A

DIGEST OF INDIAN LAW CASES

CONTAINING

HIGH COURT REPORTS, 1862—1909;

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA. 1836—1909,

WITH AN INDEX OF CASES,

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

B. D. BOSE

OF THE INNER TEMPLE, BARRISTER-AT-LAW; ADVOCATE OF THE HIGH COURT, CALCUTTA AND EDITOR OF THE INDIAN LAW REPORTS, CALCUTTA SERIES.

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reasonable time had been allowed for the auctioneers to refer the bid to the owner of the goods. The only evidence on this point was that of an assistant to the firm of the plaintiffs, who stated "that such an arrangement had never been

SALE BY AUCTION—*contd*

repudiated." *Held*, that the condition of sale containing no clause to the effect of the usage claimed, and there being no sufficient evidence that the usage was so universal as to become part of the contract by operation of law, there was no contract between the parties, and therefore that no suit would lie. Mackenzie Lyall & Co. v Chamroo Singh & Co . I. L. R. 16 Calc. 702

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does not apply to execution proceedings held under the Public Demands Recovery Act. *Ram Taruck Hazra* v. *Dilwar Ali, I. L. R. 29 Calc. 73*, relied on. GIRISH CHANDRA CHANGDAR *v.* GOLAM KARIM (1906) . . **I. L. R. 33 Calc. 451 s.c. 10 C. W. N. 347**

2. ——————— *Public Demands Recovery Act (Bengal Act VII of 1880), s 17—Powers of revision of the Commissioner and the Board of Revenue—Certificate sale—Setting aside—Certificate issued under the Cess Act (Bengal Act IX of 1880)—Limitation—Deciding case in a party's absence—Proper remedy.* Bengal Act VII of 1880 for the recovery of public demands applied to cases of road and other cesses, *Sadhusaran Singh v. Panchdeo Lal, I L. R. 14 Calc. 1*, referred to Where a Commissioner set aside a sale held in execution of a certificate granted by a Deputy Collector in respect of a fine imposed for failure to comply with a notice under s. 16 of the Cess Act, on the ground that the evidence for the petitioner made out "a *primâ facie* case of fraud, or at any rate of irregularities, which prevented the petitioner from obtaining knowledge of the proceedings against him, and caused the sale of his estate at a most inadequate price." *Held*, that the power of revision conferred on the Commissioner by s. 17 of Bengal Act VII of 1880, was amply sufficient to justify the order setting aside the sale The Board of Revenue also had power to interfere in this case under s. 24 of the Act. S 17 of Bengal Act VII of 1880 applied to orders made after as well as before sales in execution of certificates issued under the Act. The periods of limitation applicable in ordinary cases were not binding on the Commissioner, when he was acting in exercise of his revisional jurisdiction

[illegible]

an opportunity of being heard. In this case the

[illegible]

[illegible]

3. ——————— *Public Demands Recovery Act (I of 1895), ss. 10, 12, 15, 17, 24, 26—Certificate sale—Sale to set aside, if lies—Amount of certificate paid after issue—Sale if void—Sale in execution of decree after satisfaction certified—Right of innocent purchaser—Hardship—Speculative purchase.* A certificate which has been properly made for arrears actually due cannot be cancelled or modified on the ground that the demand has been subsequently satisfied, either upon a petition of objection preferred under s 12 of the Public Demands Recovery Act or in an action under s. 15 of the same Act. A suit will lie to set aside a sale held in execution of such a decree. It cannot be broadly laid down that in no case is an innocent stranger who has purchased immoveable property sold in execution of a satisfied decree to be deprived of the benefit of his purchase. *Held*, on a review of the autho-

[illegible]

chaser for value without notice. The Public Demands Recovery Act, by ss. 10, 24 and 26, casts upon the certificate officer a duty to enter satisfaction as soon as payment has been made of the amount for which certificate had been issued and authorises him to sell only so long as the certificate remains unpaid Where, therefore, the amount for which the certificate was issued was two days later deposited in the treasury, but this was overlooked with notice under s. 10 of the Act was issued and served and immoveable property belonging to the judgment-debtor sold and purchased by a stranger, *Held*, that the sale must be set aside as made without jurisdiction. *Abdool Hai v. Gunraj, L R. 20 I. A. 70, s.c. I. L. R. 20 Calc. 826 (1891)*, followed. *Rewa Mahton v Ram Kishen, L R. 13 I. A 106, s c. I. L R 14 Calc. 18 (1886)*, explained. *Poorna Chandra v. Dinabandhu, 11 C. W. N. 756 s c. I. L. R. 34 Calc. 811 5 C. L. J. 96*, referred to. A person who with his eyes open makes a speculative purchase of a valuable estate for next to nothing cannot complain of hardship when the sale is set aside. JANUKDHARI LAL *v.* GOSSAIN LAL BHAYA GAYWAL (1909) . . . **13 C.W. N. 710**

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3. ———— *Purchase—Right to sue—Suit by another defaulting co-sharer to set aside sale* A suit by a sharer to set aside a sale . . .

chaser, a co-sharer, was also a defaulter. *Held*, that, until the sale was set aside, plaintiff was not in a position to claim possession of his share. GOUREE KOMUL BHUTTACHARJEE *v* RAJ KRISTO NATH . . . . . 14 W. R. 369

4. ———— *Purchase—Suit by other defaulters to set aside sale—Joint owners—Dar-patnidar—Constructive trust.* Of three joint owners of a dar-patni, two held a 4 annas share, and the third an 8 annas share. Default having been made by all three in the payment of the rent, the patnidar brought a suit and obtained a decree for the arrears. In execution of this decree, proclamation was made that a dar-patni would be sold on the 5th of October 1877. Up to the commencement of the sale the 4 annas shareholders were unable to pay their proportionate amount of the decree; the 8 annas shareholder declined paying his share, and, when the sale took place, he became the purchaser of a dar-patni. In a suit brought by the 4 annas shareholders to recover their shares from the purchaser, the lower . . .

as through the default of the defendant, the former had no equity against the latter; and that therefore the suit should be dismissed. RAM LOLL MOOKERJEE *v* DEBENDER NATH CHATTERJEE I. L. R. 8 Calc. 8

s.c. RAM LOLL MOOKERJEE *v.* JADUNATH CHATTERJEE . . . . . 9 C. L. R. 337

5. ——— **Defaulter for period later** . . .

sue for damages, although himself a defaulter for a later period. MADHUB ANUND MOITRO *v* JOY KOOMAREE BIBEE . . . 5 W. R. 201

3. UNDER-TENURES, SALE OF.

1. ———— **Beng. Act VIII of 1865**—*Application of Act—Chota Nagpore* Bengal Act VIII of 1865 applied to the district of Lohardagga in Chota Nagpore. GOBIND RAM *v* BHUPAL SINGH 10 C. L. R. 76

2. ———— s. 30.—"*Proceeding*"—*Sale* A sale under Bengal Act VIII of 1865 was a "proceeding" within the meaning of s 30 of that Act. DWARKANATH SEIN *v* CHUNDER MOHUN MITTER 12 W. R. 326

3. ———— **Act X of 1859, s. 105**—*Sale of transferable tenure—Act X of 1859, s. 151.* The plaintiff sued to bring a transferable occupancy tenure to sale in satisfaction of a decree for . . .

SALE FOR ARREARS OF RENT—*contd.*

3 UNDER-TENURES, SALE OF—*contd.*

4. ——————— *Purchase by zamindar at sale in execution of decree of Civil Court.* A zamindar who had obtained a decree against a registered tenant for arrears of rent was fully justified in proceeding to sale under s. 105 of Act X of 1859, notwithstanding the tenure was purchased subsequently to the date of the above decree at a sale in execution of a decree of the Civil Court. SUFUROONISSA *v.* SAREE DHOOPEE
8 W. R. 384

5. ——————— Under s. 105, Act X of 1859, an under-tenure might be sold in execution of a decree, provided there was an arrear of rent adjudged. SUTTEESCHUNDER ROY *v.* MODHOOSOODUN PAUL CHOWDHRY
W. R. 1864, Act X, 91

6. ——————— *Procedure by proprietor of under-tenure—Act X of 1859, s. 106.* Under s. 105, Act X of 1859, an under-tenure was liable to sale in execution of a decree for arrears of rent for eleven years Any party wishing to stay the sale, on the ground of his being the proprietor of the under-tenure, had to comply with the provisions of s. 106. DOORGA PERSAD BOSE *v.* SREEKISTO MOONSHEE
W. R. 1864, Act X, 48

7. ——————— Beng. Act VIII of 1869, ss. 59

[illegible]

after batwara of a share of the talukh in which

[illegible]

8. [illegible] *Right, title and* [illegible] In a sale [illegible] judgment- [illegible] MUNSHI [illegible] B. L. R. 1

9. ——————— *"Tenure," meaning of—Non-registration of names—Act X of 1859, s. 105.* By the word "tenure" as used in s 105, Act X of 1859, is meant not the right or interest of any person in the land, but the holding or the interest which has been created by the lease, and it is the latter which is sold on a sale under s. 105. Therefore where *A*, at a sale in execution of a decree for debt, bought the right, title, and interest of the holder of a transferable under-tenure, and previous to the confirmation of such sale the zamindar sued the tenant for arrears of rent and obtaind a decree, under which he sold the tenure to persons who con-

[illegible]

recover possession from *B* SHAMCHAND KUNDU *v.* BROJONATH PAL CHOWDHRY
12 B. L. R. F. B. 484 : 21 W. R. 94

SALE FOR ARREARS OF RENT—*contd.*

3 UNDER-TENURES, SALE OF—*contd.*

GIRISH CHUNDER MITTER *v.* JHAKU
12 B. L. R. 488 note : 17 W. R. 352

ANUND LOLL MOOKERJEE *v.* KALIKA PERSAD MISSER . **12 B. L R. 489 note : 20 W. R. 59**

RUGHOOBUR THAKOOR *v.* SYEFOOLLAH KHAN
23 W. R. 289

BANEE MADHUB BUKSHEE *v* RADHA MADHUB MOZOOMDAR . . . . **22 W. R 196**

10 ——————— *Non-registration of tenants' names—Right of person in permissive possession of tenure.* A sale in execution of a decree for arrears of rent (at an enhanced rate) of a subordinate talukh, which has been obtained against a party who is in possession of the talukh by permission of the owners, but who has no other right or title to it, will not bind those owners, even though their names be not recorded as tenants in the books of the zamindar. *Sham Chand Kundu* v. *Brojo Nath Pal Chowdhry, 12 B. L. R. 484*, distinguished. RIDOY KISSEN DUTT *v.* RAM COOMAR SEN . **3 C L. R. 231**

11. ——————— *Non-registration of purchase of under-tenure in the landlord's serishta* In a case governed by Act X of 1859, it was *held* that a person, who had purchased a transferable jote, but who did not get his name registered in the landlord's serishta, had no *locus standi* against a subsequent auction-purchaser of the jote in execution of a decree obtained against the recorded tenant, and had no right to impugn the title of the auction-purchaser under the sale. *Sham Chand Koondoo* v. *Brojo Nath Pal Chowdhry, 12 B. L R 484 : 21 W. R. 94*, followed. PATIT SHAHU *v* HARI MAHANTI . . . . **I. L. R 27 Calc. 789**

12. ——————— *What passes a sale of under-tenure—Growing crops—Beng Act VIII of 1869, s. 66.* At the sale of an under-tenure for arrears of rent under s. 66 of Bengal Act VIII of 1869, the growing crop standing on the land passes to the purchaser at the auction-sale, except when it has been specially excepted by the notification of sale, or a custom to the contrary has been proved AFATOOLLA SIRDAR *v.* DWARKA NATH MOITRY
I. L R. 4 Calc. 814 : 4 C. L R 95

13. ——————— *What passes at sale of under-tenure—Certificate of sale* *B B* held 1 anna of a 10 annas in a jumma which had, been purchased by *B L H*, and had paid rent to the kutkinadar on such 1 anna share, and had his name registered as owner of such 1 anna share in the sherista of the kutkinadar. The kutkinadar having afterwards brought a suit against *B L H* alone for arrears of rent of the entire 10

[illegible]

did not pass under such sale. BHUGEERUTH BERAH *v.* MONEERAM BANERJEE
I. L R. 4 Calc 855

SALE FOR ARREARS OF RENT—*contd.*

3. UNDER-TENURES, SALE OF—*contd.*

14. ———— *What passes at sale of under-tenure—Beng Act VIII of 1869, ss. 59, 60—Sale certificate—Proclamation of sale.* *Held*, on the construction of a sale certificate and a proclamation of sale, purporting to be made under ss. 59 and 60 of the Rent Act (Bengal Act VIII of 1869), that what passed by the sale was not an under-tenure, but merely the right, title and interest of the judgment-debtor therein. The declaratory portion of a sale proclamation is not by itself sufficient to override the description of the property in the body of the document. DWARKA NATH *v.* ALOKA CHUNDER SEAL

I. L. R. 9 Calc. 641

15. ———— *Sale in execution of decree under Civil Procedure Code, 1859—Beng Act VIII of 1869, ss 59, 60, 66—Right of purchaser* In execution proceedings under Act VIII of 1869, whether the property attached is an under-tenure or an ordinary leasehold interest, only the right, title, and interest of a judgment-debtor can be sold, while by virtue of a sale of a tenure under s. 59 of Act VIII of 1869, the purchaser acquires it under ss. 59, 60, and 66 free of [illegible]

SAHOO *v.* LALLA CHABEEL CHAND. DOOLAR CHAND SAHOO *v.* LALLA BISHESHUR DYAL

L. R. 6 I. A. 47 : 3 C. L. R. 561

16. ———— *Beng Act VIII of 1869, ss 59, 61—Right of auction-purchaser* Where an under tenure was sold in execution of a decree which had been passed in the terms of a compromise effected between the landlord and all the sharers in the tenure but one, and the representative of the latter sought to assert his right to his share against the auction-purchaser —*Held*, that, in a sale under Act VIII of 1869, a tenure is sold outright, and that this tenure did not pass to the auction-purchaser with any incumbrances GRISH CHUNDER GHOSE *v.* KALEE TARA . **25 W. R. 395**

17. ———— *Right of mortgagee—Right to notice of sale—Adjudication of title, suit for.* The right, title, and interest of *A* in a certain under-tenure was sold in execution of a decree for rent obtained against him by *B* and purchased by *B* himself *B* at the time held another decree against *A* for arrears of rent for the same under-tenure. *C*, to whom *A* had previously mortgaged the under-tenure, thereupon having foreclosed the mortgage, instituted a suit for possession against *A* and *B* and obtained a decree for possession. After this decree, but before *C* got actual possession, *B* caused the under-tenure to be sold in execution of his other decree against *A* and again became himself the purchaser. *C*, having shortly afterwards obtained possession under his decree, was dispossessed by *B*, who took possession through the Court under his second purchase. *C* thereupon instituted proceedings under s. 269, Act VIII of 1869, in which he was successful, and consequently regained possession. In a suit brought by *B* to set aside those proceedings and for adjudication of title —*Held*, that *B* had a good title to the under-tenure, and that he was not bound, before bringing the under-tenure to sale under his second decree, to give notice to *C*. *Nobeen Kishen Mookerjee v. Shib Prosad Pattuck, 8 W. R. 96*, considered. LAIDLEY *v.* GUNNESS CHUNDER SAHOO

I. L. R. 4 Calc. 435

s.c. WATSON *v.* GONESH CHUNDER SAHOO

3 C. L. R. [illegible]

18. ———— **Procedure**—*Setting aside sale—Material irregularities—Civil Procedure Code (Act X of 1877), Ch. XIX, ss 311, 617.* The procedure to be followed upon the sale of an under-tenure is now that prescribed by the Civil Procedure Code. S. 311 does not apply only to sales made under Ch. XIX of the Code, and the sale of an under-tenure may be set aside upon any of the grounds mentioned in that section. AZIZOONISSA KHATOON *v.* GORA CHAND DASS . **I. L. R. 7 Calc. [illegible]**

s.c. AZIZOONISSA KHATOON *v.* KALLY [illegible]

8 C. L. R. [illegible]

19. ———— *Execution of decree—Bengal Rent Act (Bengal Act VIII of 1869), ss. 59, 60, 64—Decree for arrears of rent against Hindu heiress—Rent accrued due after death of last owners—What passes by sale, whether limited or absolute estate.* In execution of a decree for arrears of rent, obtained in a suit under the Bengal Rent Act (Bengal Act VIII of 1869) by [illegible] of several co-sharer landlords against a [illegible] daughter for arrears accruing after her [illegible] death, an under-tenure of which she was in possession and in enjoyment of the [illegible] was sold under the provisions of [illegible] Act. *Held*, by the Judicial Committee [illegible] the judgment of the High Court, that [illegible] limited interest which she took as [illegible] daughter, and not an absolute interest [illegible] passed by the sale The liability [illegible]

[illegible]

JIBAN KRISHNA ROY *v.* BROJO LAL [illegible]

I. L. R. [illegible]

s.c. [illegible]

L. R. [illegible]

4. PORTION OF UNDER-TENURE [illegible]

1. ———— **Judgment** [illegible] **of whole rent**—*Beng Act VIII of [illegible]* [illegible] 64 It is only where the [illegible] in receipt of the entire [illegible] that in execution of a decree [illegible] tenure can be sold. DWARKA [illegible] SUVRIDRA NATH CHOWDHRY [illegible]

SALE FOR ARREARS OF RENT—*contd.*

4. PORTION OF UNDER-TENURE, SALE OF —*contd*

2. ——— **Sale under decree obtained by sharer in undivided estate.** If a decree is given in favour of a sharer in a joint undivided estate for his share of the rent of an under-tenure situate in such estate, he is not allowed by law to put up for sale a portion of the under-tenure. GOBIND CHUNDER ROY CHOWDHRY *v.* RAM CHUNDER CHOWDHRY . 22 W. R. 421

3. ——— *Act X of 1859, s. 108—Effect of sale.* Where a sharer in an undivided talukh after obtaining a decree for money, due to him on account of his share of the rent, brings to sale a portion of the tenure

[illegible]

PITAMBUREE CHOWDHRAIN *v.* NOBIN KRISTO MOOKERJEE . . . . 18 W. R. 205

4 ——— **Act X of 1859, s 108**—*Beng Act VIII of 1865, s 4—Sale of under-tenure—Execution of decree for rent* A suit by a sharer in a joint undivided state for money due to him on account of his share of the rent of an under-tenure situate in such undivided estate fell within the provisions of s. 108, Act X of 1859. Where the owner [illegible] to a tenant [illegible] buliat, a suit [illegible] treated as a [illegible] came under the provisions of s. 4, Bengal Act VIII of 1865. DWARKANATH CHUCKERBUTTY *v.* DHUN MONEE CHOWDHRAIN . . . . 15 W. R. 524

5. ——— *Right of purchaser on sale of portion of tenure* Where a suit was for rent and the balances due under the decree were on account of a 7 annas rukkum of a tenure, and the sale certificate passed the right and interest of the defaulting under-tenant, it was *held* that Act X of 1859, s. 108, was applicable to the case, and that such right and interest only, and not the whole tenure, became vested in the auction-purchaser. AUKHIL CHUNDER MOOKERJEE *v.* CHUNDER COOMAR MITTER 22 W. R. 414

6. ——— **Beng. Act VIII of 1868, s. 64** —*Right of purchaser—Effect of sale.* The Full Bench decision in *Sham Chand Kundu* v. *Brojonath Pal Chowdhry, 12 B L. R. 484 : 21 W. R. 94*, by which the right of a purchaser in execution of a rent-decree prevails over that of an earlier purchaser, has no application to the case of a sale under Bengal Act VIII of 1869, s. 64, which provides for the sale, not of the tenure, but of the right, title, and interest of the judgment-debtors. LUCHMUN RAMONOOJ DOSS *v.* RAM HUREE ROY 22 W. R. 67

7. ——— *Landlord and tenant —Sale of a portion of a tenure—Beng. Act VIII of 1869, ss. 59, 60—Co-sharers—Parties.* A portion of a tenure cannot be the subject of a sale under s 64, Bengal Act VIII of 1869, so as to give the purchaser the same privilege as he would acquire by the purchase of an entire tenure under ss 59 and 60 A landlord who was in receipt of a half share of the rent of a certain tenure caused that share of the tenure to be sold in execution of a decree for arrears of rent. After such sale *A*, the purchaser, took possession Subsequently the tenant executed a mortgage, and a decree being obtained by the mortgagee the whole tenure was brought to sale in execution thereof and purchased by the mortgagee, who proceeded to oust *A* In a suit by *A* to recover possession of his half share of the tenure on the footing of his purchase :—*Held*, that he could not make out a title to the half tenure with the privilege attaching to the purchase of an entire tenure under ss 59 and 60 of Bengal Act VIII of 1869; and that, as it appeared that

[illegible]

See SHAMCHAND KUNDU *v* BROJONATH PAL CHOWDHRY . . . . 12 B L. R. 484

8. ——— *Right, title, and interest of registered shareholder in tenure—Effect on* [illegible]

[illegible]

arrears of rent and in execution thereof proceeded to sell his right, title, and interest under s 64 of the Rent Act :—*Held*, that, as the judgment-debtor represented his brother, and as they were equally liable to pay the amount of the decree upon the principle set out above, the latter were not entitled to recover their share of the tenure which the auction-purchaser had obtained possession of in execution of the decree against the judgment-debtor *Doolar Chand Sahoo* v. *Lalla Chabeel Chand, L. R 6 I. A. 47* ; and *Bissessur Lall Sahoo* v. *Luchmessur Singh, L. R 6 I A 233*, commented on. JEO LALL SINGH *v.* GUNGA PERSHAD . . . I. L. R. 10 Calc. 996

9. ——— *Sale of right, title and interest of a registered tenant—Effect of* [illegible]

[illegible]

sale did not affect their rights, on the allegation

SALE FOR ARREARS OF RENT—*contd.*

4. PORTION OF UNDER-TENURE, SALE OF —*contd*

that defendants Nos. 3 and 4, who were the proprietors of a certain share of the estate under which the said talukh was held, having obtained a collusive decree for arrears of rent for the years 1298 and 1299 (B. S.) against defendant No. 1, who was a joint owner of the talukh with the plaintiffs, in execution thereof fraudulently caused the disputed property to be sold, and defendant No 1 purchased it, in the benami of defendant No. 2, the defence (*inter alia*) was that the sale was not brought about by fraud or collusion, and that the rent suit having been brought against the registered tenant defendant No. 1, the whole tenure passed by the sale. *Held* by BANERJEE and HILL, JJ (RAMPINI, J., dissenting), that inasmuch as it appeared that the share sold away stood in the name of defendant No. 1 alone, that the zamindar used to sue defendant No 1 rent for the said share; that the defendant No 1 used to realise a rateable share of costs, road cesses, etc, which he was bound to pay under rent decrees obtained against him, from the plaintiffs sometimes amicably and generally by contribution suits; and that the defendants Nos. 3 and 4, who were the fractional shareholders of the zamindari, sued the defendant No 1 as usual for rent for the years 1298 and 1299 B S, and obtained a decree, the sale, though in terms only a sale of the right, title, and interest of the judgment-debtor, really passed the right, title, and interest, not only of the registered tenant, but also of the unregistered co-owners whom he represented. *Jeo Lall Singh* v. *Gunga Pershad, I. L. R 10 Calc 996*, followed. NITAYI BEHARI SAHA PARAMANICK v. HARI GOVINDA SAHA . . . I. L. R. 26 Calc 677

10. ———— *Sale of a jumma in execution of a decree for rent obtained against one of the heirs, of the last recorded tenant, from whom the landlord chose to accept rent separately and who was not recorded in the landlord's serishta —Effect of such a sale.* An heir of an occupancy raiyat can claim recognition by the landlord on the death of his ancestor who was the recorded tenant The plaintiffs sued to recover possession of their share of certain rent-paying lands on the allegation that they were entitled to a one-third share of these lands by inheritance from the last recorded tenant, and another one-third share by purchase from one of his heirs; that the defendants Nos. 2 and 3 were entitled to the remaining one-third share; that for some years they and the said defendants have been paying rent to the landlord and obtaining separate rent receipts; that the defendants Nos. 2 and 3 in collusion with the landlord [illegible]

SALE FOR ARREARS OF RENT—*contd.*

4 PORTION OF UNDER-TENURE, SALE OF —*contd*

entire jumma passed *Held*, that, as the landlord was bound to recognise the plaintiffs as tenants in the place of the last recorded tenant, and also as he chose to accept rent from the plaintiffs, and the defendants Nos. 2 and 3 separately, he had no right to ignore the plaintiffs and proceed only against the defendants The entire jumma did not pass by the sale, and the plaintiffs' right was not affected thereby. *Nitayi Behari Saha Paramanick* v. *Hari Go[illegible]* [illegible] guished. [illegible] HALDAR [illegible]

11. ———— *Sale of gantidari rights.* In a suit for arrears of rent, where defendants denied the relation of landlord and tenant to [illegible]

due on the 12 annas share, plaintiff caused the ganti to be sold and purchased it himself, and the proceeds not being sufficient to pay the amount of the decree, he caused the tenant-right of the 4 annas share to be sold and purchased that also *Held*, that Bengal Act VIII of 1869, s 64, did not apply, because plaintiff was not a sharer in a joint undivided estate; and that, by his purchase, plaintiff had become the absolute owner of the 12 annas ganti, and had acquired the right, title, and interest of the last registered tenant in the 4 annas share. The result was to place him in the position of holding the 16 annas gantidari right as against the under-tenants, who were bound to pay rent to him as *de facto* gantidar. JOGENDRO CHUNDER GHOSE v. SHONA KALEE . 24 W. R. 313

12. ———— *Sale of immoveable property—Beng Act VIII of 1869, s 65.* [illegible]

his debtor, such attachment is void and will not invalidate a conveyance of the property by the [illegible]

SARODA PROSAD GANGOOLY v. TARUCK CHUNDER BHUTTACHARJEE . . . 2 C. L. R 325

13. ———— *Landlord and tenant—Sale of portion of under-tenure—Suit for arrears of rent* There is nothing in s 64, Bengal Act VIII of 1869, which necessarily leads to the conclusion that under that section a share of an under-tenure cannot be sold so as to render

SALE FOR ARREARS OF RENT—*contd.*

4. PORTION OF UNDER-TENURE, SALE OF —*concld*

held a talukh in such zamindari, for arrears of rent due in respect of such share, and in execution of such decree brought a share of such taluk to sale, corresponding with his share in the zamindari, and himself became the purchaser, and where such plaintiff subsequently instituted a suit against *X*, who was also the owner of a howla and nim-howla under the said talukh, for arrears of rent due in respect of the share of the talukh so purchased by him; and where it appeared that the sale at which the plaintiff became the purchaser was afterwards confirmed; and that he had obtained a sale certificate:—*Held*, that such suit was not liable to be dismissed merely on the ground that the plaintiff had brought a share of an under-tenure to sale in execution of a decree for arrears of rent under s. 64 of Bengal Act VIII of 1869, and had thereby acquired nothing by such purchase, there being nothing in that section to support such a conclusion *Gobind Chunder Roy Chowdhry* v. *Ram Chunder Chowdhry*, 22 *W R.* 421, and *Reily* v. *Hur Chunder Ghose, I. L. R 9 Calc* 792, discussed and explained ASHANULLA KHAN BAHADUR *v.* RAJENDRA CHANDRA RAI

I. L. R. 12 Calc. 464

14 ——— **Act VIII of 1869, ss 26, 59**—*Suit for rent—Landlord and tenant—Effect of sale in execution of a decree for rent.* Where two persons, *B* and *I*, were registered tenants, and on *B's* death no one was registered in his place, and a suit for arrears of rent was brought against the widow and the executors of the sole surviving registered tenant:—*Held*, in view of s 26 of Act VIII of 1869 (B. C), that the zamindar was not bound to look for his rent beyond the representative of the surviving registered tenant, and that the entire tenure passed by the sale in execution of a decree for arrears of rent obtained against the representative of the surviving registered tenant. Where the sale

debtor would not have the effect of limiting the sale to such rights and interests and not extending to the tenure itself MAHOMED SIRKAR *v.* GIRISH CHUNDER CHOWDHURI . . 2 C. W. N 251

5. EFFECT OF SALE.

1. ——— **Dissolution of relation of landlord and tenant**—*Patni tenure.* The sale of a patni dissolves the relationship of landlord and tenant between the zamindar and the patnidar. BROJONATH SINGH ROY *v.* BHUGOBUTTY DASSEE

1 W. R. 133

2. ——— **Unregistered tenant.** A zamindar has a perfect right to bring a tenure to sale for arrears of rent without regard to the rights of the new tenant while he is yet unregistered. NOBEEN KISHEN MOOKERJEE *v* SHIB PERSHAD PATTUCK . . . . 9 W. R. 161

Upholding on review decision in 8 W. R. 96

3. ——— **Registered tenant affected by sale** A zamindar need not ordinarily look beyond the register for sale of a tenure of a registered defaulter FORBES *v.* PROTAP SINGH DOOGUR

7 W. R. 409

4. ——— **Liability of tenant for rent**

S.C. RAM COMUL MISTRY *v.* GOPEEKISTO GOSSAMEE . . . . . . 1 Hay 563

See (*contra*) HOROMOHUN MOOKERJEE *v* RAM COOMAR MITTER . . . 1 W. R. 225

5. ——— **Right of inamdars in respect of debts for arrears of rent.** The paramount rights of Government in respect of debts due to the Crown are not transferred to alienees (such as inamdars) of Government revenue If an inamdar fails to recover his rents by any of the special processes provided in the regulations, and

6. ——— *Bengal Tenancy Act (VIII of 1885), ss. 160, cl (g), 163 and 167—Sale of mortgage of dar-patni tenure—Right, title and interest of debtors—Ben. Reg. VIII of 1819, ss 3 and 4—Incumbrance—Limitation Act (XV of 1877), s. 7—Where limitation is determined by the provisions of the Bengal Tenancy Act, whether a minor is entitled to a further period of limitation under the Limitation Act* The

SALE FOR ARREARS OF RENT—*contd.*

5. EFFECT OF SALE—*contd.*

title and interest of the defaulter therein. *Jotendro Mohun Tagore* v. *Jogul Kishore, I. L. R. 7 Calc. 357* and *Nitayi Behari Saha Paramanick* v. *Hari Govinda Saha, I. L. R. 26 Calc. 677*, referred to. A mortgage created by a *darpatnidar* of his interest in the *taluk* does not amount to a "protected interest," with the meaning of s. 160, cl. (g), of the Bengal Tenancy Act. When a mortgagee of a tenure had enforced his lien and ob-[illegible]

[illegible] ation is provided in the third column of the Second Schedule to that Act. But, in a case where the limitation is determined by the provisions of s. 167 of the Bengal Tenancy Act, s. 7 of the Limitation Act cannot have any application, and the minor is not entitled to any fresh period of limitation. *Girija Nath Roy Bahadur* v. *Patani Bibee, I. L. R. 17 Calc. 263*, referred to. The purchaser of the interest of a judgment-debtor is his representative for the purpose of execution proceedings. *Ishan Chunder Sirkar* v. *Beni Madhab Sirkar, I. L. R. 24 Calc. 62*, referred to. AKHOY KUMAR SOOR *v.* BEJOY CHAND MOHATAP (1902) . . . **I. L. R. 29 Calc. 813**

7. ———— ———— *Tenure, sale of—Recorded tenant, rent decree against—Execution as money decree—Sale if passes entire enure—Estoppel.* A sale in execution of a money decree obtained [illegible]

v. *Gunga Pershad, I. L. R. 10 Calc. 996*, distinguished and doubted. DOORGADHUR BISWAS *v.* HURO MOHINEE DABEE (1888) **13 C. W. N. 270**

6. INCUMBRANCES.

1. ———— **Subordinate tenures, effect of sale on**—*Beng. Reg. VIII of 1819—Sale of patni talukh.* On the sale of a talukh under the [illegible]

[illegible] Tenures created by defaulter [illegible]

DHAN GANGULI
3 B. L. R. A. C. 431 : 12 W. R. 383

SALE FOR ARREARS OF RENT—*contd.*

6. INCUMBRANCES—*contd.*

3. ———— **Tenures created by patnidar**—*Patni tenure—Act X of 1859, s. 105—Beng. Reg. VIII of 1819.* The provisions of Regulation VIII of 1819 with respect to the sale of under-[illegible]

trary, that the tenure was one transferable by sale, and upon the creation of which it was stipulated by the terms of the engagements interchanged that in case of an arrear occurring, the estate must be brought to sale, in other words, it must be presumed to be a tenure such as is described in the preamble to Regulation VIII of 1819, and the effect of the sale was to annul all incumbrances created by the patnidar. BRINDABUN CHUNDER SIRCAR CHOWDHRY *v.* BRINDABUN CHUNDER DEY CHOWDHRY **13 B. L. R. 408 : 21 W. R. 324 L. R. 1 I. A. 178**

s.c. in the High Court, BRINDABUN CHUNDER CHOWDHRY *v.* BRINDABUN CHUNDER SIRCAR CHOWDHRY . . . . **8 W. R. 507**

4. ———— **Decree as to liability to enhancement**—*Beng. Reg. VIII of 1919—Right of purchaser—Suit for enhancement of rent—Patni tenure.* The purchaser of a patni talukh at a sale for arrears of rent under Regulation VIII of 1819 sued for a kabuliat at an enhanced rent. The former patnidar had brought a similar suit, and the Court had declared that the rent was not liable to enhancement. *Held*, that the purchaser was bound by that decree. TARAPRASAD MITTRA *v.* RAM NRISING MITTRA
6 B. L. R. Ap. 5 : 14 W. R. 283

5. ———— **Purchase by grantor of patni tenure**—*Beng. Reg. VIII of 1819, s. 11, cls. 1 and 3—Rate of rent—Patni tenure.* The grantor of a patni tenure who subsequently purchases the lands granted by him in patni at the sale of the patni tenure does not revert *ipso facto* to the possession he formerly held as proprietor, and is not entitled to recover rent from the tenants at the rate he was receiving when he granted the patni, without reference to the rents realised by the patniholder in the interim. MAJORAM OJHA *v.* NILMONEY SINGH DEO
13 B. L. R. 198 : 21 W. R. 326

6. ———— **Right to annul tenures**—*Right of lessee claiming under purchaser—Tenures not annulled by purchaser.* Where an auction-purchaser did not avail himself of the [illegible]

NOONISSA BIBEE . . . . . **7 W. R. 91**

7. ———— **Power to make incumbrances**—*Patni lease, construction of—Beng. Reg. VIII of 1819.* A patni lease containing word

SALE FOR ARREARS OF RENT—*contd.*

6. INCUMBRANCES—*contd.*

to the effect that the patnidar could give no darpatni or mokurari lease at a jumma less than the [illegible]

as regards the grant of leases. MOHADEB MUNDUL v COWELL . . . . . 15 W. R. 445

Upheld on review COWELL v MOHADEB MUNDUL . . . . . . 17 W. R. 182

See MONOMOTHONATH DEY v GLASCOTT. 20 W. R. 275

SHAM CHAND MITTER v. JUGGUT CHUNDER SIRCAR . . . . 22 W. R. 50

Upheld on review . . . . 22 W. R. 541

8. ——— **Right of ejectment**—*Right of purchaser of patni tenure—Waiver by acceptance of rent.* The receipt of rent for fifteen years by the purchaser of a patni talukh sold for arrears of rent under Regulation VIII of 1819 was *held* to be a waiver on his part of his right to evict the tenant under cl. 2, s. 11, of that Regulation. WOOMANATH ROY CHOWDHRY v ROGHOONATH MITTER . . . . 5 W. R., Act X, 63

9. ——— **Bengal Rent Act, 1869, s. 66 (Beng. Act VIII of 1865, s. 16)**—*Khodkasht raiyats* The object of s. 16, Bengal Act VIII of 1865, was to protect not merely any one class of tenants, but the leaseholder of the particular land leased: the expression "khodkasht raiyats" as used there meaning "resident and hereditary cultivators." KOONTEE DEBEE v. HRIDOY NATH DURREEPA . . . . . 16 W. R. 206

10. ——— *Purchaser of rights of holder of fractional share.* S 16 of Bengal Act VIII of 1865 did not apply to the purchaser of the rights and interests of the holder of a fractional share in an under-tenure HARASUNDARI DASI v. KISTOMANI CHOWDHRAIN 5 B. L. R Ap. 37 : 13 W. R. 257

11. ——— *Right of purchaser to eject tenants.* Where the rights and interests of a judgment-debtor were sold in execution under Bengal Act VIII of 1865, the tenure itself did not pass, much less did it pass free from all incumbrances; and the purchaser was not entitled to eject tenants who had been occupying and cultivating the land for more than twelve years. RAJ KISHEN MOOKERJEE v. DUSRUTH SOOTRODHUR . . . . . 15 W. R. 234

12. ——— *Under-tenure, sale of—Act X of 1859, s. 105.* Under-tenure sold for arrears of rent under s. 105 of Act X of 1859, other than tenures upon which the right of selling for arrears of rent had been especially reserved by stipulation in the engagement interchanged on the creation of the tenures, did not pass free from incumbrances. *Semble* It was to get rid of this that s 16 of Bengal Act VIII of 1865 was enacted. SHAHABOODEEN v. FUTTEH ALI B. L. R. Sup. Vol. 646 2 Ind. Jur. N. S. 135 : 7 W. R. 260

MOHIMA CHUNDER DEY v. GOOROO DOSS SEN 7 W. R. 285

INDUR CHUNDRA DOOGUR v RUTTUN KOOMAREE BIBEE . . . . . . 7 W. R. 376

The above Full Bench decision did not apply where the tenure itself was not sold DOORGA SOONDUREE DEBIA v. DINOBUNDHOO KYBURTO DOSS . . . . . . 8 W. R. 475

13. ——— *Sale of sub-tenure—Beng Reg VIII of 1831.* Where a sub-tenure had been granted, but no power was reserved to the grantor in the sanad to sell the tenure free from incumbrances in case of default in payment of rent —*Held,* that, in a sale for arrears of rent under Regulation VIII of 1831, the purchaser did not take free from incumbrances created by the grantee. The decision in *Shahaboodeen v. Futteh Ali, B L. R. Sup Vol 646,* affirmed. FORBES v. LUTCHMEPUT SINGH 10 B L. R. 139 : 17 W. R. 197 14 Moo. I. A. 330

MOHESH CHUNDER BANERJEE v. CHUNDER MONEE DEBI 10 B. L. R. 150 note : 15 W. R. 237

14. ——— *Beng Act VIII* [illegible]

GOBIND CHUNDER BOSE v. ALIMOODDEEN 11 W. R. 160

15. ——— *Survival of incumbrances.* The sale of a tenure under s 16 Bengal Act VIII of 1865, did not *ipso facto* annul all incumbrances, but certain incumbrances were recognized by this section to survive such sale. UMASUNDARI DASI v. BIRBUL MANDAL 3 B. L. R. A. C. 183

s c. WOOMA SOONDUREE DOSSIA v. BEERBUL MUNDUL . . . . . . 11 W. R. 563

16. ——— *Voidable incumbrances.* Under Bengal Act VIII of 1865, s. 16, under-tenures became void *ipso facto* by the sale and were not merely voidable at the option of the purchaser UNNODA CHURN DASS BISWAS v. MOTHURA NATH DASS BISWAS I. L. R. 4 Calc. 860 : 4 C. L. R. 6

17. ——— *Suit to set aside incumbrances.* The right which an auction-purchaser has, under the Rent Law, s. 66, to do away with under-tenures cannot be executed without a suit first having been instituted, the mere fact of purchase being insufficient to set aside incumbrances. RAJ BULLUBH MITTER v. SREERAM SIRCAR . . . . . 25 W. R. 109

SALE FOR ARREARS OF RENT—*contd.*

6. INCUMBRANCES—*contd.*

18. ———— *Patni tenure—Dar-patni tenure—Under-tenure—Incumbrance—Beng. Act VIII of 1869, ss. 59, 60.* The sale of a patni tenure of its own arrears under ss. 59 and 60, Bengal Act VIII of 1869, does not *per se* avoid the dar-patni tenures, but only renders them voidable at the option of the purchaser. An under-tenure is an incumbrance within the meaning of s. 60, Bengal Act VIII of 1869. TITU BIBI *v.* MOHESH CHUNDER BAGCHI . I. L. R. 9 Calc. 683

s.c. TITU BIBI *v.* IBRAHIM MOLLAH
12 C. L. R. 304

19. ———— *Brick-built house.* A brick-built house was not an "incumbrance," or a tenure within the meaning of that word in s. 16 of Bengal Act VIII of 1865 which a purchaser at a sale for arrears of rent could remove. SHIBDAS BANDAPADHYA *v.* BAMANDAS MUKHOPADHYA . 8 B. L. R. 237 : 15 W. R. 360

20. ———— *Mortgage by defaulting tenant—Act X of 1859, s. 107.* A mort-

21. ———— *Title acquired—Adverse possession.* If the holder of an under-tenure allowed his tenant to occupy the land rent free for more than twelve years, the interest thus created in the latter was an incumbrance upon the under-tenure as much within the reason of Bengal Act VIII of 1865, s. 16, as if the holder had made a rent-free grant or given a nominal lease MAHOMED ASKUR *v* MAHOMED WASUCK
22 W. R. 413

22. ———— *Right of occupancy under Act X of 1859, s. 6—Right of purchaser—Incumbrance.* A purchaser of a tenure sold under Act VIII of 1865 for arrears of rent could not, under s. 16, eject a raiyat who had acquired a right of occupancy under s. 6, Act X of 1859, under the former tenant. NILMADHAB KARMOKAR *v.* SHIBU PAL
5 B. L. R. Ap. 18 ; 13 W. R. 410

PUREDAG SINGH *v.* PURTAB NARAYAN SINGH
5 B. L. R. Ap. 20 : 11 W. R. 253

BHOLANATH GHOSSAL *v.* KEDARNATH BANERJEE
19 W. R. 106

EMAM ALI MESTORY *v* ATOR ALI KHAN
22 W. R. 133

23. ———— *Intermediate holding—Howla tenure.* An auction-purchaser at a sale held under Bengal Act VIII of 1865 had a right to get rid of an intermediate holding such as a howla so far as to substitute himself for the howladar in respect of the collection of the raiyat's rents. MOHIOODDEEN MAHOMED *v.* RAM KISHORE KOONDOO . . . . 22 W. R. 311

SALE FOR ARREARS OF RENT—*contd.*

6 INCUMBRANCES—*contd.*

24. ———— *Rights of a purchaser at an auction-sale held under Beng Act VIII of 1865 when in collusion with the former proprietor.* A proprietor of a talukh, which was about to be sold, for arrears of rent, entered into an arrangement with the plaintiff whereby, in consideration of a share

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former proprietor obtained a share in the purchase. A suit by the plaintiff to oust the under-tenants was dismissed; the plaintiff took only as a purchaser at an ordinary execution-sale, and did not obtain the benefit of s. 16 of Bengal Act VIII of 1865 SRINATH GHOSE *v.* HARONATH DUTT CHOWDHRY . . 9 B. L. R. 220 : 18 W. R. 240

25. ———— *Shikmi tenure.* Where a shikmi tenure was sold under Bengal Act VIII of 1865 and the shikmidar was found to be the under-tenant of the zamindar, the shikmi pottah not giving the privilege of making incumbrances, the purchaser was *held* entitled under s. 16 to receive the tenure free of all incumbrances, *e.g.*, the incumbrances of a jummai tenure of a person who was not a khodkasht raiyat. HUREE NARAIN CHATTERJEE *v.* WOOMA CHURN MOOKERJEE . . . 19 W. R. 169

26. ———— *Shikmi tenure.* At a sale held under Bengal Act VIII of 1865 the defendant purchased a shikmi tenure, and obtained possession thereof Subsequently he ousted the plaintiff from certain lands, and hence the suit by the plaintiff for recovery of possession thereof, on the ground that the property in dispute was a lakhiraj tenure, created by the Rajah of Tipperah, and that the plaintiff was owner thereof, partly to purchase and partly by inheritance. The lower Appellate Court found as a fact that the late shikmidar, and not the Rajah, had granted the lands in dispute as brahmatar, but not in favour of the person through whom the plaintiff claimed. It, however, passed a decree

purchaser, and that the plaintiff should show that the former holder could create such right. ISWAR CHANDRA CHUCKERBUTTY *v.* BISTU CHANDRA CHUCKERBUTTY 3 B. L. R. Ap. 97 : 12 W. R. 32

See SRINATH CHUCKERBUTTY *v.* SRIMANTO LASHKAR . 8 B. L. R. 240 note : 10 W. R. 467

27. ———— *Incumbrance created with sanction of zamindar.* In a suit by a purchaser at a sale under Bengal Act VIII

zamindar:—*Held*, that under the strict provision

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6. INCUMBRANCES—*contd.*

of that section no sanction of the zamindar would avail, unless the right was vested in the holder by the written engagement under which the under-tenure was created, or by the subsequent written authority of the person who created it, or his representatives. ESHAN CHUNDER MOJOOMDAR *v.* HURISH CHUNDER GHOSE

21 W. R. 137

28. ——————— *Avoidance of incumbrance—Beng. Act VIII of 1869, ss. 59, 60.* On a partition of a joint family property, a certain ganti tenure, which had been purchased by the three members of the family at a sale, on the 3rd August 1874, under the provisions of ss. 59 and 60 of Bengal Act VIII of 1869, was allotted to the plaintiff, who brought a suit claiming to be entitled, under the statutory provisions of s 66 of that Act, to evict the ... possession by ... nd covered by ... at the tenure under which the defendant held the land was created, not by the owner of the ganti tenure, but by the superior landlord before the creation of the ganti tenure. *Held*, that, inasmuch as the tenure had not been created by the owner of the ganti tenure, the plaintiff was not entitled to avoid it as an incumbrance under s 66 of Bengal Act VIII of 1869. DURGA PROSONNO GHOSE *v.* KALIDAS DUTT . . . 9 C. L. R. 449

29. ——————— *Beng. Reg. VIII of 1819, s. 11—Cancelment of under-tenures* Lands appertaining to a certain talukh which was sold under Regulation VIII of 1819 for arrears were held from the owner of the talukh under a kaimi jumma tenure, under which the plaintiff who sued the purchaser for confirmation of his title, cultivated the land through persons called burgaits, with whom he shared the profits in some way. *Held*, that under s 11 of the Regulation the plaintiff's tenure was cancelled. Compare *Unnoda Churn Das v. Muthura Nath Dass, I. L R 4 Calc. 860 : 4 C. L. R* ... *Bahadoo.* ... MOHINI ...

30. ——— Beng. Reg. VIII of 1819, s. 11—*"Defaulting proprietor"—"Defaulter"—Incumbrances created by previous patnidar—Mokurari lease, avoidance of—Voidable incumbrances* In 1839 a mokurari lease was granted to the predecessors of the defendants by the then patnidar of a patni created in 1810 In 1848 the patni was sold for arrears of rent under the provisions of Bengal Regulation VIII of 1819, but the purchaser at that sale did not interfere with the mokurari. In 1885 the patni was again brought to sale under the same Regulation for arrears of rent, the default being made by one of the successors of the purchaser in 1848, and at this sale it was purchased by the plaintiffs. In 1890 the plaintiffs sued to set aside the mokurari lease, contending that they were, by virtue of their purchase, entitled to avoid all encumbrances created by any patnidar, and were not restricted to avoiding merely those created by the immediate defaulter. ... ed t ... restr ... the ... the ... prev ... ferec ... not ... ing), ... mokurari *Held, per* GHOSE and BEVERLEY, *JJ.*, that having regard to the policy and principle of the Regulation ...

GHOSE, *J.*—The mokurari lease was an incumbrance upon the patni, but inasmuch as s. 11 distinguishes in cls. 1 and 2 between "incumbrances" and "leases" it might be regarded as the latter. If treated as an incumbrance, it must be held to have accrued upon the patni by reason of the defaulting zamindar not having set it aside, though entitled to do so within the meaning of those words in cl. 1. If treated as a lease, the words in cl. 2, "holder of the former tenure," are wide enough to include any patnidar whether the defaulting or a previous holder. *Per* BEVERLEY, *J.*—The words "defaulting proprietors" used in cl. 1 of s. 11 must be read as the "proprietor of the tenure in default," ... wide interpretation. GOPENDRO CHUNDER MITTER *v.* MOKADDAM HOSSEIN. I. L. R. 21 Calc. 702

31. ——— cl. (3)—*Occupancy or non-occupancy holding, whether an incumbrance* An occupancy or non-occupancy holding, if not held by a khodkasht raiyat, *i.e.*, a resident and hereditary cultivator, is an incumbrance and not protected from ejectment by the terms of cl. 3, s. 11, of Regulation VIII of 1819, and may be annulled by a purchaser at a sale under the said Regulation. JOGESHWAR MAZUMDAR *v* ABED MAHOMED SIRCAR . . . 3 C. W. N. 13

32. ——————— Bengal Tenancy Act (VIII of 1885), s. 161—*Exchange of land—Suit for recovery of possession of land.* Exchange of land is an incumbrance within the meaning of s. 161 of the Bengal Tenancy Act. CHUNDRA SAKAI *v.* KALLI PROSONNO CHUKERBUTTY

I. L. R. 23 Calc. 254

33. ——————— and s. 171—*Payment by person interested to prevent sale—Mortgage—Incumbrance.* A mortgage created by the operation of s 171 of the Bengal Tenancy Act (VIII of

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6. INCUMBRANCES—*contd.*

1885) is not an incumbrance within the meaning of s. 161 of that Act, and is not liable to be annulled as such at the instance of a purchaser of a holding at a sale in execution of a decree for arrears of rent. PASUPATI MOHAPATRA v. NARAYANI DASSI . . . I. L. R. 24 Calc. 537
1 C. W. N. 519

34. ———— **and s. 167**—*Notice—Mortgage.* A sale purporting to be under s. 161 and the following sections of the Bengal Tenancy Act (VIII of 1885) does not *ipso facto* cancel incumbrances. Notice must be given under s. 167 according to the procedure laid down in that section. BENI PROSAD SINHA v. REWAT LALL
I. L. R. 24 Calc. 746

35. ———— **s. 167**—*Effect of service of notice—Annulling of incumbrance—Property in possession of a person other than the purchaser.* Service of notice under s. 167 of the Bengal Tenancy Act has the effect of annulling an incumbrance. It is not necessary for the purchaser to bring a declaratory suit to have it declared that the incumbrance is annulled. The incumbrance would be annulled even if the property be not at the time of the service of the notice under s. 167 in the possession of the purchaser, but of some body else. PEARI LALL ROY v. MOHESHWARI DEBI
I. L. R. 25 Calc. 551

36. ———— **and ss. 65, 148, 161, and 176**—*Estoppel—Mortgagor and mortgagee—Order in execution-proceedings against mortgagee—Res judicata—Decree obtained before Bengal Tenancy Act came into force—Execution under former Rent Law—Incumbrance—Mode of annulling incumbrance—Sale for arrears of rent—Charge of rent as first charge on tenure—Sale in execution of mortgage-decree—Decree for sale.* By a mortgage-bond, dated the 22nd August 1884, and registered, *K* created a charge in favour of the plaintiff on six talukhs for re-payment of the mortgage-debt, in respect of two of which talukhs suits had been brought by the zamindar for arrears of rent, and decrees obtained on the 6th June 1885, before the coming into operation of the Bengal Tenancy Act (VIII of 1885). After that Act had come into force, these decrees were assigned to *G*, a benamidar for *P*, for execution, and on his seek-

Court overruled this objection, and ordered execution to issue, holding that, as the decree in the rent-suits were passed before the Tenancy Act came into operation, the execution should proceed under the old law. In execution of the decrees, the two talukhs were put up for sale, and purchased by *G* as benamidar for *P*. In

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6. INCUMBRANCES—*contd.*

a suit brought by the plaintiff, the mortgagee against *K* and *P* (and others representing others of the six talukhs) it was contended, so far as the two talukhs were concerned, that the plaintiff, though not a party to the execution-proceedings, was bound by the order of the 9th July 1886, made in the course of those proceedings; that *P*, having purchased the two taluks at sales for arrears of rent, had acquired them free from all incumbrances; that the plaintiff's mortgage was not a notified incumbrance within the meaning of s. 161 of the Tenancy Act, and that he was there-

1886, *K*, the mortgagor, not representing his interest sufficiently to make that order binding on the plaintiff as mortgagee. *Dooma Sahoo v. Joonarain Lall, 12 W. R. 362 . 4 B L R. A. C. 27 note ; Tribhobun Singh v. Jhono Lall, 18 W. R. 206 , Bonomali Nag v. Koylash Chunder Dey, I. L. R. 4 Calc. 692 ; Madho Pershad Singh v. Purshan Ram, I. L. R. 4 Calc 520 ;* and *Sitaram v. Amir Begam, I. L R 8 All. 324*, referred to. The proprietor of an estate cannot be said to represent

bind the reversioner or the succeeding shebait. The interest of a mortgagee in an estate may be greater than that left in the mortgagor, or, as in the present case, where it was no part of the mortgagor's interest to protect the incumbrance, the interests of the mortgagor and mortgagee are not identical; the balance of justice and expediency

rent of a tenure obtained against the registered tenant binds an unregistered transferee of the tenure, who can show no sufficient cause for not registering his name, and may be enforced by sale of the tenure [*Sham Chand Kundu v. Brojonath Pal Chowdhry, 12 B L. R 484 · 21 W. R. 94*]; but whether any such sale was in sufficient conformity with the rent-law to be operative in annulling a prior mortgage, or other incumbrance, must be determined in the presence of the party claiming the benefit of the incumbrance. *Tirbhobun Singh v. Jhono Lal, 18 W. R. 206*, and *Madho Pershad Singh v. Purshan Ram, I. L. R.*

6 INCUMBRANCES—*contd.*

assignee before the Bengal Tenancy Act came into force. The mode provided by s. 167 of the Bengal Tenancy Act is the only mode in which incumbrances can be annulled by purchasers of tenures

rent thereof, and the rent shall be a first charge thereon, only intends what is laid down in Ch.

by the sale of the tenure, the charge created by s. 65 cannot be enforced in any other way No reason, therefore, could be shown under that

37. ———— and s. 165—*Notice to annul incumbrance, whether necessary when the purchaser and incumbrancer are the same person.* After a

cumbrance had not been cancelled by the necessary notices under s. 167 of the Bengal Tenancy

38. ———————— "*Purchaser,*" *meaning of—Incumbrance, annulment of, when purchaser himself is the incumbrancer—Transfer of Property Act (IV of 1882) s. 101.* The purchaser contemplated by s. 167 is a purchaser independently of the incumbrancer, and where the incumbrancer himself purchases the property encumbered to him, in execution of a decree for arrears of rent, it is not necessary for him to give notice of annulment of his incumbrance under s. 167 of the Bengal Tenancy Act. Under s 101 of the Transfer of Property Act, which is of general application, his incumbrance is extinguished unless he evinces an intention to keep it alive. Where a mortgagee has purchased the mortgaged property in execution of a rent decree, he is entitled to proceed against the

39. ———— Madras Rent Recovery Act, s. 38—*Incumbrance* As the tenancy of an ordinary pottahdar only confers on him a right of occupancy until default in payment of rent and the determination of the tenancy under the provisions of the Rent Act, any incumbrance created by such pottahdar on the land cannot affect the landholder's statutory power of sale under the Act or the rights of the purchaser at such sale. KONDI MUNISAMI CHETTI *v.* DAKSHANAMURTHI PILLAI

I. L. R. 5 Mad. 371

40 ———————— *Purchase by credi-*

Held, that the landlord's purchase was subject to the creditor's attachment. SUBRAMANYA *v* RAJARAM . . . . . I. L. R. 8 Mad. 573

41. ———————— *Sale of tenant's interest—Prior incumbrance—Rights of purchaser.* A sale by a landlord of a tenant's interest in his holding for non-payment of rent under the provisions of s. 38 of the Rent Recovery Act (Madras Act VIII of 1865) does not defeat existing incumbrances. *Munisami v. Dukshanamurti, I. L. R. 5 Mad. 371,* overruled. RAJAGOPALASHARI *v.* SUBBARAYA MUDALI . . I. L. R. 7 Mad. 31

See ZAMINDAR OF RAMNAD *v.* RAMAMANY AMMAL . . . . . I. L. R. 2 Mad. 234

42. ———————— *Mulageni lease*

landlord could not execute his decree by sale of the tenancy free from the mortgage created by

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6. INCUMBRANCES—*contd*

the tenant. *Rajagopal* v. *Subbaraya, I L. R. 7 Mad. 31,* followed. PADAKANNAYA v. NARASIMMA I. L. R 10 Mad. 266

43. ——— **Defective application**—*Bengal Tenancy Act (VIII of 1885), s 167—Application to avoid an incumbrance, mentioning a wrong person as the incumbrancer—Another application after the period of limitation, for amending the previous application, effect of—Collector's power to amend such application.* An application to avoid an incumbrance under s. 167 of the Bengal Tenancy Act was made by an auction-purchaser within one year

previous application by substituting the name of the real incumbrancer, which was allowed by the Collector *Held*, that the Collector, who was merely a ministerial officer in the matter, had no power to make any such amendment; and that the application to serve a notice on the real incumbrancer, not having been made within one year from the date on which the purchaser had notice of the incumbrance, was barred by limitation. NRITYA GOPAL HAZRA v. GOLAM RASOOL (1900) I. L. R. 28 Calc. 160

44. ——— **Notice of annulment**—*Bengal Tenancy Act (VIII of 1885), s 167—Annulment of incumbrance, notice for—Notice, contents of—Notice, joint, to several persons.* A notice to annul an incumbrance under s. 167 of the Bengal Tenancy Act is not bad, although it does not specify the particulars of the land held by the tenant or the rent payable by him. Such a notice, if addressed to several tenants jointly, is not bad if it is served in accordance with the prescribed rules. JOGABUNDHU MAJUMDAR v RASHO MONJAN DASSYA (1900) 5 C. W. N. 272

45. ——— *Bengal Tenancy Act (VIII of 1885), s. 167—Notice to annul incumbrance—Jurisdiction to issue such notice by a*

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discharge the functions of a Collector under s. 167 of the Bengal Tenancy Act has no power to receive an application, nor has he jurisdiction to issue notice, annulling an incumbrance, under that section. MOHABUT SINGH v. UMAHIL FATIMA (1900) . . . . I. L. R. 28 Calc. 66

46. ——— **Tenants' mortgage**—*Bengal Tenancy Act (VIII of 1885), s 65—Sale of a holding in execution of a decree for rent—Charge—Mortgagee, suit by, to enforce mortgage—Transfer of Property Act (IV of 1882), s. 101.* Where, in execution of a decree for arrears of rent, a *raiyati*

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l, brought

, that the

SALE FOR ARREARS OF RENT—*contd.*

6. INCUMBRANCES—*contd.*

mortgagee was entitled to enforce the mortgage on payment of the money due under the rent-decree *Held*, that the landlord, when he made the purchase in execution of the rent-decree, might be taken to have become absolutely en-

plaintiff (mortgagee) might be regarded as a second mortgagee MEHERUNNESSA v. SHAM SUNDER BHUIYA (1902) . 6 C. W. N. 834

47. ——— **Tenant's sub-lessee**—*Bengal Tenancy Act (VIII of 1885), s. 167—Landlord and under-raiyat—Sub-lease given by a tenant without the landlord's consent—In a suit for khas possession by a landlord on purchase of a holding sold for arrears of rent, whether necessary for the landlord to avoid the incumbrance so created—Bengal Tenancy*

necessary for him to follow the procedure prescribed by s. 167 of the Bengal Tenancy Act. The rights under such an under-*raiyati* lease are not protected by sub-s. (*1*) of s. 22 of the Act PEARY MOHUN MOOKERJEE v. BADUL CHANDRA BAGDI (1900)

I. L. R. 28 Calc. 205 : s.c. 5 C. W. N. 310

48. ——— **Notice to annul encumbrance**—*Rights and liabilities of purchaser—Protected interest—Incumbrance, annulment of—Bengal Tenancy Act (VIII of 1885), s 160 (g), s. 167.* A clause in a patni lease to the effect that, if the patnidar should grant a dar-patni, the dar-patnidar shall act according to the terms of the putni kabuliat does not amount to a permission to the putnidar to create a

of the Bengal Tenancy Act was made to the Collector and both the application and the notice issued bore the seal of the Collector and the notice

SALE FOR ARREARS OF RENT—*contd.*

6. INCUMBRANCES—*concld*

"for the Collector" It is not necessary that the Collector should personally receive the petition or personally cause the notice to be served. *Akhoy Kumar Soor v. Bejoy Chand Mohatap, I L. R. 29 Calc. 813*, approved on this point. MAHOMED KAZEM *v* NAFFAR CHUNDRA PAL CHOWDHRY (1905) . . . I. L. R. 32 Calc. 911

7. RIGHTS AND LIABILITIES OF PURCHASERS.

1. ———— Right of purchaser—*Right to khas possession* A raiyat's tenure having been sold for arrears of rent under an Act X decree, the purchaser was *held* to be entitled to be put in khas possession of the entire tenure as it originally stood, notwithstanding that the sons of the raiyat had been occupying huts on the land for more than twenty years. The circumstance that the purchaser happened to be the superior landlord did not diminish his right. TEELOTTUMA DEBEE *v.* BROJO LALL SHAMUNT . . . . 8 W. R. 478

2. ———— *Right to nij-jote land.* The right to hold nij-jote lands necessarily passes with the sale to the auction-purchaser. JOY DUTT JHA *v.* BAYEE RAM SINGH . 7 W. R 40

3. ———— *Right to rent due at time of sale.* A purchaser of patni sold in execution buys it with all its liabilities, including instalments due to the zamindar, and cannot recover them from the original patnidar KHODA BUKSH *v* DEOUMBUREE DOSSEE . . W R 1864, 207

4. ———— *Right to rent—Liability of patnidar for rent—Beng. Reg VIII of 1819, s. 8, cl 3.* Where a patnidar's possession is

15 W. R. 180

5. ———— *Right to rent—Liability of surety of patnidar.* The purchaser of the rights and interests of a patnidar in a patni talukh sold for arrears of rent purchases the talukh subject to whatever claims the zamindar has against it for rent, and has no claim against the surety of the patnidar by reason of the name of the latter appearing as the owner of the talukh in the zamindar's papers or otherwise. He may sue the other sharers for the money which he has paid on their account ORHOY CHUNDER BUNDOPADHYA *v.* NILAMBUR MOOKERJEE . . W. R. 1864, 73

6 ———— *Sale under Beng. Act VIII of 1865—What passes at sale.* As a general rule, when a tenure was sold in execution of a decree under the provisions of Bengal Act VIII of 1865, the whole tenure passed, unless there was some reservation made at the time of the sale. HURO GOBIND BISWAS *v* DUMOUNTEE DABEE 13 W. R. 304

7. ———— *Purchaser of shareholder's rights—Sale under Beng. Act VIII of 1865.* The purchaser of a partnership in a tenure —in other words, of a shareholder's rights—acquired

8. ———— *Purchase by shareholders—Ousut howlas, effect of sale on—Recorded tenants* A shareholder is not precluded from purchasing the whole of a howla sold *bonâ fide*—for arrears of rent due from himself and his co-sharer. All ousut howlas created by the co-sharers fall with the sale of a howla unless specially protected by the howla lease A zamindar may bring a suit for arrears only against the tenant whose name is recorded in his serishta and in execution of a decree obtained in such a suit the whole tenure may be sold, though others, not recognized by the zamindar as his tenants, may be interested in the lease. HUREE CHURN BOSE *v* MEHAROONISSA BIBEE . . . . 7 W. R. 318

9 ———— *Liability of co-sharers on sale of tenure* Where a decree was for

8 W R 60

(*Contra*) LALLA SABIL CHAND *v.* GOODUR KHAN 22 W. R. 187

10. ———— *Right of purchaser of transferable under-tenure to void leases—Right to enhance rent* The purchaser of a transferable

11. ———— *Act X of 1859, s 105—Beng Reg VIII of 1819, s. 11—Title created*

he is bound to recognize that party's purchase, and also all *bonâ fide* leases under that party. Where the lease by which a howla tenure is created does not expressly reserve it for sale for non-payment of rent, the rights of an auction-purchaser cannot arise

SALE FOR ARREARS OF RENT—contd

7 RIGHTS AND LIABILITIES OF PURCHASERS—contd

under Regulation VIII of 1819 MEHEROONISSA BIBEE v. HUR CHURN BOSE . 10 W. R 220

12. ———— *Principle with regard to purchasers at revenue sales* The principle laid down in the case of *Surnomoyee* v *Suttees Chunder Roy, 2 W R P C 14 10 Moo I. A 123,*

5 W. R., Act X, 63

13. ———— *Rent accrued due against Hindu female heir after death of last full owner —Effect of sale in execution under Beng Act VIII of 1869—Personal execution against female heir.* A claim for arrears of rent against a female heir accrued due after the death of the last full owner is a personal claim against her, therefore by a sale held under the provisions of Bengal Act VIII of 1869 in execution of a decree for arrears of such rent obtained against her by some of the co-sharer landlords only the limited estate of the female heir passed unless the said landlords proceeded to bring the tenure itself to sale *Baijun Doobey* v. *Brij Bhookun Lall, I L R. 1 Calc 133 . L R 2 I A. 275,* and *Mohima Chunder Roy Chowdhry* v *Ram Kishore Acharjee Chowdhry, 15 B L R 142 23 W R. 174,* followed. BRAJA LAL SEN v JIBAN KRISHNA ROY . I. L. R. 26 Calc. 286

14 ———— Liability of purchaser— *Date from which purchaser's liability for rent commences* The purchaser of a tenure at a sale for arrears of rent was *held* to be liable for rent from the date on which the sale was confirmed, for until confirmation he could not obtain the certificate of purchase BEEPIN BEHAREE BISWAS v JUDOONATH HAZRAH . 21 W. R. 367

15 ———— *Liability to condition in lease—Right of re-entry* A dar-patni lease granted upon the payment of a bonus contained a condition that, if the annual rent remained for a longer period than one month in arrear, the lessor should have a right of re-entry The lessor, upon default in payment of rent, without availing himself of the forfeiture, instituted a summary suit for the

condition. DEENDYAL PARAMANICK v JUGGESHUR ROY . . . Marsh. 252 : 2 Hay 21

16. ———— *Liability to decree in ejectment suit—Previous purchase by mortgagee of portion of tenure—Right of purchaser to question by suit the validity of decree for ejectment if not a party to the rent suit* In a suit for arrears of rent by a mokuraridar against his dar-mokuraridar, a decree was passed ejecting the latter, and, as a consequence, the tenure of the dar-mokuraridar was cancelled. *Held,* that a mortgagee from the dar-mokuraridar, who had, previously to the rent suit, obtained a decree on his mortgage and purchased himself at the auction-sale, and who had not been made a party to the rent suit, was entitled to question by suit the validity of the decree obtained in the rent suit ordering ejectment of the dar-mokuraridar MADHOO PROSHAUD SINGH v PURSHAN RAM . . I. L. R. 4 Calc. 520

17. ———— *Priority of auction-purchasers—Sale set aside by an ex parte decree and afterwards confirmed—Notice.* The plaintiff and the defendant purchased the same tenure at successive sales, held in execution of two decrees under the provisions of s. 59 of Act VIII of 1869, for arrears of rent due in respect of different periods Defendant's sale was first in point of time, but was set aside on the judgment-debtor obtaining an *ex parte* decree against the defendant. The suit was, however, restored and ultimately dismissed, and the defendant's purchase remained undisturbed. In the meantime, however, after the *ex parte* decree, but before the dismissal of that suit, the tenure had been again sold for further arrears of rent, which had accrued before the defendant's purchase and was

decree was obtained, or to give notice of his purchase to the plaintiff RAM CHUNDER SADHU KHAN v. SAMIR GAZI . . . I. L. R. 20 Calc. 25

18. ———— *Patni tenure.*

against him, and that the rights of the zamindar were not affected by the existence of the remedy provided by s 7 of Bengal Regulation VIII of 1819 *Lukhinarain Mitter* v. *Khetter Pal Singh Roy, 13 B L R 146,* referred to SURENDRONATH PAL CHOWDHRY v TINCOWRI DASI

I. L. R. 20 Calc. 247

19. ———— *Liability of auction-purchaser for arrears of rent prior to purchase— Bengal Tenancy Act (VIII of 1885), ss 65 and 169, cl (c)—Rent, suit for.* The plaintiffs sued the first five defendants for arrears of rent due in respect of a certain tenure, and obtained a decree on the 16th April 1888. In execution of that decree, the tenure was sold on the 8th April 1891, the defendants 6, 7, and 8 being the auction-purchasers. On the 18th of April 1891 the plaintiffs sued all eight defendants for the arrears of rent which had become due between the 16th April 1888 and the 8th April 1891. *Held,* that the auction purchasers

SALE FOR ARREARS OF RENT—*contd.*

7. RIGHTS AND LIABILITIES OF PURCHASERS—*contd.*

(defendants 6, 7, and 8) were not liable, the arrears of rent sued for having become due prior to their purchase. FAEZ RAHAMAN *v.* RAMSKUH BAJPAI **I. L. R 21 Calc 169**

20. ———— *Sale on basis of decree on compromise—Auction-purchaser, title of —Liability of purchaser for rent accruing due after his purchase, but before confirmation of sale—Effect of compromise as against purchaser—Rent, accrual of—Bengal Tenancy Act, s. 53.* A tenant, when sued for arrears of rent of a jote, compromised the case by executing a solehnama agreeing to pay rent at 13 annas per bigha on 4,300 bighas. Subsequently the jote was sold, in execution of a decree passed on the basis of the solehnama, and was purchased by the defendant on the 20th March 1889, the sale being confirmed on the 7th August 1889. In a suit, instituted by the landlord against the auction-purchaser for arrears of rent for the whole year 1296 (13th April 1889 to 12th April 1890) .—*Held*, that the

the solehnama irrespective of any question as to whether the quantity of land there mentioned was correct or not. SATYENDRA NATH THAKUR *v.* NILKANTHA SINGH . . **I. L. R. 21 Calc. 383**

21. ———— *Bengal Tenancy Act (VIII of 1885), ss. 11, 12, and 13—Sale of a tenure in execution of a decree not for arrears of rent—Effect of non-payment of landlord's fee or the fee for service of notice of the sale on the landlord before the confirmation of sale.* Under s. 13 of the Bengal Tenancy Act, when a permanent tenure is sold in

invalid. BABAR ALI *v.* KRISHNAMANINI DASSI **I. L. R. 26 Calc. 603**

22. ———— **Right of purchaser**—*Sale of tenant's interest by creditor—Subsequent sale by landlord for arrears of rent—Right of purchaser.* The

the land at auction for arrears of rent due by the tenant. *Held*, that the tenant's rights having passed to the purchaser at the Civil Court's sale, there was no interest of the tenant available for sale by the landlord under the provisions of s. 38 of the Rent

SALE FOR ARREARS OF RENT—*contd.*

7. RIGHTS AND LIABILITIES OF PURCHASERS—*contd.*

Recovery Act. VIRAPPA NAYAK *v.* KATHANA TALAVACHI . . . . **I. L. R. 6 Mad 428**

23. ———— *Sale of occupancy holding at the instance of landlord in execution of money-decree—Subsequent sale of the same for arrears of rent—Bengal Tenancy Act (VIII of 1885), s. 22—Damages—Refund of purchase-money.* Defendant No. 10, the landlord, in execution of a decree for money, put to sale the occupancy holding of an occupancy raiyat, the defendant No. 1, and, having purchased it himself, made a settlement of the same with defendants Nos. 2, 3, and 4; the landlord subsequently brought a suit against defendant No. 1 for recovery of rent due from him for the past years and brought to sale the same holding which was thereupon purchased by the plaintiff. In a suit by the latter for recovery of possession: —*Held*, that the plaintiff did not acquire any title, inasmuch as the landlord by his own act had brought the raiyati right of the defendant No. 1 to a termination, and there was no subsisting right in that defendant such as the plaintiff could acquire by sale. *Held*, further, that the plaintiff was entitled to get a refund of the purchase money from the landlord, and that a separate suit for that purpose was not necessary. RAM SARAN PODDAR *v.* MAHOMED LATIF . **3 C. W. N. 62**

24. ———— *Mortgage of dar-talukh—Its subsequent transformation into a patni talukh—Purchaser in execution of a decree for arrears*

principal defendants. In a suit for possession of the dar-talukh by the plaintiffs, who respresented the purchaser at a sale in execution of the mortgage-

mortgage gives certain rights to the mortgagor over the mortgaged property; but it does not

. N. 39

SALE FOR ARREARS OF RENT—*contd.*

7. RIGHTS AND LIABILITIES OF PURCHASERS—*concld*

25. — **Liability for rent**—*Bengal Tenancy Act (VIII of 1885), ss 65, 195 (e)—Patni Regulation (VIII of 1819), s 17—Contribution—Decree for rent for a period anterior to sale.* There is no conflict between s. 65 of the Bengal Tenancy Act and s. 17 (3) of the Patni Regulation Antecedent balances may be mere personal debts, which cannot be summarily recovered under the procedure prescribed by the Patni Regulation, but they may be also a charge on the talukh, and the talukh may be sold subject to them Where the purchaser of a patni talukh paid off a decree for rent obtained against the old tenant for a period anterior to that of the rent-decree in execution of which the tenure was sold —*Held*, that the purchaser was not entitled to contribution from the old tenant against whom the rent-decree was obtained *Maharani Darya* v. *Harendra Lal Rai, 1 C W N 458*, followed PEARY MOHAN MUKHOPADHYA *v* SREERAM CHANDRA BOSE (1902) . . **6 C. W N. 794**

26. ———— *Sale in execution of decree for arrears—Liability of purchaser for rent for a period anterior to sale—Notification of sale—Bengal Tenancy Act (VIII of 1885), s. 65* Where a tenure or holding was sold in execution of a decree for rent, with a notice that it was saddled with liability for arrears of rent for a period anterior to the date of sale —*Held*, that the purchaser was liable for the rent for such period *Alim* v *Satis Chandra Chaturdhurin, I. L R 24 Calc 37*, referred to *Faez Rahaman* v. *Ram Sukh Bajpai, I. L. R 21 Calc. 169*, distinguished. HARADHAN CHATTORAJ *v.* KARTICK CHANDRA CHATTOPADHYA (1902) . . . **6 C. W. N. 877**

27 ———— *Sale notification,*

sale certificate, stated a certain amount as the annual rent payable, out of which a certain sum was kept in abeyance as *bhadran mahakup*, and the balance was stated as the net annual rent :—*Held*,

[illegible]

8. SECOND SALE.

1. ———— **Sale for prior arrears after sale for arrears of rent.** Where a tenure has once been sold for its own arrears, it cannot be again put up to sale for the arrears due on account of a previous period. *Lutifun* v. *Meah Jan, 6 W. R. 112*, followed. PRANGOUR MOZOOMDAR *v.* HIMANTA KUMARI DEBYA . **I. L. R. 12 Calc. 597**

SALE FOR ARREARS OF RENT—*contd.*

9. SURPLUS PROCEEDS OF SALE

1. — — **Right to surplus proceeds** —*Attachment in hands of Collector.* The surplus proceeds of a sale made for default of payment of patni rent, though under attachment by a Civil Court in the hands of the Collector, continues to be the property of the patnidar until ordered to be paid away by an order from such Court. SADFOOLLAH KHAN *v* LUCHMEEPUT SINGH DOOGUR **13 W. R. 58**

2 ———— *Priority—Surplus proceeds of sale under s. 59, Beng. Act VIII of*

1876, and after satisfaction of the decree the surplus proceeds remained in the Collectorate to the credit of the dar-patnidar Afterwards in December 1876 the patnidar brought another suit for the dar-patni rent due in respect of the period between April and October 1876, and having obtained a decree attached the surplus proceeds in the Collectorate, which were at the same time attached by two other holders of ordinary decrees *Held*, that the decree of the

3 ———— *Beng. Reg. VIII of 1819, s. 17, cl. (5)—Patni talukh—Attachment—Priority* The patnidar of a talukh granted a dar-

SALE FOR ARREARS OF RENT—*contd.*

9. SURPLUS PROCEEDS OF SALE—*contd*

4. ———— *Sale of patni—Mortgage security, conversion of—Surplus sale pro-*

... the ars. ikh, the amount of his unsatisfied claim Two of the defendants pleaded that, over and above the amount taken by them, there remained in deposit sufficient money to satisfy the plaintiff, and that the other unsecured creditors who had drawn out this balance should alone be held liable *Held*, that the surplus sale-proceeds were to be regarded as the shape into which the plaintiff's security was converted, and as before such conversion the security could not be split up into parts, the plaintiff was entitled to realize the balance due to him out of the whole of the surplus, as otherwise his security would be diminished. GOSTO BEHARY PYNE *v* SHIB NATH DUTT . . . . **I. L. R. 20 Calc. 241**

5. ———— *Transfer of Property Act (IV of 1882), s. 73—Rights of purchasers—Mortgage.* S 73 of the Transfer of Property Act only gives a right to the mortgagee over the residue of the sale-proceeds and refers to cases where the ...

Purnima Dasi, I. L. R. 15 Calc. 546, referred to. BENI PROSAD SINHA *v.* REWAT LALL **I. L. R. 24 Calc. 746**

6. ———— *Beng Reg VII of 1819, s 17—Distribution of surplus sale-proceeds—Claim by se-patnidar* A se-patnidar is not entitled to a share of the proceeds of a sale of the patni for arrears of rent held under Regulation VII of 1819. MOTI LAL GHOSE *v* BISSESUR HAZRA **3 C. W. N. 60**

7. ———— *Right of suit by an unregistered tenant for surplus sale-proceeds* Where in execution of a decree for arrears of rent, the tenure was sold, and an unregistered tenant who was a purchaser of a share of the tenure after the date of the decree brought a suit for recovery of his share of the surplus sale-proceeds :—*Held*, that the suit was maintainable. MATANGINI CHAUDHURANI *v* SREENATH DAS (1903) **7 C. W. N. 552**

8. ———— *Surplus sale-proceeds—Landlord's right to surplus sale proceeds—Priority between landlord and mortgagee—Bengal* ...

... of the landlord and the balance of the sale-proceeds, after deducting the costs of the decree-holder and what was due to him under the decree, was paid into Court :—*Held*, that under s 169 of the Bengal Tenancy Act the landlord was ...

10 DEPOSIT TO STAY SALE.

1. ———— **Right to sue**—*Voluntary payment to stay sale—Act X of 1859, ss 102, 103.* A ...

ABDUL WAHAB *v* DRUMMOND **2 W R. Act X, 48**

2. ———— **Party with recognized interest**—*Beng Reg VIII of 1819, s 14, cl 1.* Cl. 1, s 14, Regulation VIII of 1819, does not contemplate that any party may, by depositing the ...

3. ———— **Sufficiency of interest**—*Suit to recover money deposited* The plaintiff's mother brought a suit to recover a portion of a talukh which she claimed under a will and which she would be entitled to upon the death of the widow of the deceased owner While the suit was pending the talukh was put up for sale under Regulation VIII of 1819 ...

... mother's interest in the talukh was such as entitled the plaintiff to recover the money she paid. SHARODA KOOMAREE DOSSEE *v* MOHINEE MOHUN GHOSE . . . **20 W. R. 272**

4. ———— **Voluntary payment**—*Right of mortgagee to prevent sale of mortgaged property—Voluntary payment* The mortgagee of a patni talukh paid certain moneys to prevent the sale of such talukh for arrears of zamindari rent. *Held*, that this was not a voluntary ...

... 241, followed. MOHESH CHUNDER BANERJEE *v.* RAM PURSONO CHOWDHRY **I. L. R. 4 Calc. 539 : 6 C. L. R. 280**

See DULICHAND *v.* RAMKISHEIN SINGH **I. L. R. 7 Calc. 648**

5. ———— *Sale of transferable tenures under s. 105, Act X of 1859—Right*

SALE FOR ARREARS OF RENT—*contd.*

10 DEPOSIT TO STAY SALE—*contd*

of suit. The right to make payments to preserve an interest, and to recover the sums paid, was not given in the case of ganti jummas and other transferable tenures sold for arrears of rent under s. 105, Act X of 1859, when such payments are neither expressly nor impliedly authorized, they must be regarded as voluntary payments, for the recovery of which no action will lie SREENATH HOLDAR *v* RAM SOONDUR CHUCKERBUTTY

4 W. R. S. C. C. Ref. 4

6 ———————— *Right of suit.* An under-tenant who has saved the superior tenure from sale by depositing the amount of rent due, not only has the security of the tenure which he preserves, and of which he can obtain possession on application to the Collector, but he also has a right to recover the amount deposited by him as a loan in an ordinary suit. AMBIKA DEBI *v*. PRANHARI DAS

4 B. L. R. F. B. 77

s c. UMBIKA DEBIA *v* PRANHUREE DOSS

13 W. R. F. B. 1

7. ———————— *Right of suit—Beng Reg VIII of 1819—Non-registration of transfer* L and R, the holders of a patni estate,

[illegible]

recognized as their tenant by L and R, the rent of the dar patni being paid in the name of S. In 1864, the rent due from the patnidars being in arrear, the

[illegible]

that he was entitled to recover the amount deposited by him in the Collectorate. LUCKHINARAIN MITTER *v* KHETTRO PAL SINGH ROY

13 B. L. R. P. C. 146 · 20 W. R. 380

SALE FOR ARREARS OF RENT—*contd.*

10 DEPOSIT TO STAY SALE—*contd*

Affirming the decision of the High Court in s c. KHETTER PAUL SINGH *v* LUCKHEE NARAIN MITTER

15 W. R 125

OKHOY COOMAR CHATTERJEE *v* DHIRAJ MAHTAB CHUND . . . . . **22 W. R 299**

8. ———————— *Payment made by vendee of dar-patnidar—Voluntary payment* A payment made by the vendee of the dar-patnidar

[illegible]

SEETANATH GHOSE

1 Ind. Jur N. S. 317 : 6 W. R. Act X, 8

9. ———————— *Payment of patni rent by dar-patnidar—Beng Reg. VIII of 1819, s. 13.* In a suit by the purchaser of a patni against a dar-patnidar for arrears of rent of the year 1285 (1878), it appeared that, before the plaintiff's purchase, the dar-patnidar had paid the amount of arrears of patni rent for the year 1284 (1877), in order to save the patni from being sold under Regulation VIII of 1819, and that the amount so paid considerably exceeded the dar-patni rent due at the date of suit *Held*, that the defendant was entitled to deduct from the rent claimed the amount paid under the Regulation in excess of the dar-patni rent due up to the end of 1284 NOBO GOPAL SIRCAR *v* SRINATH BUNDOPADHYA

I. L. R. 8 Calc. 877 : 11 C. L. R. 37

10. ———————— *Payment by dar-patnidar—Beng. Reg VIII of 1819—Beng Act VIII of 1869, s 62* The zamindar of an estate, in which the plaintiff and defendant respectively had purchased patni and dar patni tenures, obtained

[illegible]

suit by the patnidar against the dar-patnidar for arrears of rent accruing due subsequently to the defendant's purchase:—*Held*, that the defendant was, on the construction of s 13 of Regulation VIII of 1819 and s. 62, Bengal Act VIII of 1869, entitled to set off such payment against the plaintiff's claim *Nobogopal Sircar* v. *Sreenath Bundopadhya, I L R. 8 Calc 877,* followed. LALIT MOHUN SHAHA *v* SRINIBAS SEN

I. L. R. 13 Calc. 331

11 ———————— [illegible]

[illegible] under cl. 4, s. 13, Regulation VIII of 1819, and has come into possession of the tenure, and is entitled to the profits of it is bound to give notice of his title to the raiyats. In the absence of such notice, he cannot recover from them rents already paid by them to the patnidar. NILMONEE ROY *v*. HILLS

4 W. R. Act X, 38

SALE FOR ARREARS OF RENT—*contd.*

II. SETTING ASIDE SALE—*contd*

(*b*) Irregularity—*contd.*

Mohinee Dossee *v.* Juggodumba Dossee
W. R. 1864, 382

9. ——— "*Substantial persons*"—*Service of notice.* The provisions of cl 2, s. 8, Reg VIII of 1819, with regard to the notification of the sale of a patni talukh for the arrears

provisions,—*e.g.*, as where one of the witnesses

person" within the meaning of cl. 2, s. 8, of the Regulation It is too limited a construction of that clause to hold that the word "substantial" must be taken to mean a wealthy man from whom damages could be recovered by the patnidar, supposing the attestation to be false. Ramsabuck Bose *v* Kaminee Koomaree Dossee
14 B. L. R 394
s.c. Ram Sabuk Bose *v.* Monmohinee Dossee
L R 2 I. A. 71: 23 W. R. 113

10. ——— *Substantial persons*—*Suit to set aside sale for irregularity*—*Non-service of notices*—*Omission to tender rent.* In a suit to set aside the sale of a patni for arrears of rent under Regulation VIII of 1819, on the ground that proper notices were not sent, served, and published under s 8, cl. 2, the objection in order to succeed must be one of substance and not merely of form The requirements of the Regulation as to the service of the istahar and the signing of the receipt by substantial persons may be held to have been substantially performed where the persons signing are such as are usually expected to attest such a document, persons who are treated with consideration, *e g*, ameens, mooktears, chowkidars. Pitamber Panda *v* Damoodur Doss Dassee *v.* Pitambur Panda . . **24 W. R 129**

11 ——— **Service of notice of sale**—*Beng. Reg VIII of 1819, s 8, cl 2*—*Non-service of notice, effect of, on sale* Where a Court finds that the notice prescribed in cl. 2, s. 8, Regulation VIII of 1819, has been duly served, it need not find whether the peon who served the notice complied

Chowdhry . . . . **9 W. R. 242**

SALE FOR ARREARS OF RENT—*contd.*

II. SETTING ASIDE SALE—*contd.*

(*b*) Irregularity—*contd.*

12. ——— *Proof of service*—*Onus probandi*—*Evidence Act, s. 106.* In a suit against a zamindar to reverse the sale of a patni tenure held under Regulation VIII of 1819, on the ground of non-service of notice, the onus of proving service lies on the defendant, according to the spirit of s 106 of the Evidence Act. Dooroa Churn Surma Chowdhry *v* Najimooddeen
21 W. R 397

13. ——— *Proof of service*—*Beng. Reg VIII of 1819, s 8, cl 2*—*Publication.* Although the provisions of s. 8, cl. 2, of Regulation VIII of 1819, specifying the manner in which proof should be given of service of notice of sale, are merely directory, it is nevertheless absolutely

14. ——— *Beng Reg VIII of 1819, s 8, cl 2*—*Proof of publication of notice*

Lalchand Chowdhry, 9 W. R. 242), yet where that fact was in doubt owing to the evidence of it not

was main-
Maharajah

I. L. R. 9 Calc. 619 : 13 C. L. R. 34
L. R. 10 I. A. 19

15. ——— *Proof of publication of notice*—*Beng. Reg. VIII of 1819, s. 8*—

Haranath Gupta *v* Jagannath Roy Chowdhry . . **9 B. L. R. 89 note : 11 W. R. 87**

And as to what amounts to publication of notice RAGHAB CHANDRA BANERJEE *v* BRAJANATH KUNDU CHOWDHRY

9 B. L. R 91 note: 14 W. R. 489

16. ———— *Beng Reg VIII of 1819, s 8, cl 2—Formalities prescribed in that section for due publication of the notice of sale.* In cases where the due publication of the sale notice is in controversy, it is incumbent upon the landlord to show that the formalities prescribed by s 8 of Regulation VIII of 1819 have been complied with *Maharajah of Burdwan* v *Tarasundari Debi, I. L R 9 Calc 619 L R 10 I. A 19*, and *Maharani of Burdwan* v *Krishna Kamini Dasi, I L R 14 Calc. 365 L. R 14 I A 20*, referred to. *Sona Beebee* v *Lallchand Choudhry, 9 W R 242*, explained. BEJOY CHAND MAHATAB *v* AMRITA LAL MUKERJEE **I. L. R. 27 Calc. 308**

17. ———— *Ground for setting aside sale—Non-service of notice.* The fact of no notice having been served in the mofussil is sufficient ground for setting aside a sale for arrears of rent. NUGENDRO CHUNDER GHOSE *v* MUSRUFF BIBEE . . . . . **15 W. R. 17**

TARA CHAND BISWAS *v* RAM JEEBAN MOOSTAFEE **22 W. R. 202**

18. ———— *Beng Reg VIII of 1819, s 8—Notice of sale, publication of* In a

19. ———— *Beng Reg VIII of 1819.* It was held to be a far more exact compliance with the spirit of Regulation VIII of

DOSS *alias* NONNAH BABOO *v.* BIPRO CHURN ROY **20 W. R. 132**

20. ———— *Beng. Reg. VIII*

publication. MUNGAZEE CHAPRASSEE *v.* SHIBO SOONDUREE . . . **21 W. R. 369**

21. ———— *Beng. Reg. VIII of 1819, s 8—Due publication of notice of sale.*

Where there is a cutchery upon the land of a defaulting patnidar, the notice required by s 8 of Regulation VIII of 1819 must be served there; but where

I. L R 9 Calc. 931 13 C. L. R. 427

S C. on appeal to the Privy Council Publication of the notice of sale of a tenure under Regulation VIII of 1819 is required to be in the manner prescribed in s 8, cl. 2, and personal service on the defaulter is not sufficient. The object of directing local publication of the notice, *viz*, to warn the under-lessees of the sale-proceedings and also to advertise the sale to those who might bid, would be frustrated if it were sufficient to publish the notice at a distant cutchery or to serve it personally. If there is a cutchery on the land of the defaulting patnidar, meaning the land which is to be sold for arrears of rent, the copy or extract of such part of the notice of sale as may

observed a substantial part of the prescribed process, and that this was for the defaulting patnidar "a sufficient plea" within the meaning of the Regulation MAHARANI OF BURDWAN *v.* KRISHNA KAMINI DASI . . . . . **I. L. R. 14 Calc. 365**

MAHARANI OF BURDWAN *v.* MIRTUNJOY SINGH **L R. 14 I. A. 13**

See AHSANULLA KHAN BAHADUR *v* HURRI CHURN MOZOOMDAR . **I. L. R. 17 Calc. 474**

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SALE FOR ARREARS OF RENT—*contd*

9. SURPLUS PROCEEDS OF SALE—*contd*

4. ———— *Sale of patni—Mortgage security, conversion of—Surplus sale proceeds, shares of mortgagee upon—Transfer of Pro-*

amount of his unsatisfied claim Two of the defendants pleaded that, over and above the amount taken by them, there remained in deposit sufficient money to satisfy the plaintiff, and that the other unsecured creditors who had drawn out this balance should alone be held liable. *Held*, that the surplus sale-proceeds were to be regarded as the shape into which the plaintiff's security was converted, and as before such conversion the security could not be split up into parts, the plaintiff was entitled to realize the balance due to him out of the whole of the surplus, as otherwise his security would be diminished GOSTO BEHARY PYNE *v* SHIB NATH DUTT . . . . **I. L. R. 20 Calc. 241**

5. ———— *Transfer of Property Act (IV of 1882), s. 73—Rights of purchasers—Mortgage.* S 73 of the Transfer of Property Act only gives a right to the mortgagee over the residue of the sale-proceeds and refers to cases where the law otherwise provided that the effect of the sale is to nullify a mortgage: it is not intended in any way to enlarge the interest of the purchaser at a sale for arrears of revenue or rent *Prem Chand Pal* v *Purnima Dasi, I L. R. 15 Calc 546,* referred to BENI PROSAD SINHA *v.* REWAT LALL **I. L. R. 24 Calc. 746**

6. ———— *Beng Reg. VII of 1819, s. 17—Distribution of surplus sale-proceeds—Claim by se-patnidar* A se-patnidar is not entitled to a share of the proceeds of a sale of the patni for arrears of rent held under Regulation VII of 1819. MOTI LAL GHOSE *v* BISSESUR HAZRA **3 C. W. N. 60**

7. ———— *Right of suit by an unregistered tenant for surplus sale-proceeds.* Where in execution of a decree for arrears of rent, the tenure was sold, and an unregistered tenant who was a purchaser of a share of the tenure after the date of the decree brought a suit for recovery of his share of the surplus sale-proceeds —*Held*, that the suit was maintainable MATANGINI CHAUDHURANI *v* SREENATH DAS (1903) **7 C. W. N. 552**

8. ———— *Surplus sale-proceeds—Landlord's right to surplus sale-proceeds—Priority between landlord and mortgagee—Bengal Tenancy Act (VIII of 1885), s 169* Where a tenure, which had been mortgaged by the tenure-holder, was sold in execution of a decree for rent obtained by the landlord and the balance of the sale-proceeds, after deducting the costs of the decree-holder and what was due to him under the decree, was paid into Court:—*Held*, that under s. 169 of the Bengal Tenancy Act the landlord was entitled to be paid out of the sale-proceeds in Court the amount of rent due in respect of the tenure between the institution of the suit and the date of the sale in priority to the mortgagee. PRABAL CHANDRA MUKERJEE *v.* JADUPATI CHAKRAVARTI (1907) **I. L. R 34 Calc. 724**

10. DEPOSIT TO STAY SALE

1. ———— **Right to sue**—*Voluntary payment to stay sale—Act X of 1859, ss 102, 103* A person making voluntary payments in his own name to stay a sale in execution of a decree against others could not sue under s. 102 or 103 of Act X of 1859 for the recovery of the money so paid by him. ABDUL WAHAB *v* DRUMMOND **2 W R. Act X, 48**

2. ———— **Party with recognized interest**—*Beng Reg. VIII of 1819, s 14, cl 1.* Cl 1, s 14, Regulation VIII of 1819, does not contemplate that any party may, by depositing the amount due, stay a sale of a patni, but only a party having a recognized interest in such patni According to s 6 even application for registration is not sufficient that section provides what can legally be done if registration is refused. KRISTO JEEBUN BUKSHEE *v.* MACKINTOSH . **W R. 1864, 53**

3. ———— **Sufficiency of interest**—*Suit to recover money deposited* The plaintiff's mother brought a suit to recover a portion of a talukh which she claimed under a will and which she would be entitled to upon the death of the widow of the deceased owner While the suit was pending the talukh was put up for sale under Regulation VIII of 1819 and to prevent ...

... interest in the talukh was such as entitled the plaintiff to recover the money she paid. SHARODA KOOMAREE DOSSEE *v* MOHINEE MOHUN GHOSE . . . **20 W. R. 272**

4. ———— **Voluntary payment**—*Right of mortgagee to prevent sale of mortgaged property—Voluntary payment* The mortgagee of a patni talukh paid certain moneys to prevent the sale of such talukh for arrears of zamindari rent *Held*, that this was not a voluntary payment, and could not be so considered even in the case where the mortgagee, by a covenant in his mortgage-deed, had insured himself against loss by such sale *Nogender Chunder Ghose v Kaminee Dossi, 11 Moo I. A. 241,* followed MOHESH CHUNDER BANERJEE *v.* RAM PURSONO CHOWDHRY **I. L. R. 4 Calc. 539 : 3 C. L. R 280**

See DULICHAND *v.* RAMKISHEIN SINGH **I. L. R. 7 Calc 648**

5. ———— *Sale of transferable tenures under s. 105, Act X of 1859—Right*

SALE FOR ARREARS OF RENT—*contd.*

10 DEPOSIT TO STAY SALE—*contd*

of suit. The right to make payments to preserve an interest, and to recover the sums paid, was not given in the case of ganti jummas and other transferable tenures sold for arrears of rent under s 105, Act X of 1859; when such payments are neither expressly nor impliedly authorized, they must be regarded as voluntary payments, for the recovery of which no action will lie. SREENATH HOLDAR v RAM SOONDUR CHUCKERBUTTY

4 W. R. S. C. C. Ref. 4

6 ———— *Right of suit* An under-tenant who has saved the superior tenure from sale by depositing the amount of rent due, not only has the security of the tenure which he preserves, and of which he can obtain possession on application to the Collector, but he also has a right to recover the amount deposited by him as a loan in an ordinary suit. AMBIKA DEBI v. PRANHARI DAS

4 B. L. R. F. B. 77

s c. UMBIKA DEBIA v PRANHUREE DOSS

13 W. R. F. B. 1

7. ———— *Right of suit—Beng Reg VIII of 1819—Non registration of transfer.* *L* and *R*, the holders of a patni estate, granted in 1856 a dar-patni lease to *S* at an annual rent, the lease stipulating that *S* should have full power of sale and gift, but should not sub-let without the patnidars' consent. The lease contained no stipulation for the registration of any vendee or donee In 1860 *S* sold the dar-patni lease to *K*, the deed of sale which was duly registered providing for mutation of names in the patnidars' books No such mutation was ever effected by *K*, who was never

and then brought a suit in the Collector's Court

decision was reversed on appeal, and the suit dismissed for want of jurisdiction. On 6th June 1869 *K* filed his plaint in the proper Court. *Held*, that he was entitled to recover the amount deposited by him in the Collectorate. LUCKHINARAIN MITTER v KHETTRO PAL SINGH ROY

13 B. L. R. P. C. 146 : 20 W. R. 380

SALE FOR ARREARS OF RENT—*contd.*

10 DEPOSIT TO STAY SALE—*contd*

Affirming the decision of the High Court in s c· KHETTER PAUL SINGH v. LUCKHEE NARAIN MITTER

15 W. R 125

OKHOY COOMAR CHATTERJEE v DHIRAJ MAHTAB CHUND . . . . **22 W R 299**

8. ———— *Payment made by vendee of dar-patnidar—Voluntary payment* A payment made by the vendee of the dar-patnidar (who has not obtained registration) to save the patni from sale is a voluntary payment and the registered dar-patnidar cannot seek to deduct the amount from the rent due by him LUKHEENARAIN MITTER v SEETANATH GHOSE

1 Ind. Jur N. S. 317 : 6 W. R Act X, 8

9. ———— *Payment of patni rent by dar-patnidar—Beng Reg VIII of 1819, s. 13* In a suit by the purchaser of a patni against a dar-patnidar for arrears of rent of the year 1285 (1878), it appeared that, before the plaintiff's purchase, the dar-patnidar had paid the amount of arrears of patni rent for the year 1284 (1877), in order to save the patni from being sold under Regulation VIII of 1819, and that the amount so paid considerably exceeded the dar-patni rent due at the date of suit. *Held*, that the defendant was entitled to deduct from the rent claimed the amount paid under the Regulation in excess of the dar-patni rent due up to the end of 1284 NOBO GOPAL SIRCAR v. SRINATH BUNDOPADHYA

I. L. R. 8 Calc. 877 : 11 C. L. R. 37

10 ———— *Payment by dar-patnidar—Beng. Reg VIII of 1819—Beng Act VIII of 1869, s 62* The zamindar of an estate, in which the plaintiff and defendant respectively had purchased patni and dar-patni tenures, obtained

was, on the construction of s 13 of Regulation VIII of 1819 and s 62, Bengal Act VIII of 1869, entitled to set off such payment against the plaintiff's claim *Nobogopal Sircar* v. *Sreenath Bundopadhya, I L. R. 8 Calc 877*, followed. LALIT MOHUN SHAHA v SRINIBAS SEN

I. L. R. 13 Calc. 331

11. ———— *Payment by dar-*

cannot recover from them rents already paid by them to the patnidar. NILMONEE ROY v HILLS

4 W. R. Act X, 38

SALE FOR ARREARS OF RENT—*contd.*

10. DEPOSIT TO STAY SALE—*contd.*

12. ——————— *Payment by shikmidar—Money paid to preserve estate from sale.* A shikmidar is not entitled to recover money voluntarily paid by him to preserve an estate from sale. POORNO CHUNDER DOSS CHOWDHRY *v.* SREENATH GOOPTO . . . . . 6 W. R. 173

13. ——————— *Right to contribution from co-sharers*—A shareholder who pays up arrears of rent due from the whole of the tenure

14. ——————— *Compulsory payment—Right to recover.* Plaintiff, to save the patni from sale for arrears of rent of a former year which had been adjudged by an apparently valid decree to be due to the defendant, paid the money. *Held,* that the payment was made under such circumstances as entitled the plaintiff to recover back the money from the defendant. ANDREW *v* LARMOUR
2 Ind. Jur. O. S. 4 : 1 Hay 309

15. ——————— *Suit to recover money paid—Beng Reg VIII of 1819, s 13, cl. 3—Beng Act VIII of 1865, s. 6.* A patnidar, in execution of a decree for rent against his mirasidar, attached certain property of his, including a parcel of land belonging to the plaintiff, who, to save that portion, paid the whole amount due, and sued the mirasidar to recover the portion he ought to have

sions of s. 6, Bengal Act VIII of 1865, read with s. 13, Regulation VIII of 1819, more particularly with cl. 3. LUCKHEE PREA DEBIA *v* BRINDABUN DEY . . . . . 12 W. R 313

16. ——————— *Suit to recover money paid.* The plaintiff purchased an estate at an auction-sale in execution of a decree against the defendant, who was in possession, and after his purchase obtained possession on 6th April 1866 While he was in possession, one *R*, the patnidar, sued the defendant to recover arrears of rent which

was, as far as the defendant was concerned, a voluntary payment. Mere inconvenience without risk of actual damages is not sufficient to take away the voluntary character of the payment. RAM BAKSH CHETLANGI *v.* HRIDOY MANI DEBI
8 B. L. R. 10 note : 10 W. R. 446

17. ——————— *Suit to recover money paid.* A patni tenure which had been attached by *G* in execution of a decree against *D* was claimed by *S*, whose claim was allowed. Upon this *G* instituted a suit against *S* and others to have the patni declared to be the property of *D*, and, being successful, had the patni sold in execution of his decree against *D*, became the purchaser and got possession. After this he saved the estate from being sold for arrears of rent which had accrued prior to his purchase by paying up the amount due He subsequently sued *D* and *S* to recover the amount so paid *S*, who had meantime appealed to the Privy Council, succeeded in obtaining a reversal of the decree under which *G* had sold the patni; but this reversal did not take place before *G* had instituted the suit for recovering the arrears he had liquidated. *Held*, that *G* was entitled to recover from *S* the amount which had been paid by him to save the patni from being sold. GOPAL CHUNDER CHUCKERBUTTY *v.* UOODOY LALL DEY
10 W. R. 115

18. ——————— *Suit to recover money paid* The plaintiff purchased at an execution sale a share of *K's* tenure which had been attached on account of a money-decree Subsequently the

was neither officious nor volunteer and that K

CHATTERJEE . . . . . 19 W. R. 287

19. ——————— *Unconditional tender—Beng. Reg VIII of 1819.* KEMP, J —A tender to stay a sale under Regulation VIII, 1819, must be of the whole of the zamindar's demand and without any condition as to its being kept in deposit by the Collector RAM CHURN BUNDOPADHYA *v.* DROPO MOYEE DOSSEE . . 17 W. R. 122

20. ——————— *Payment to zamindar—Beng Reg VIII of 1819, s. 13—Payment to stay final sale.* The direction in s. 13 of the Regulation VIII of 1819 that money paid into Court by a talukhdar in order to stay the final sale shall be deducted from any claim of rent that may at the time be pending on account of the year or month for which the notice of sale may have been pub-

SALE FOR ARREARS OF RENT—*contd.*

10. DEPOSIT TO STAY SALE—*concld.*

21. ———————— *Nature of payment—Loan to proprietor—Beng. Act VIII of 1865, s. 6.* Money deposited to protect from sale a tenure advertised under the provisions of Act VIII of 1865 must under s. 6 be considered as a loan made to the proprietor of the tenure, which becomes security to the depositor, who is entitled on applying to obtain immediate possession in order to recover the amount from any profits belonging to the tenure. KARTICK SURMAH *v* BYDONATH SAEENLE 10 W. R. 205

22. **Position of person making payment**—*Beng Reg VIII of 1819—Suit for share of patni estate—Mortgagee* Plaintiff claimed an eight annas share of a patni as purchased by the official assignee of an insolvent, *D*, whom the Principal Sudder Ameen found to have been owner in his own right by inheritance of the share of the

[illegible]

11. SETTING ASIDE SALE.

(*a*) GENERAL CASES

1. ———— **Civil Procedure Code, 1882, s. 310A**—*Civil Procedure Code Amendment Act (V of 1894)—Bengal Tenancy Act (VIII of 1885), s 174* S. 310A of the Code of Civil Procedure applies to the sale of a tenure in execution of a decree for its own arrears JANARDHAN GANGULI *v* KALI KRISTO THAKUR I. L. R. 23 Calc. 393

KRISHNADHAN NATH *v* DAMAYANTI DEVI I. L. R. 23 Calc. 396 note

BEHARY LAL SEAL *v* RUSSICK CHUNDER PAL I. L. R. 23 Calc. 396 note

BUNGSHIDHAR HALDAR *v.* KEDARNATH MONDAL. 1 C. W. N. 114

2. ———————— *Order under s. 310, Civil Procedure Code, 1882—Notice to purchaser.* An auction-purchaser is entitled to a notice before an order is made under s. 310A. BUNGSHIDHAR HALDAR *v* KEDARNATH MONDUL 1 C. W. N. 114

3 ———————— S. 310A of the Civil Procedure Code does not apply to sale under

SALE FOR ARREARS OF RENT—*contd.*

11 SETTING ASIDE SALE—*contd.*

(*a*) GENERAL CASES—*concld.*

Act X of 1859, as the Code of Civil Procedure applies only up to the sale, and not after it. HARISH CHANDRA GHOSE *v.* ANANTA CHARAN PATRA 2 C. W. N. 127

[illegible]

within the meaning of s. 310A. *Held*, by the majority of the Full Bench (RAMPINI, *J*, dissenting), that mortgagee of a tenure or holding sold in execution of a decree for arrears of rent due in respect of it is entitled to make an application under s. 310A of the Code of Civil Procedure, as being a "person whose immoveable property has been sold," within the meaning of that section. PARESH NATH SINGHA *v.* NABOGOPAL CHATTOPADHYA (F B, 1901) . . I. L. R. 29 Calc. 1 s c. 5 C. W. N. 821

5. ———— **Under-raiyat**—*Civil Procedure Code (as amended by Act V of 1894), s 310A—Immoveable property—Sale—Whether an under-raiyat is entitled to make an application under that section* An under-raiyat is not entitled to make an application under s. 310A of the Civil Procedure Code, to set aside the sale of a holding sold in execution of decree for arrears of rent obtained against the raiyat ABED MOLLAH *v.* DILJAN MOLLAH (1902) . . I. L. R. 29 Calc. 459

(*b*) IRREGULARITY

6. ———— **Beng. Reg. VIII of 1819, s. 8, application of**—*Jungleburi tenures*—S. 8, Regulation VIII of 1819, refers to jungleburi tenures that existed at that time and its provisions do not apply to any tenure created since the passing of that Regulation. MONMOHUN SINGH *v* WATSON & Co. 2 Hay 398

7. ———— **Ben Reg. VIII of 1819, s. 8, construction of**—*Residing in neighbour-*

[illegible]

8. ———— **Substantial persons**—*Attesting witnesses.* With reference to the provision in cl. 2, s. 8, Reg. VIII of 1819, that the service of notice of sale of a patni talukh shall be attested by three substantial persons :—*Held*, that the word "substantial" must be understood in its ordinary sense,—i e., men who have some stake in

[illegible]

2 W. R. 105

SALE FOR ARREARS OF RENT—*contd.*

11. SETTING ASIDE SALE—*contd*

(*b*) IRREGULARITY—*contd.*

MOHINEE DOSSEE *v.* JUGGODUMBA DOSSEE
W R. 1864, 382

9. ———————— "*Substantial persons*"—*Service of notice.* The provisions of cl 2, s. 8, Reg VIII of 1819, with regard to the notification of the sale of a patni talukh for the arrears

the spot," are merely directory, and where there is proof that the notice was in fact served the sale will not be vitiated by non-compliance with any of these provisions,—*e.g*, as where one of the witnesses

person within the meaning of cl. 2, s 8, of the Regulation It is too limited a construction of that clause to hold that the word "substantial" must be taken to mean a wealthy man from whom damages could be recovered by the patnidar, supposing the attestation to be false RAMSABUCK BOSE *v* KAMINEE KOOMAREE DOSSEE
14 B L. R. 394
S C RAM SABUK BOSE *v.* MONMOHINEE DOSSEE
L. R 2 I. A 71: 23 W R. 113

10. ———————— *Substantial persons—Suit to set aside sale for irregularity—Non-service of notices—Omission to tender rent* In a suit to set aside the sale of a patni for arrears of rent under Regulation VIII of 1819, on the ground that proper notices were not sent, served, and published under s. 8, cl. 2, the objection in order to succeed must be one of substance and not merely of form. The requirements of the Regulation as to the service of the istahar and the signing of the receipt by substantial persons may be held to have been substantially performed where the persons signing are such as are usually expected to attest such a document, persons who are treated with consideration, *e g*, ameens, mooktears, chowkidars. PITAMBER PANDA *v.* DAMOODUR DOSS DASSEE *v.* PITAMBUR PANDA . . 24 W. R. 129

11 Service of notice of sale—*Beng Reg VIII of 1819, s. 8, cl 2—Non-service of notice, effect of, on sale.* Where a Court finds that the notice prescribed in cl. 2, s. 8, Regulation VIII of 1819, has been duly served, it need not find whether the peon who served the notice complied with all the directions of the Regulation as to what

SALE FOR ARREARS OF RENT—*contd.*

11 SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

12. ———————— *Proof of service—Onus probandi—Evidence Act, s 106.* In a suit against a zamindar to reverse the sale of a patni tenure held under Regulation VIII of 1819, on the ground of non-service of notice, the onus of proving service lies on the defendant, according to the spirit of s. 106 of the Evidence Act DOORGA CHURN SURMA CHOWDHRY *v.* NAJIMOODDEEN
21 W. R 397

13 ———————— *Proof of service—Beng Reg VIII of 1819, s 8, cl 2—Publication.*

strict compliance with the directions given in the same clause and section of the Regulation. BHAGWAN CHUNDER DASS *v* SUDDER ALLY
I. L. R. 4 Calc 41; 2 C. L. R. 357

14 ———————— *Beng Reg VIII of 1819, s 8, cl 2—Proof of publication of notice before sale of patni talukh for arrears of rent* The due publication of the notices prescribed by Regulation VIII of 1819, s 8, cl 2, forms an essential part of the foundation on which the summary power to

Lalchand Chowdhry, 9 W. R 243), yet where that fact was in doubt owing to the evidence of it not

OF BURDWAN *v.* TARASUNDARI DEBI
I. L. R. 9 Calc. 619 . 13 C. L. R. 34
L. R. 10 I. A. 19

15. ———————— *Proof of publication of notice—Beng. Reg VIII of 1819, s 8—Irregularity in sale—Suit to set aside sale.* It is

HARANATH GUPTA *v* JAGANNATH ROY CHOWDHRY . . 9 B. L. R. 89 note : 11 W. R. 87

SALE FOR ARREARS OF RENT—*contd.*

11 SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd*

And as to what amounts to publication of notice RAGHAB CHANDRA BANERJEE *v* BRAJANATH KUNDU CHOWDHRY

9 B. L. R 91 note: 14 W. R. 489

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TARA CHAND BISWAS *v* RAM JEEBAN MOOSTAFEE **22 W. R. 202**

18 ———— *Beng Reg VIII of 1819, s 8—Notice of sale, publication of.* In a case of a sale under Regulation VIII of 1819, where the patni was a small piece of land, upon which there was no town or village or cutchery of any kind, and the peon stuck up the notice in the Collector's office and also at the sudder cutchery of the zamindar and obtained the receipt of the defaulter in the latter place, he was held to have carried out substantially, as far as he could, the provisions of the law regarding notice HURRY KRISTO ROY *v* MOTEE LALL NUNDEE . . . **14 W. R 36**

19. ———— *Beng. Reg VIII of 1819* It was held to be a far more exact compliance with the spirit of Regulation VIII of

Doss *alias* NONNAH BABOO *v* BIPRO CHURN ROY **20 W R. 132**

20. ———— *Beng Reg. VIII of 1819, s. 8.* In the case of a sale of a patni talukh

defaulter, publication at that cutchery is a sufficient publication. MUNGAZEE CHAPRASSEE *v.* SHIBO SOONDUREE . . . **21 W. R. 369**

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observed a substantial part of the prescribed process,

MAHARANI OF BURDWAN *v.* MIRTUNJOY SINGH **L R. 14 I. A. 13**

See AHSANULLA KHAN BAHADUR *v* HURRI CHURN MOZOOMDAR . **I. L. R. 17 Calc. 474**

22. ———— *Insufficient publication of notice—Suit for reversal of sale* Where, in a suit to set aside a patni sale under Regulation VIII of 1819, it was proved that the notice of sale was first stuck up in the cutchery of the ijaradar

SALE FOR ARREARS OF RENT—*contd.*

II SETTING ASIDE SALE—*contd.*

(b) IRREGULARITY—*contd.*

of notice of sale is not only to give notice of sale to the defaulter, but also to the under-tenants, and to advertise the sale on the spot for the information of intending purchasers. But though those provisions had not been strictly complied with, yet as the plaintiff (the patnidar) did not allege that in consequence of the defective publication there was

23. ——————— *Publication of notice of sale—Material irregularity—Beng. Reg. VIII of 1819, s. 8, cl. 2.* Cl. 2, s 8, of Regulation VIII of 1819, which provides that a notice of sale under the Regulation shall be stuck up in the cutchery of the zamindar, is not complied with by serving the notice upon the zamindar himself or his agent. The object of the Regulation is to make known to the holders of under-tenures and raiyats and the residents of the place that the patni will be sold if the arrears are not paid off within the time specified, and if the notice is not stuck up in the cutchery, as prescribed by the Regulation, there is such a material irregularity in the publication as will avoid the sale. GOBIND LALL SEAL *v.* CHAND HURRY MAITY . . **I. L. R. 9. Calc. 172**

24. ——————— *Beng. Reg VIII of 1819, s 8—Publication of proof of service—Suit to set aside sale.* Compliance with the directions in Regulation VIII of 1819 as to service of notice

25 ——————— *Patni tenure—Beng Reg VIII of 1819, s 8, cl. 2, and s 14—Date*

ground for setting aside the sale of a patni tenure for arrears of rent. There being nothing in the receipt to show the date on which the notice was published, no injury to the plaintiff having been proved, and it appearing that more than the time prescribed by the Regulation had elapsed before the

SALE FOR ARREARS OF RENT—*contd.*

II. SETTING ASIDE SALE—*contd.*

(b) IRREGULARITY—*contd.*

sale actually took place, the Court refused to set

26. ——————— *Beng Reg VIII of 1819, s 8—Benami purchase—Validity of sale* *A* and *B* were co-sharers of a patni which was sold for arrears of rent by the zamindar and purchased by *C*. In a suit by *A* against *B*, *C* and the zamin-

the cutchery of the defaulter in accordance with cl. 2, s. 8, Regulation VIII of 1819, it was not essential to the validity of the sale that any other notice should have been given to the defaulters themselves or that the service should have been verified in the manner directed by the section. *Held*, also, the benami purchase having been proved, that the sale must be considered good as far as the zamindar was concerned, and therefore the suit as against him must be dismissed with costs; and that as against *B* the parties were in exactly the same position as before the sale, *B* being a constructive trustee for *A*. *Sona Beebee* v. *Lall Chand Chowdhry, 1 W. R. 242*, and *Koylash Chunder Banerjee* v. *Kali Prosunno Chowdhry, 16 W. R. 80*, cited and followed. JOTENDRO MOHUN TAGORE *v.* DEBENDRO MONEE . . **2 C. L. R. 419**

27. ——————— *Beng Reg. VIII of 1819, cl. 3, ss 8, 14—Patni sale—Notices, publication of—Ostum sale.* It is imperative that the

28. ——————— *Beng. Reg. VIII of 1819, s 8—Service and publication of notice of sale—Irregularities in preliminaries to sale—Petition for sale—Certificate of Munsif when service is sworn to before him—Form of notice of sale in mid-year sales for six months' arrears.* All the requirements in cl. 2, s 8 of Regulation VIII of 1819

balance due, or of three-fourths of such balance. In such a case a notice which stated that the sale

would take place unless the whole of the balance was paid as if the zamindar was proceeding under cl. 2 for the whole year's arrears was held to be a *bad notice* and a *non-compliance with* a substantial requirement of the Regulation such as to justify the reversal of the sale. The publication of the petition to the Collector containing a specification of the balance of rent due, by sticking it up in some conspicuous part of the cutchery as required by cl. 2, s. 8, of the Regulation, is not a substantial portion of the process to be observed by the zamindar previous to a sale for arrears of rent; non-compliance with that provision therefore is not a ground for setting aside the sale For the same reason, the non-presentation of the petition on the precise day (1st Kartick)

case of refusal by the village people to attest the publication of the notice of sale, mean a certificate to the effect that the peon did come before the Munsif or police officer, as the case may be, and did make voluntary oath as to the service of the notice Where the peon, after serving the notice, made an affidavit as to the mode of service, and took the affidavit before the Munsif to whom it was read and who then signed it, there was held to be a sufficient certificate to satisfy the requirements of the section Ahsanulla Khan Bahadoor *v.* Hurri Churn Mozoomdar

I. L. R. 17 Calc. 474

Held, by the Privy Council affirming this decision :—The power of sale given to the zamindar by Regulation VIII of 1819, upon default in payment of the rent by a patnidar, is only exercisable subject to a condition as to notice to the defaulter. To

26. ———— *Beng. Reg VIII of 1819, s. 8—Notice, publication of—Reasonable*

SALE FOR ARREARS OF RENT—*contd*

11. SETTING ASIDE SALE—*contd.*

(*b*) Irregularity—*contd.*

notice to be affixed at the Collectorate The words in the section " the same shall then be stuck up in some conspicuous part of the cutchery " do not mean that it must be stuck up either immediately or before

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Forbes . . . 2 C. W. N. 401

30. ———— *Beng. Reg VIII of 1819, s. 8, cl 2—Onus of proof of publication of notice before sale of patni talukh for arrears of rent.* In a suit to set aside a sale of a patni talukh, held under the provisions of s. 8 of Regulation VIII of 1819, on the ground that the notice required by sub-s. 2 of that section had not been duly published, it lies upon the defendant to show that the sale was preceded by the notice required by that sub-section, the service of which notice is an essential preliminary to the validity of the sale. In such a suit, where there was no evidence one way or the other to show that the notice required by that sub-section to be stuck up in some conspicuous part of the Collector's cutchery had been published :—*Held*, that the plaintiff was entitled to a decree setting aside the sale. Hurro Doyal Roy Chowdhry *v.* Mahomed Gazi Chowdhry . . . . I. L. R. 19 Calc. 699

31. ———— *Beng Reg. VIII of 1819, ss. 8, 14, cl. 2—Publication of notice in the Collector's cutchery—Non-publication of notice in manner prescribed, effect of, on the validity of a sale of a patni tenure—"Sufficient plea."* The sticking up or publication in a conspicuous part of the Collector's cutchery of a notice in accordance with the provisions of cl. 2 of s. 8 of Regulation VIII of 1819 is essential to the validity of a sale of a patni tenure under that Regulation. Where a notice of sale, instead of being stuck up and published in some conspicuous part of the Collector's cutchery as required by law, was, in accordance with the

Petheram, *C.J.*, and Ghose, *J.* (Tottenham, *J.*, dissenting), that this was not a publication

SALE FOR ARREARS OF RENT—*contd.*

11. SETTING ASIDE SALE—*contd.*

(b) Irregularity—*contd.*

of the notice within the meaning of cl. 2 of s. 8 of the Regulation and that it was a 'sufficient plea' for the defaulting patnidars within the meaning of s. 14 to have the sale set aside *Maharaja of Burdwan v Tarasundari Debi, I. L. R. 9 Calc 619 L. R. 10 I. A. 19,* relied on. *Ahsanulla Khan Bahadur v Hurri Churn Mozoomdar, I. L. R. 17 Calc. 474,* distinguished. Rajnarain Mitra v. Ananta Lal Mondul. Kristo Lal Chowdhry v Ananta Lal Mondul . **I. L. R. 19 Calc. 703**

32. ——— *Act X of 1859—Non attachment and non-publication of sale proclamation—Civil Procedure Code (Act XIV of 1882), s 311.* There is no provision in Act X of 1859 under which the sale of a jote in execution of a rent decree is liable to be set aside on the ground of non-attachment and non-proof of publication of the sale proclamation. Patit Shahu v. Hari Mahanti **I. L. R. 27 Calc. 789**

33. ——— *Sale after due and proper notice set aside as irregularly conducted—Second sale without fresh notice—Suit to set aside second sale—Madras Rent Recovery Act (Mad. Act VIII of 1865), ss 18, 39, and 40.* A landlord ... f rent in ... Madras ... plication for sale to the Collector and otherwise complied with the procedure prescribed by the Act The land was sold, but the sale was set aside as having been irregularly conducted. The landlord then made in ...

34. ——— *Setting aside sale—Irregularity—Bengal Regulation VIII of 1819, ss. 8, 10—Publication of notice of sale—Form of notice—Order as to lots to be sold.* A sale under ...

s. 8 of the Regulation is a material irregularity. A notice not containing any order as to the lots to be sold is not in proper form; where the notice was ...

down at 5 P. M and they were not stuck up at all on Sundays:—*Held,* that the procedure was not justified by the Regulation Bijoy Chand Mahatap v. Atulya Charan Bose (1905) **I. L. R. 32 Calc. 953**

(c) Other Grounds.

35. ——— **Unregistered proprietor's right to sue to set aside sale**—*Patni talukh—Transfer of patni—Registered transferee—Beng Reg. VIII of 1819, s. 14.* Where a patni talukh has been sold ...

I. L. R. 12 Calc. 622

36. ——— *Beng Reg VIII of 1819, ss 3, 5, 6, 14—Sale of patni tenure—Registered patnidars—Suit by unregistered patnidars.* ... tenure is en- ... under Regu- ... shad Roy v. ... *I. L. R. 12 Calc. 622,* followed. Joykrishna Mukhopadhaya v. Sarfannessa . . **I L. R. 15 Calc. 345**

37. ——— **Fraud**—*Suit to set aside sale—Beng Act VIII of 1865—Right of purchaser* A purchaser at a sale in execution of a decree held under Bengal Act VIII of 1865 could not be ousted from the property purchased by him without proof that the decree and sale were fraudulent and that he (the purchaser) was a party to or had notice of the fraud. Damudar Roy v. Nimanund Chuckerbutty **7 B. L. R. Ap. 1 : 15 W. R 365**

38. ——— *Collusion—Suit by tenant against purchaser to set aside sale.* Where a tenure had been sold under s. 105, Act X of 1859, in execution of a decree for the rent of land held under a mirasi pottah, a tenant in possession was at liberty to show that the decree had been obtained by fraud and collusion against a person who had then no interest in the premises Borradaile v. Gregory . . . **2 W. R. Act X, 63**

39. ——— *Beng. Reg VIII of 1819—Invalid sale.* A patni talukh being about to be brought to sale under Regulation VIII of 1819 the agent of the ...

... the time, the lot was about to be called up. The third, *K*, without informing the ... intention ... purhased ... bad faith, ... he represen... benefit by ... also, that, as between the ... and the de... ...ut that it ... favour of ... annas share,

SALE FOR ARREARS OF RENT—*contd.*

II. SETTING ASIDE SALE—*contd*

(c) OTHER GROUNDS—*contd.*

and *K* must be treated as having made the purchase on account of, and as a trustee for, the 12 annas shareholders. KOYLASH CHUNDER BANERJEE *v.* KALEE PROSUNNO CHOWDHRY

16 W. R. 80

40. ———— *Collusion—Invalid sale—Reconveyance of share sold.* Where the sale of a tenure for arrears of rent was brought about by collusion between the party in whose name it stood and the purchaser, with a view to get rid of a co-sharer, who had neglected to have his share transferred to his name.—*Held*, that the transaction was a private one and not really an auction sale for the purpose of realizing the zamindar's rent, and that on payment of his share of the rent the above sharer was entitled to have his share reconveyed to him. KISHORE CHUNDER SEIN *v.* KALLY KINKER PAUL CHOWDHRY

20 W. R. 333

See SHIBO SOONDUREE DOSSEE *v.* PANCHCOWREE CHUNDRA . . . . . 14 W. R. 158

SIDHEE NUZUR ALLY KHAN *v* OJOODHYARAM KHAN . . . . 10 Moo. I. A. 540
5 W. R. P. C. 83

41. ———— *Collusion—Beng. Reg. VIII of 1819—Sale where no arrears are due. Per* AINSLIE, *J.*—It can only be on the ground that a sale is carried out in respect of arrears not really due that fraud and collusion can be imputed. RAM CHURN BUNDOPADHYA *v.* DROPO MOYEE DOSSEE . . . . 17 W. R. 122

42. ———— *Beng Reg. VIII of 1819—Invalidity of sale—Sale where no arrears are due.* A patni sale under Regulation VIII of 1819 is invalid if there was no arrear of rent at the date of sale, whether notice of the fact had been given to the Collector or not at the time of the sale. SHUROOP CHUNDER BHOOMICK *v* PERTAB CHUNDER SINGH . . . 7 W. R. 219

43 ———— Sale after arrears have been paid—*Suit to set aside sale—Deposit of rent in Collector's treasury* An estate was sold under cl. 2, s. 8, Regulation VIII of 1819, for arrears of [illegible]

SALE FOR ARREARS OF RENT—*contd.*

II SETTING ASIDE SALE—*contd.*

(c) OTHER GROUNDS—*contd.*

44. ———— *Sale by zamindar with notice (though irregularly served) that arrears of rent have been deposited.* Where a zamindar puts up a patni for sale, under Regulation VIII of 1819, knowing that the rent due to him has been paid into Court by the patnidar, the sale is invalid, even if the notice served on the zamindar was illegally served. TARA SOONDUREE DEBIA *v* RADHA SOONDUR ROY . . 24 W. R. 63

45. ———— Sale under decree alleged to be against wrong person—*Beng Act VIII* [illegible]

8 B. L. R. 4 note : 13 W. R. 433

46. ———— Sale of an under-tenure in execution of decree for arrears of rent—*Act VIII of 1865—Sale under three separate decrees, each against one of three joint brothers—Execution issued only against one—Joint interest of three brothers in joint possession sold* A zamindar brought to a judicial sale an under-tenure in execution of three *ex parte* decrees obtained by him for arrears of rent thereof for different periods. The property was held by three Hindu brothers in joint possession. The zamindar purchased it at the sale. At the instance of the zamindar, [illegible] one of the [illegible] to this [illegible] sale, and [illegible] the fact was, that the decrees had not, each and all of them, been against each and all of the three brothers, and that the sale was invalid. One at least of the three decrees was against the three brothers, who all understood that they were judgment-debtors under the decrees. They had been served with proper notices under Act VIII of 1865, and separate attachments of the land under each decree, and separate proclamations of sale thereunder, had been made. *Held*, that the sale was a valid one, and operated to transfer the tenure to the purchaser. TARA LAL SINGH *v* SAROBAR SINGH

I. L. R. 27 Calc. 407
L. R 27 I. A. 33
4 C. W. N. 533

SALE FOR ARREARS OF RENT—*contd.*

II. SETTING ASIDE SALE—*contd*

(c) Other Grounds—*contd.*

47. ———— **Decree for sale set aside on review**—*Bonâ fide purchaser—Suit to set aside sale.* *A* purchased a share of *B's* talukh at an auction-sale in execution of an *ex parte* decree obtained against *B* under s. 105 of Act X of 1859. *B* obtained leave under s. 58 of Act X of 1859 to revive the suit and succeeded in getting it dismissed He now sued to set aside the sale to *A*. *Held*, that the sale to *A* was binding against *B*, notwithstanding that the decree in execution of which it had taken place had been set aside in review, provided the sale was *bonâ fide*. Jan Ali *v.* Jan Ali Chowdhry

1 B. L. R. A. C. 56 : 10 W. R. 154

48 ———— **Decree for sale set aside for fraud**—*Suit to set aside sale.* In a suit to annul the sale of an under-tenure in execution of a decree under Act X of 1859 which was subsequently set aside on the allegation that it had been obtained collusively and by fraud, it was found that neither the decree-holder nor the purchaser was [illegible] to the decree and sale Jugul Kishore Banerjee *v* Abhaya Charan Sarma 1 B. L. R. A. C. 84

Mohesh Chunder Bagchee *v* Dwarkanath Moitro . . . . 24 W. R. 260

49. ———— **Sale while warrant is in force against moveable property**—*Beng Act VIII of 1869, s 61—Irregularity in sale—Suit to set aside sale for irregularity.* Under s. 61 of Ben- [illegible]

50 ———— **Want of material injury**—*Beng Reg VIII of 1819.* A purchaser under a [illegible]

Marsh. 31 : 1 Hay 68

51. ———— **Want of notice of suit for arrears**—*Suit to set aside sale.* No suit will lie to set aside the sale of an estate in execution of a decree for arrears of rent at enhanced rates according to a prior decree for enhancement subsequently reversed on special appeal, on the ground of want of notice of the suit for arrears of rent. Doorga Pershad Pal Chowdhry *v.* Jogesh Prokash Gongopadhya . . . 4 W. R. Act X, 38

52. ———— **Want of notice of sale**—*Bonâ fide purchaser* If a patni is sold for arrears of rent without the notice required by Regulation VIII of 1819, the sale is informal and can be set aside notwithstanding the *bonâ fides* of the purchaser. Mobaruck Ali *v.* Ameer Ali . 21 W. R. 252

53. ———— *Unregistered tenant—Purchaser—Suit to set aside sale.* The purchaser of a tenure which is liable to be sold under Regulation VIII of 1819, who has not registered his name as tenant, is not entitled on a sale of the tenure to notice of sale, and a suit brought by him for reversal of the sale on that ground was dismissed. Dhunput Singh Roy *v.* Villayet Ali

13 B. L. R. 153 note . 15 W. R. 211

Also Bhobo Tarinee Dossee *v.* Prosonnomoye Dossee . . . . 13 B. L. R 150 note

Gossain Mungul Doss *v.* Roy Dhunput Singh 25 W. R. 152

54. ———— *Beng Reg. VIII of 1819, s 14—Patni sale—Se-patni interest—Onus of proof as to requirements of Reg VIII of 1819.* [illegible] portion of the lands let out in patni, were, after the sale, dispossessed by the defendants. The se-patnidars brought a suit against the defendants [illegible] of the last deceased holder of the patni. The zamindar was made a party to the suit, but no relief was asked against him. *Held*, that, notwithstanding that the plaint questioned the validity of the sale, [illegible]

55. ———— **Vagueness of specification** [illegible]

10 W. R. 218

56. ———— **Absence of one shareholder's name from** [illegible] *validity of sale* [illegible] arrears of rent under Act X of 1859 and Bengal Act VIII of 1865, the absence of a shareholder's name

SALE FOR ARREARS OF RENT—*contd.*

II. SETTING ASIDE SALE—*contd*

(c) OTHER GROUNDS—*contd.*

from the proceedings did not as a matter of law invalidate the sale as against him. DOORBIJOY MAHTOON *v.* PRITHEE NARAIN SINGH
14 W. R. 30

57. ———— **Fixing date of sale**—*Era—Custom—Uniformity of practice.* As regards the date fixed for sale and the era to be followed the intention of the Regulation was to lay down a uniform practice in each locality. Uniformity being the essential requirement, and the particular date only the form of enforcing regularity, a practice which has been established for a course of years and which is reasonable and convenient in itself is not liable to objection on a mere point of form. PITAMBER PANDA *v.* DAMOODUR DOSS. DASSEE *v.* PITAMBUR PANDA . . . . . **24 W. R. 129**

58. ———— *Era—Error in advertisement of date.* According to Regulation

on the 6th Sept 1265, which date was erroneously

BECHARAM MOOKERJEE *v.* ISSUR CHUNDER MOOKERJEE . . . . . **W. R. 1864, 4**

59. ———— **Change of date of sale**—*Sale not for full arrears—Fraud—Suit to set aside sale.* In a suit to set aside a sale for arrears of rent due up to Aughran 1262, the plaintiff, who claimed under a deed of conditional sale, was *held* not entitled to a decree on the following grounds. The change of date of sale from a holiday to the next advertised public sale day was not in this case such a postponement of the sale as to require any new distinct notification. A sale is not invalid because it is not for the full complete arrears due at the end of the year; it may take place at the end of

60. ———— **Postponement of sale**—*Discretion of Court.* A sale in execution of a decree under Bengal Act VIII of 1869 can be postponed at the discretion of the Court only when the post-

61. ———— *Mad. Act VIII of 1865 (Rent Recovery Act), s. 33—Adjournment for want of bidders to next day—Duty of officer conducting sale.* A sale of land for arrears of rent under the provisions of the Rent Recovery Act having been advertised for a certain day was, owing to the absence of bidders on that day, adjourned and held on the day following by the officer empowered to sell. *Held*, that the sale was invalid. PALANI *v.* SIVALINGA . . **I. L. R. 8 Mad. 6**

62. ———— **Inadequacy of price**—*Ground for setting aside sale.* Inadequacy of price is no ground for setting aside a sale regularly held for arrears of rent under the patni law. MUNGAZEE CHAPRASSEE *v.* SHIBO SOONDUREE
21 W. R. 369

63. ———— **Irregularity not caused by act or omission of decree-holder**—*Act X of*

CHUNDER SINGH . . . . . **7 W. R. 307**

64. ———— **Omission to tender before sale**—*Inclusion of irrecoverable charges.* Where there is no tender before sale of the amount of rent due, a sale under Regulation VIII of 1819 cannot be set aside merely because some charges were inclu-

24 W. R. 129

65. ———— **Rights of purchaser**—*Landlord having a mortgage of the holding—Transfer of Property Act (IV of 1882), s. 99.* The sale of a

the holding, who has purchased it under a decree on his mortgage. *Sheodeni Tewari* v. *Ram Saran Singh, I. L. R. 26 Calc. 164,* followed. BASIRUDDIN *v.* KAILASH KAMINI DEBI (1905)
I. L. R. 33 Calc. 113

(d) RE-SALE.

66. ———— *Rent Recovery Act*

SALE FOR ARREARS OF RENT—*contd.*

II. SETTING ASIDE SALE—*contd*

(c) OTHER GROUNDS—*contd.*

47. ———— Decree for sale set aside on review—*Bonâ fide purchaser—Suit to set aside sale* A purchased a share of *B's* talukh at an auction-sale in execution of an *ex parte* decree obtained

been set aside in review, provided the sale was *bonâ fide*. JAN ALI v JAN ALI CHOWDHRY
1 B. L. R. A. C. 56 10 W. R. 154

48 ———— Decree for sale set aside for fraud—*Suit to set aside sale.* In a suit to annul the sale of an under-tenure in execution of a decree under Act X of 1859 which was subsequently set aside on the allegation that it had been obtained collusively and by fraud, it was found that neither the decree-holder nor the purchaser was guilty of any fraud. *Held,* that the mere circumstance of the decree under which the sale had taken place having itself been set aside did not invalidate the sale, the plaintiff having failed to show that the purchaser was a party to the fraud which led to the decree and sale JUGUL KISHORE BANERJEE v. ABHAYA CHARAN SARMA 1 B. L. R. A. C. 84

MOHESH CHUNDER BAGCHEE v. DWARKANATH MOITRO . . . . 24 W. R. 260

49. ———— Sale while warrant is in force against moveable property—*Beng. Act VIII of 1869, s 61—Irregularity in sale—Suit to*

50. ———— Want of material injury—*Beng Reg. VIII of 1819.* A purchaser under a

Marsh. 31; 1 Hay 68

51. ———— Want of notice of suit for

notice of the suit for arrears of rent. DOORGA PERSHAD PAL CHOWDHRY v JOGESH PROKASH GONGOPADHYA . . . 4 W. R. Act X, 38

52. ———— Want of notice of sale—*Bonâ fide purchaser* If a patni is sold for arrears of rent without the notice required by Regulation VIII of 1819, the sale is informal and can be set aside notwithstanding the *bonâ fides* of the purchaser. MOBARUCK ALI v AMEER ALI . 21 W. R. 252

53. ———— *Unregistered tenant—Purchaser—Suit to set aside sale* The purchaser of a tenure which is liable to be sold under Regulation VIII of 1819, who has not registered his name as tenant, is not entitled on a sale of the tenure to notice of sale, and a suit brought by him for reversal of the sale on that ground was dismissed. DHUNPUT SINGH ROY v. VILLAYET ALI
13 B L. R. 153 note. 15 W. R. 211

Also BHOBO TARINEE DOSSEE v. PROSONNOMOYE DOSSEE . . . . 13 B L. R. 150 note

GOSSAIN MUNGUL DOSS v. ROY DHUNPUT SINGH
25 W. R 152

54. ———— *Beng. Reg. VIII of 1819, s. 14—Patni sale—Se-patni interest—Onus*

55. ———— Vagueness of specification

15 W. R 279

56. ———— Absence of one shareholder's name from

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VIII

SALE FOR ARREARS OF RENT—*contd.*

II. SETTING ASIDE SALE—*contd*

(c) OTHER GROUNDS—*contd.*

from the proceedings did not as a matter of law invalidate the sale as against him DOORBIJOY MAHTOON *v* PRITHEE NARAIN SINGH
14 W. R. 30

57. ——— Fixing date of sale—*Era—Custom—Uniformity of practice.* As regards the date fixed for sale and the era to be followed the intention of the Regulation was to lay down a uniform practice in each locality Uniformity being the essential requirement, and the particular date only the form of enforcing regularity, a practice which has been established for a course of years and which is reasonable and convenient in itself is not liable to objection on a mere point of form PITAMBER PANDA *v* DAMOODUR DOSS DASSEE *v.* PITAMBUR PANDA . . . 24 W. R. 129

58. ——— *Era—Error in advertisement of date.* According to Regulation VIII of 1819, the sale of a patni tenure for arrears of rent must take place on a day in the Bengali month of Jeyt. When a sale was advertised to take place on the 5th Jeyt 1269, which date was erroneously

it might have been adjourned after due notice. BECHARAM MOOKERJEE *v* ISSUR CHUNDER MOOKERJEE . . . . . . W. R. 1864, 4

59. ——— Change of date of sale—*Sale not for full arrears—Fraud—Suit to set aside sale.* In a suit to set aside a sale for arrears of rent due up to Aughran 1262, the plaintiff, who claimed under a deed of conditional sale, was *held* not entitled to a decree on the following grounds. The change of date of sale from a holiday to the next advertised public sale day was not in this case such

60. ——— Postponement of sale—*Discretion of Court.* A sale in execution of a decree under Bengal Act VIII of 1869 can be postponed at the discretion of the Court only when the post-

postponement would cause no serious prejudice to the decree-holder. JANOKEENATH MOOKERJEE *v* RADHA MOHUN CHATTERJEE . 20 W. R. 130

SALE FOR ARREARS OF RENT—*contd.*

II. SETTING ASIDE SALE—*contd.*

(c) OTHER GROUNDS—*concld.*

61. ——— *Mad. Act VIII of 1865 (Rent Recovery Act), s 33—Adjournment for want of bidders to next day—Duty of officer conducting sale.* A sale of land for arrears of rent under the provisions of the Rent Recovery Act having been advertised for a certain day was, owing to the absence of bidders on that day, adjourned and held on the day following by the officer empowered to sell. *Held,* that the sale was invalid. PALANI *v.* SIVALINGA . . I. L. R. 8 Mad. 6

62. ——— Inadequacy of price—*Ground for setting aside sale* Inadequacy of price is no ground for setting aside a sale regularly held for arrears of rent under the patni law MUNGAZEE CHAPRASSEE *v* SHIBO SOONDUREE
21 W. R. 369

63. ———

CHUNDER SURMAH CHUCKERBUTTY *v.* KALEE CHUNDER SINGH . . . . 7 W. R. 307

64. ——— Omission to tender before sale—*Inclusion of irrecoverable charges.* Where

DOSS DASSEE *v.* PITAMBER PANDA
24 W. R. 129

65. ——— Rights of purchaser—*Landlord having a mortgage of the holding—Transfer of Property Act (IV of 1882), s. 99.* The sale of a

I. L. R. 33 Calc. 113

(d) RE-SALE

66.

SALE FOR ARREARS OF RENT—*contd.*

11. SETTING ASIDE SALE—*concld.*

(*d*) RE-SALE—*concld.*

when a bid was made for the first item, which was sufficient to satisfy the arrear. The bidder, however, paid only a small portion on account of his bid, and failed to pay the balance, and the item was subsequently put up for sale again, with others, and purchased by the landholder. A suit was then brought to set aside the sale, when it was contended that, inasmuch as a bid equal to the amount of the arrear had been made for a portion of the property, the claim of the landholder had been satisfied, under s 33 of the Rent Recovery Act, although the whole amount bid had not in fact been paid; also that a subsequent sale of the rest of the tenant's property was illegal, and that the landholder's proper remedy lay in taking proceedings against the defaulting purchaser. *Held*, that the contention could not be upheld. An arrear of rent is only satisfied by a sale when the amount bid is paid, till when the debt subsists. *Held*, further, that notice of the second

I. L R 24 Mad. 507

12. EFFECT OF SETTING ASIDE SALE.

1. ———— **Recovery of purchase-money**—*Decree for purchase-money—Execution—Fresh suit—Interest on deposit* In a suit to set aside the sale of a patni tenure, where a purchaser is made a co-defendant under s. 14, Regulation VIII of 1819, and it is decreed that the purchaser may recover the purchase-money from the zamindar defendant.—

2. ———————— *Sale where no*

appertaining to the patni, and if it turns out that there are no such lands (that there is in fact no such patni), the purchaser will be entitled to recover his purchase-money. KHELUT CHUNDER GHOSE *v.* KISHEN GOBIND DEB . . 16 W. R. 128

3. ———— **Refund of bonus paid to purchaser on his purchase**—*Lease, construction of—Landlord and tenant—Failure of consideration—Sale subsequently set aside.* The defendants, after purchasing a patni talukh at an auction sale for arrears of rent under Regulation VIII of 1819, granted a dar-patni lease to the plaintiffs (the former dar-patnidars) and received a bonus of R1,199. The auction-sale being five years afterwards set

SALE FOR ARREARS OF RENT—*concld.*

12. EFFECT OF SETTING ASIDE SALE—*concld.*

aside:—*Held*, that the plaintiffs were entitled to a refund of the bonus, although they had not been dispossessed, but had simply reverted to their former position as dar-patnidars under the former patnidar TARACHAND BISWAS *v.* RAM GOBIND CHOWDHRY **I. L. R. 4 Calc. 778 : 4 C. L R. 20**

4. ———— **Indemnification for payments of rent while sale existed**—*Beng. Reg. VIII of 1819, s 14, cl. 1.* Where a zamindar sells a patni tenure for arrears of rent and the sale is

have made, and if he does not do so, he cannot set up his loss in answer to a liability which he has incurred. TARACHAND BISWAS *v.* NAFAR ALI BISWAS **1 C L. R. 236**

5. ———— **Position of holder of chahar-patni**—*Sale—Under-tenure—Purchaser, liability of* The holder of a chahar-patni, or other subordinate tenure

I. L. R. 4 Calc. 807 : 4 C. L R. 148

6. ———— **Order for refund of purchase money**—*Beng Reg VIII of 1819—Notice of sale—Setting aside sale—Refund of purchase-money* If a patni is sold for arrears of rent without the notice required by Regulation VIII of 1819, the sale is informal and can be set aside, notwithstanding the *bonâ fides* of the purchaser. Where such a sale was so set aside and the lower Appellate Court refused to make an order for refund of the purchase-money, the High Court in special appeal, and with reference to s. 14, cl. 1 of the Regulation, declared the purchaser entitled to a refund with interest. MOBARUCK ALI *v.* AMEER ALI . . . . **21 W. R. 252**

7.

SALE FOR ARREARS OF REVENUE.

See ACT XI OF 1859.

See ACT XI OF 1859, s 5
12 B. L. R. 297
I. L. R. 13 Calc. 208

See BENAMI TRANSACTION—CERTIFIED PURCHASERS—ACTS XII OF 1841, I OF 1845, AND XI OF 1859

See BENGAL RENT ACT (X OF 1859)

See BOMBAY LAND REVENUE ACT, s. 56
I. L. R. 15 Bom. 67

See JURISDICTION.
I. L. R. 31 Calc. 937

See LIMITATION . I. L. R. 26 All. 4

See LIMITATION ACT, 1877, ss. 2, 10, 28
I. L. R. 31 Calc. 314

See MADRAS REVENUE RECOVERY ACT (MAD. ACT II OF 1864)

See MORTGAGE-LIEN.
I. L. R. 32 Calc. 283

See PREVIOUS HOLDER.
I. L. R. 31 Calc. 901

See REVENUE SALE LAW (ACT XI OF 1859)

See RIGHT OF SUIT—REVENUE, SALE FOR ARREARS OF.

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.
I. L. R. 25 All. 371

SALE FOR ARREARS OF REVENUE—*contd.*

——— **suit to set aside—**

See CO-SHARERS—SUIT BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—POSSESSION . 7 B. L. R. Ap. 42

See COURT-FEES ACT (VII OF 1870), SCH. II, ART. 17, CL. 3 . 6 C. W. N. 157

See PARTITION—MISCELLANEOUS CASES
5 B. L. R. 135

1. RIGHT TO SELL.

1. ——— **Right of Government.** Whenever the land revenue is in arrear, Government is entitled to sell the land and to realize its due, whoever is the defaulter BALKRISHNA VASUDEV *v.* MADHAVRAV NARAYAN . I. L. R. 5 Bom. 73

2. ——— *Arrears—Beng. Regs XIV of 1793 and VII of 1799—Beng. Reg. V of 1812.* By Regulations XIV of 1793 and VII of [illegible]

[illegible]

monthly instalments be fixed and determined By Regulation V of 1812, if there be an arrear of the annual assessment, or of a fixed monthly kist or [illegible]

[illegible]

zamindari on default being made in payment of these instalments, by taking a bond from sureties by which the estates of the sureties also were rendered liable for the payment. KIRT CHUNDER ROY *v* GOVERNMENT
5 W. R. P. C. 41 : 1 Moo. I. A. 383

3. ——— *Revenue Sale Law (Act XI of 1859), sale under—Kists fixed by the Board of Revenue—Default of payment of one kist—Proprietor of estate, if entitled to pay the whole demand on the date fixed for the last kist* An estate was sold for arrears of a few rupees, which amount was in [illegible]

SALE FOR ARREARS OF REVENUE—*contd.*

2 PROTECTED TENURES.

1. ——— Act XI of 1859, s. 37—*Power of purchaser to avoid incumbrances—Right of occupancy.* The title of a purchaser at a sale for arrears of Government revenue, to void an under-tenure and eject the tenant, will depend upon whether the tenure is protected under any of the clauses of s 37 of Act XI of 1859, and whether the tenant has a right of occupancy. If the tenant can prove such a right, he cannot be objected under s. 37. SHEO PURSHUN SINGH v. RAJENDRO KISHORE SINGH
12 W. R. 123

2 ——— *Right of transferee of purchaser at sale for arrears of revenue* The rights which are conferred upon a purchaser at a sale for arrears of revenue under Act XI of 1859, s 37, are capable of being transferred to another person, if the transfer follows immediately upon the sale or within a reasonable time thereafter KOYLASH CHUNDER DUTT v. JUBUR ALI . 22 W. R. 29

3. ——— ——— *Right of purchaser to avoid under-tenure.* When a patni granted by a Hindu widow, though in appearance a duly registered tenure falling within the 3rd exception of s. 37, Act XI of 1859, was in reality a fraud which the owner or reversioner might have avoided — *Held*, that a revenue sale passes the right of avoiding it to the auction-purchaser RAM CHUNDER CHUCKERBUTTY v. KASHINATH MOITRO
W. R. 1864, 66

4 ——— *Suit by purchaser to avoid under-tenure—Beng Act VIII of 1865, s. 16—Resident and hereditary cultivator.* A certain chur having been converted into two estates paying Government revenue, the plaintiffs became the purchasers of one of these estates at a sale for arrears of revenue and of a howla lease of the other at an auction-sale for arrears of rent, and brought a suit, in virtue of s 37 of Act XI of 1859 and s 16 of Bengal Act VIII of 1865, to avoid the tenures of the defendants, who held, in shikmi talukhdari and howladari tenure, lands appertaining to both estates The defendants admitted the alleged nature of their holdings, but claimed exemption from eviction on the ground that their ancestor, more than twelve years before, had cleared and

... ment and hereditary cultivator irrespective of his denomination. MAHOMED ASSANOOLLAH CHOWDHRY v SHANSHIR ALI
4 C. L. R. 165

5. ——— s 52—*Plantation* —The plaintiff was the purchaser at a sale under Act XI of 1859 by the Collector of the 24-Pergunnas for arrears of revenue, of an estate in the Sunderbunds in which the defendant was holder of a mokurari maurasi jungleburi tenure, under which he was to clear away the jungle and then to cultivate the land with paddy In a suit after notice to quit to eject the defendant, and obtain possession of the land, or to have the defendant's tenure annulled —*Held*, that the defendant's tenure was not protected as being one of "lands whereon plantations have been made" within the meaning of s. 52 of Act XI of 1859 BHOLANATH BANDYOPADHYA v UMACHURN BANDYOPADHYA. UMACHURN BANDYOPADHYA v BHOLANATH BANDYOPADHYA . . . I. L. R. 14 Calc. 440

6. ——— Garden and homestead land with tanks. Where a party had occupied land for about forty years under a howla lease, and had made tanks, gardens, and homesteads, he was *held* to be protected under Act XI of 1859, s 37. GRISH CHUNDER BANERJEE v. GUNGA DOORGA
25 W. R. 60

7. ——— *Protection from effect of sale—Land planted as garden* —A land-

8. ——— *Garden land—Under-tenure—Avoidance of tenure* Leases of lands

tected from avoidance by a revenue auction-purchaser GOBIND CHUNDRA SEN v. JOY CHUNDRA DASS . . . I. L. R. 12 Calc. 327

9 ———

that, notwithstanding a party may fail to show that his tenure was created prior to the permanent settlement, yet he is entitled to the benefit of the 4th exception in respect of any permanent structures that may be upon his holding BHAGO BIBEE v RAM KANT ROY CHOWDHRY
I. L. R. 3 Calc. 293

10. ——— *Under-tenure-holders—Raiyats, rights of—Improvements on land.* A person holding land which is not protected

SALE FOR ARREARS OF REVENUE—*contd.*

2. PROTECTED TENURES—*contd*

from the operation of s 37 of Act XI of 1859 by any of the first three exceptions is yet entitled to the benefit of the 4th exception in respect of any of the items mentioned therein which may have been

Chowdhry, I. L R 3 Calc. 293, followed The benefit of the 4th exception to s. 37, Act XI of 1859, must be limited to improvements effected *bonâ fide*

ing the rights of an auction-purchaser. Subject to this reservation, it does not matter whether the improvements have been effected by the present holder or by some previous occupier. AJOUR ALI v. ASMUT ALI

I L. R. 8 Calc. 110 : 10 C. L R. 87

11. ——— *Lease of tank without surrounding land.*—A lease of tank without any portion of the surrounding land is not protected under cl 4, s 37, of Act XI of 1859, as it is not, within the meaning of that clause, a lease of land whereon a tank had been excavated. *Ajgur Ali v. Asmut Ali, I. L R 8 Calc 110,* referred to. ASMAT ALI v. HASMAT KHAN . . 2 C. W. N. 412

12. ——— *Ejectment—Dwelling-house, tanks, and trees* The plaintiffs, purchasers at a revenue sale, sought to eject the defendant from a piece of land measuring a little over one bigha The defendant pleaded that he had

land MAKAR ALI v SHYAMA CHARAN DAS
3 C. W. N. 212

3. SALE OF SHARE OF ESTATE.

1 ——— Separation of estate—*Act XI of 1859, ss. 10, 11, and 37—"Shares" of an estate.* The portion of an estate for which a separate account is opened under ss. 10 and 11 of Act XI

1 W. R. 21

SALE FOR ARREARS OF REVENUE—*contd.*

3. SALE OF SHARE OF ESTATE—*contd*

2 ——— *Act XI of 1859*

a separate account, that he is to put up to sale only the share in respect of which an arrear of revenue may be due An order setting aside the sale as to the plaintiff's share therefore reversed on appeal RAJENDRO KISHORE NARAIN SINGH v DOORGA KOONWAR . . . . 7 W. R. 154

3. ——— *Act XI of 1859, s. 11—Share of estate.* A sharer of a joint talukh, whose share consists of a specific portion of land

4. ——— *Act XI of 1859, s. 11—Separation of shares* The proprietors of a certain lot having obtained a separation of their

brought a suit in the Civil Court for a separate account *Held,* that there was no legal objection

5. ——— *Act XI of 1859, ss 10, 11, and 13—Separation of shares—Suit by purchaser at private sale for possession of specific share* The proprietors of a joint mehal, the jumma of which had been partitioned under s. 10. Act XI of 1859, were in possession of specific shares under

SALE FOR ARREARS OF REVENUE— *contd.*

3. SALE OF SHARE OF ESTATE—*contd.*

specific share. GUNGADEEN MISSER *v* KHEEROO MUNDUL . **14 B L. R. 170: 22 W. R. 449**

6. ———————— *Sale for arrears of revenue—Separate shares, sale of—Notification of sale—Specification of shares—Material irregularity—Proof of substantial injury resulting—Act XI of 1859, ss. 6, 10, 33.* Act XI of 1859 requires that the estate or share to be sold must be specified; the question whether in any particular case the notification sufficiently specifies it, must depend upon the term of the notification. The connection between an irregularity in publishing or conducting a sale under Act XI of 1859 and the inadequacy of price must be established by evidence; the amount or nature of the evidence required in any case must depend upon its own circumstances. ISMAIL KHAN *v* ABDUL AZIZ KHAN (1905)

I. L. R 32 Calc. 502
s.c. 9 C. W. N. 343

7. ———————— *Separate shares, sale of—Notification of sale—Specification of share—Residue—Setting aside sale—Material irregularity—Substantial injury resulting, proof of—Act XI of 1859, ss 6, 10, 33.* The non-specification in a notification under s 6 of Act XI of 1859 of the exact share to be sold in a case where separate accounts had been opened under s 10 of the Act, is

between a material irregularity and an inadequacy of price coud be held to be established, it cannot, under the provisions of s. 33 of Act XI of 1859,

having

I. L. R. 32 Calc 509
s.c. 9 C. W. N. 348

8. ———————— *Separate shares—Notification of sale—Specification of share—Residue—Material irregularity—Substantial injury resulting, proof of—Evidence—Revenue Sale Law (Act XI of 1859), ss. 6, 10, 11, 33—Bengal Act VII of 1876, s. 70.* Where separate accounts had been opened under ss. 10 and 11 of Act XI of 1859 and s. 70 of Act VII (B. C.) of 1876, and the sale notification did not specify the share to be sold as required by

SALE FOR ARREARS OF REVENUE— *contd.*

3. SALE OF SHARE OF ESTATE—*concld.*

s. 6 of Act XI of 1859, but merely described it as the residue, and stated the amount of the revenue of the entire estate and that of the share to be sold:—*Held*, that, as the amount of revenue would not

and

rity.

whether

thus be *primâ facie* proof. *Saadatamand Khan* v. *Phul Kumar, I L. R. 20 All. 412*, referred to. NIBARAN CHANDRA CHOWDHRY *v*. CHIRANJIB PRASAD BOSE (1905) . **I. L. R. 32 Calc. 542**
9 C. W. N. 487

4 INCUMBRANCES

(*a*) GENERALLY

1. ———— **Limit of power to avoid incumbrances**—*Act XI of 1859, s 11—Purchaser of entire estate.* The power of a purchaser at a revenue sale to annul all incumbrances is limited to purchasers of entire estates KALIDASS GHOSE *v*. CHANDRA MOHINI DASSI . **8 W. R. 68**

MADHUB CHUNDER CHOWDHRY *v*. PROMOTHONATH ROY . . . . **20 W. R. 264**

(*b*) ACT I OF 1845.

2. ———— **Object of Act**—*Fraudulent purchaser—Sale by mortgagee.* Act I of 1845 was not designed to protect a fraudulent purchaser as to the question whether a plaintiff could in point of law insist, notwithstanding an auction-sale for arrears of revenue, that as against him the sale ought to be viewed as a private sale *Held*, that, under the

3. ———— **Right to avoid incumbrances**—*Right of purchaser. Quære:* Whether the auction-purchaser under Act I of 1845, at a sale for arrears of revenue, was entitled to take free of all

SALE FOR ARREARS OF REVENUE—*contd.*

4. INCUMBRANCES—*contd.*

(b) Act I of 1845—*contd.*

incumbrances created by the defaulting proprietor. Juggodeshury Dossia *v.* Umacharan Roy 7 W. R. 237

4. ———————— *Right of auction-purchaser—Act I of 1845, s 26* An auction-purchaser of a zamindari at a sale for arrears of revenue is not entitled, under s. 26, Act I of 1845, to eject a holder of a lakhiraji tenure though held under an invalid title. Doorga Pershad Chowdhry *v.* Rajendur Narain Roy . . 2 Hay 121

5. ———————— *Agreement by former owner as to division of chur—Act I of 1845,* [illegible]

[illegible] J., it would seem that purchasers under any of the sale laws since Act XII of 1841 may be bound by a decree in a boundary suit against the prior owner. Boykuntnath Chatterjee *v* Ameeroonissa Khatoon . . . . . 2 W. R. 191

6. ———————— *Act I of 1845, s. 26—Mokurari tenant in Benares, right of* S. 26 of Act I of 1845, which enables auction-purchasers at sales for arrears of revenue to eject tenants in the province of Benares, was by s. 1 of Act X of 1859 made subject to the modifications contained in the latter Act. Therefore, notwithstanding a sale by auction for arrears of revenue, a mokurari tenant in the province of Benares is entitled to receive a pottah at the fixed rent theretofore paid by him. Munro *v* Baluck Singh 1 N. W. 153: Ed. 1873, 235

7 ———————— *Act I of 1845, s. 26, cl. 3—Purchaser's right to evict—Khodkast kadimee raiyat* Possession as a khodkast kadimee [illegible]

1 W. R. 6

8. ———————— *Act I of 1845,* [illegible]

(c) Bengal Regulation XI of 1822.

9. ———— **Right to alter arrangements as to rent**—*Purchase by Government—Position of old proprietors.* An estate having been sold for

SALE FOR ARREARS OF REVENUE *contd*

4 INCUMBRANCES—*contd.*

(c) Bengal Regulation XI of 1822—*contd.*

[illegible]

arrangements entered into intermediately by the former proprietors, and that the fresh settlement made by Government with the present proprietors would not restore former arrangements and rates because they happen to be the heirs of the former proprietors Gangamonee *v* Luteefoonissa Chowdhrain . . . . 7 W. R. 198

10. ———— **Right to cancel talukhdari tenure**—*Settlement—Right to eject.* The Government purchased the zamindari rights in a pergunnah, under Regulation XI of 1822 at a sale for [illegible]

15 W. R. P. C. 24 : [illegible] I. A. [illegible]

11. ———————— [illegible] *lation by Government as* [illegible] *cise of power of cancellation* [illegible] Council, in the case of [illegible] Roy, 13 Moo I. A. 2[illegible]7, [illegible] Government had, as the [illegible] sale for arrears of revenue, [illegible] and avoiding the talukhdari [illegible] ruled that it was incumbent on Government [illegible]

(c) BENGAL REGULATION XI OF 1822—*contd.*

take some clear steps for the purpose of declaring the avoidance or cancellation of the tenure, and, finding that the Government had not exercised

apply to a case in which the proceedings of Government showed that it had exercised the power of cancellation. *Held*, also, that the indulgence in that case referred mainly to tenures purchased between 1817 and 1822, but not to tenures created after Regulation XI of 1822 had informed persons that their rights were liable to be cancelled by a purchaser at an auction-sale for arrears of revenue. AFTABOODDEEN MAHOMED *v.* SANIOOLLAH. SANIAOLLAH *v.* AFTABOODDEEN MAHOMED 23 W. R. 245

12. ——— **Right of Government to annul tenures**—*Evidence of cancellation—Presumption.* Though on the sale of a zamindari for arrears of revenue the Government has the right to annul all under-tenures not specially protected,

25 W. R. 530

13. ——— *Evidence of cancellation — Settlement — Right to eject incumbrancers.* Where at an auction sale for arrears of

general rule according to which all questions of this nature are necessarily to be decided. SHOOK DEB PRASAD *v.* ALLADI . . . 2 C. L. R. 13

See GOOROO PERSHAD CHUCKERBUTTY *v.* BENI NATH CHUCKERBUTTY . . . 2 C. L. R. 216

14. ——— **Right of purchasers**—*Tender of Government revenue by defaulter's mortgagee—Liability of Collector.* The purchaser at a revenue sale, held in default of the payment of assessment,

(c) BENGAL REGULATION XI OF 1822—*concld.*

Bhikaji, 10 Bom. 416, and *Gundo Shiddeshvar v. Mardan Saheb, 10 Bom. 419,* followed. The Collector may be responsible to the mortgagee of

15. ——— **Right of ejectment**—*Beng. Reg. XI of 1822—Under-tenures—Right to impeach*

of revenue, and an auction-purchaser takes the lands clear of all under-tenures. At a sale by Government for arrears of revenue, the Government became purchasers, and afterwards granted a lease of the lands for a term of years, and put their lessees into possession. At the time of the sale the lands were subject to an istomrari lease. No suit was brought to reverse the sale, but the Government some time afterwards, in consequence of

compromise, and not such an unconditional restoration as amounted to a reversal of the sale, and the consequent revival of the istomrari lease. *Aliter*: If a suit had been brought and a decree made for reversal of the sale. WATSON *v.* SREEMUNT LAL KHAN . . 5 Moo. I. A. 447

(d) ACT XI OF 1859

16. ——— **Lakhirajdars**—*Beng. Reg. VII of 1822, s. 10, cls. 7 and 8—Arrangement by Commissioner for payment of revenue—Payment by all through principal proprietor.* In a suit for ejectment and khas possession by an auction-purchaser

SALE FOR ARREARS OF REVENUE—*contd*

4 INCUMBRANCES—*contd.*

(*d*) ACT XI OF 1859—*contd*

payable by all the proprietors, the defendants among them, was to be paid through the principal proprietor, and that the defendants were to hold perpetual possession as shikmidars, and that their rights should be reserved intact *Held*, that the possession of the defendants as lakhirajdars could not be disturbed as long as they paid the revenue assessed upon them under the settlement *Held*, also (MARKBY, J, *dissentiente*), that cl 8, s. 10, Regulation VII of 1822, applied only to cases referred to in cl 7,— that is, of cultivating proprietors on pattidari or bhyachari tenure, or the like, and not to a case of this kind RAM GOBIND ROY *v* KUSHUFFUDOZA . . 14 W. R. 1

Affirmed on review, where it was held that a Commissioner's amulnama cannot destroy legal rights, even if no protest or objection be made The order

paid the revenue through one of their number and he made default —*Held*, that the whole estate was not liable to be sold for his default. RAM GOBIND ROY *v* KUSHUFFUDOZA . . 15 W. R. 141

17. ——— Right to annul incumbrances—*Encroachments by neighbouring estates*

actual encroachments on the talukh or estates by neighbours as to incumbrances or under-tenures created on it by the old proprietor or by his laches. GOLUCK MONEE DOSSEE *v* HURO CHUNDER GHOSE 8 W. R. 62

18. ——— *Permanently-settled estate* An auction-purchaser at a revenue sale of a permanently-settled estate is remitted to all the rights possessed by the original settler at the

SALE FOR ARREARS OF REVENUE—*contd.*

4. INCUMBRANCES—*contd.*

(*d*) ACT XI OF 1859—*contd.*

19. ——— *Suit to annul under-tenures—Right to eject.* When an auction-purchaser at a sale for arrears of revenue creates a patni, he cannot sue to annul an under-tenure within that patni, as his whole power under Act XI of 1859 passes to the patnidar, who alone can institute such a suit. In such a case the patnidar's competency to sue is not affected by the fact of his being a tenant of only a portion of the estate, provided that portion contains the tenure which is sought to be resumed. A patnidar, under such circumstances, though he may recover rent, is not entitled to eject an under-tenant who had been allowed to dig a tank and remain in possession undisturbed by the former proprietor for a long period (say upwards of thirty years), and who must therefore be assumed to have held with the acquiescence of the former proprietor, such acquiescence being equivalent to a lease. SREEMUNT RAM DEY *v* KOOKOOR CHAND . 15 W. R. 481

20. ——— *Land subject to mortgage.* Where land in the possession of a mortgagee is sold by the mamlatdars for arrears of Government land revenue —*Held*, that, as the land revenue is the paramount charge on the land, whoever derives title from the occupant takes it subject to that charge; and that therefore the purchaser at the sale was entitled to the land free from any mortgage lien. ABDUL GANI *v.* KRISHNAJI BHIKAJI . . . . 10 Bom. 416

21. ——— Right acquired by purchaser—*Act XI of 1859, ss 11, 13, 54—Sale of share of zamindari* A, in exchange for his lakhiraj land, obtained in 1791 from his zamindar 441 bighas of mâl land, which zamindar thereupon

shares. The revenue due from one of them fell

to recover possession. *Held*, that a sale of a share of a zamindari under s. 13, Act XI of 1859, does not convey to the purchaser the share free from all incumbrances created by the former zamindar, but he acquires the share, as laid down in s. 54, subject to all incumbrances. KASINATH KOOWAR *v.* BANKUBEHARI CHOWDHRY

3 B. L. R. A. C. 446

S C. KASHEENATH KOONWAR *v.* BUNKO BEHAREE CHOWDHRY . . . 12 W. R. 440

22. ——— *Act XI of 1859, s. 32—Right of purchaser to eject holders of howla and nim-howla tenures.* Where certain howla and nim-howla tenures were never set aside by the Revenue Settlement or Revenue Commissioner's

SALE FOR ARREARS OF REVENUE— *contd.*

4 INCUMBRANCES—*contd*

(*d*) ACT XI OF 1859—*contd*

in the payment of the Government revenue in January 1863, and the entire estate was put up for sale by the Collector and purchased by *A* on the 29th March 1863. *Held,* that *A,* at the time of his

Government sale for arrears of revenue. ABDOOL BARI *v.* RAMDASS COONDOO **I. L. R. 4 Calc. 607**

32. ———————— *Re-purchase by co-proprietor—Rights of under-tenants—Incumbrances—Act XI of 1859, s. 53* Under s. 53 of Act XI

s.c. MAHOMED GAZEE CHOWDHRY *v.* PEAREE MOHUN MOOKERJEE . . **16 W. R. 136**
And this is so whether he purchases benami or from the benamidar after his purchase. *See* same case and case of ALUM MANJEE *v* ASHAD ALI **16 W. R. 138**

33 ———— **Act XI of 1859, s. 54**—*Bonâ fide incumbrances* The object of s 54, Act XI

34. ———————— *Lease of a share* A lease of a share is protected under s. 54, Act XI of 1859. KALEE PUDDO GHOSE *v.* MONOHUR MOOKERJEE . . . . . **7 W. R. 295**

35. ———— **and s. 13**—*Liability to incumbrances—Mokurari lease—Inquiry as to title of alleged owners of share sold—Benami transfers—Limitation Act (XV of 1877), Sch II, Art. 114.* After the sale of a share in an estate under the provisions of Act XI of 1859, a suit was brought to establish a mokurari lease, as an incumbrance under s. 54, upon the share in the hands of the purchaser. This share having been held by several successive benami holders, the main question was whether those who had granted the mokurari were entitled to all or to any, and what part, of the land comprised in their grant; and as to this point the most important fact was the actual possession or receipt of the rents; this being also material in regard to limitation under Act XV of 1877, Sch II, Art. 144, the twelve years' bar commencing from the date of the possession first held adversely. IMAMBANDI BEGUM *v* KAMLESWARI PERSHAD **I. L. R. 14 Calc. 109**
L. R. 13 I. A. 160

SALE FOR ARREARS OF REVENUE— *contd.*

4. INCUMBRANCES—*contd*

(*d*) ACT XI OF 1859—*contd.*

36. ———— **and ss. 10, 11, 28, 53, and Sch A**—*Rights of purchaser of share of estate admitted to special registration under ss. 10, 11 of Act—Rights of mortgagee of share against purchaser.* There is a clear distinction between the rights acquired under ss. 53 and 54 of Act XI of 1859. Under the former section, the terms of the certificate given under Sch. A are limited, and a purchaser under that section acquires the estate subject to all incumbrances existing at the time of sale, whether created before or after the default, and even up to the date of the sale; but there is no such limitation to the terms of a certificate given to a purchaser under s. 54, and all incumbrances created after the date on which a purchase under that section takes effect, that is, after the date on which the default was committed are void A share of a talukh admitted to special registration, under ss 10 and 11 of Act XI of 1859, was advertised for sale under that Act in default of payment of the June kist of Government revenue. On the 25th July the recorded sharer mortgaged his interest in that share to the plaintiff. The sale took place on the 26th September, and the share was purchased by the defendant who obtained a sale certificate in due form under the Act declaring, in accordance with s. 28, that his title accrued from the 29th June, the day after the latest date allowed for payment of the June kist *Held,* that the mortgage was of no effect as an incumbrance under s. 54 of the Act. CHOWDHRY JOGESSUR MULLICK *v* KHETTER MOHUN PAL **I. L. R. 17 Calc. 148**

37. ———————— *Act XI of 1859, ss. 13, 14, 28, 29, 37, 54—Share of estate, sale of—Mokurrari lease—Rights of purchaser of share of estate—Merger.* The sale of a share of an estate

38. ———————— *Lease of land—*

I. L. R. 30 Calc. 498

39. ———————— *Incumbrances—Act XI of 1859, s 53—Proprietor—"Sale" or "purchaser," time of—Defaulting proprietors—Debt assigned to mortgagee—Want of diligence in recovering it—Accounts.* The respondent on 17th

SALE FOR ARREARS OF REVENUE— *contd.*

4 INCUMBRANCES—*contd.*

(*d*) Act XI of 1859—*concld*

February 1896, purchased an estate sold in execution of a decree of the Civil Court against the then proprietors. He obtained his sale certificate on 21st March and was put into possession on 29th April 1896 Default occurred on 12th January 1896 in payment of the Government revenue on the estate which on 25th March 1896 was sold under Act XI of 1859 for arrears of revenue and purchased by the respondent. *Held*, that at the time

Civil Court was subsequent in date to the default for arrears of revenue nor the further circumstance that under the revenue sale certificate the purchase related back beyond the actual date of the sale and took effect from the 13th January 1896, altered the ownership of the estate nor made the respondent any the less a proprietor. Where "sale" or "purchase" is spoken of in Act XI of 1859 in connection with time, the time meant is that at which the sale actually takes place and not that to which its operation is carried back by relation. S 53 of the Act is a proviso to, or qualification of, s 37. There is no implied limitation in s 53, which restricts its operation to defaulting proprietors *Abdool Bari* v *Ramdass Coondoo, I. L R 4 Calc. 607*, approved Mortgagors assigned to their mortgagee a debt due to them from a third person, and in taking the account of what was due to the mortgagee, the Courts in India debited him with the amount of the debt, though he had not received it :—*Held*, that it lay upon the mortgagee

(*e*) Madras Act II of 1864.

40. ——————— *Mad Act II of 1864—Sale of land mortgaged—Purchase by mort-*

Appadu . . . . Mad. 111

(*f*) Bengal Act VII of 1868.

41. ——————— *Beng Act VII of* ... *-f—Lakhi-* ... *eking to* ... of 1868, ... how that

SALE FOR ARREARS OF REVENUE— *contd.*

4 INCUMBRANCES—*concld*

(*f*) Bengal Act VII of 1868—*concld*

the incumbrance which he seeks to avoid is an incumbrance falling within the terms of the section,—

(*g*) N.-W. P. Land Revenue Act.

42. ——————— *N.-W. P. Land Revenue Act (XIX of 1873), ss. 166, 167, 168—Agriculturists' Loans Act (XII of 1884), s 5—Takavi loans—Sale of house in default of payment of loan—Effect of such sale.* The provisions of

payment of certain takavi advances, it was *held* that such sale did not avoid the prior incumbrance. Sheo Sampat Pande *v* Bandhu Prasad Misr

I. L. R. 22 All. 321

5. PURCHASERS, RIGHTS AND LIABILITIES OF.

1. ——————— **Purchaser of rights of Government**—*Limitation.* An auction-purchaser of the rights of Government in a talukh sold for arrears of revenue is not privy in estate to the de-

position than the Government at the time of resumption. Buzlool Rahman *v.* Prandhun Dutt

8 W. R. 222

2. ——————— **Purchaser at sale on default of Purchaser of rights of Government**—*Government proclamation—Act XI of 1859.* The Government having sold its zamindari rights in certain talukhs after a proclamation that the pur-

sale certificate showed, the purchasers of an entire

SALE FOR ARREARS OF REVENUE— *contd*

5. PURCHASERS, RIGHTS AND LIABILITIES OF—*contd*

estate separately recorded on the Collector's rent roll. GHOLAM MUKHDOOM *v.* ASHUCK JAN BIBEE 25 W. R. 86

3. ——— **Right to resume and assess lakhiraj**—*Act XI of 1859, s. 54.* When the former proprietor had a right to bring a suit to resume and assess lakhiraj land, the auction-pur...

W. R. 1864, 293

4. ——— **Period from which title of purchaser dates**—*Act I of 1845, s. 20.* The title of an auction-purchaser at a sale for arrears of revenue accrues, not from the date of sale, but from the date on which the sale was confirmed, and certificate granted under s. 20, Act I of 1845. DHEPUT SINGH *v.* MOTHOORANATH JAH W. R. 1864, 278

5. ——— **Liability for Government revenue**—*Right to recover money paid for arrears of revenue—Act XI of 1859, s. 21.* The purchaser of an estate sold for ...

DOSSIA *v* NUNDKOOMAR GOOPTO . 4 W. R. 75

6. ——— *Suit for money paid for arrears of revenue—Character of Government revenue—Apportionment of revenue—Purchaser's liability* Government revenue does not become due from day to day, but at certain specified times, according to the contract of the parties, or the custom of the district in which the lands liable to pay such revenue are ...

... subject to all revenue and cesses, whether in arrear or accruing. *Held*, therefore, in a suit by a purchaser for a certain sum for G...

SINGH *v* GRINDRA CHUNDER ROY I. L. R. 6 Calc. 389 : 7 C. L. R. 456

See WOZEER BEGUM *v.* FUZLOONISSA W. R. 1864, 373

7. ——— *Registered occupant*—Bombay S...

the subordinate rights that may have been created by the occupant out of his own qualified proprietorship, so that, even after a valid sale of the land by the occupant to a purchaser who neglects to get his name registered in his books, the Collector may, after giving notice of the failure, to pay the revenue to the registered occupant, in whom alone, according to the Bombay Survey Act, I of 1865, vests the right of conditional occupancy, put up the land for sale, and the purchaser gets occupancy rights free from all claims on the part of the first purchaser. GUNDO SHIDDHESHVAR *v.* MARDAN SAHEB . 10 Bom. 419

8. ——— *Beng Reg. XLIV of 1793, ss 5 and 7—Enhancement of rent.* The object of s 5, Regulation XLIV of 1793, taken together with s 7, was not the destruction of the under-tenures upon the sale of the parent estate for arrears of Government revenue. It only empowered the purchaser at such sale to avoid the subsisting engagements ...

to him and his heirs, or whether it was a power attaching to the zamindari and passing to subsequent purchasers SHURNOMOYEE *v.* SUTTEE CHUNDER ROY . . . . 2 W. R P. C. 14

s c. SURNOMOYEE *v.* SUTTEES CHUNDER ROY 10 Moo. I. A 123

9. ——— *Beng Reg. XI of 1822, ss. 30, 33—Beng. Reg. XLIV of 1793, s 5—Beng. Reg VIII of 1793, s. 51.* A zamindari was sold for arrears of Government revenue under Regulation XI of 1822. The purchaser's representatives sued to enhance the rent of the under-tenure. *Held*, that they had no right to enhance. The rights of the purchaser were defined by ss. 30 and 33 of Regulation XI of 1822, which were repealed by Act XII of 1841, and that Act, with the exception of the 1st and 2nd sections, was again repealed by Act I of 1845 Neither of the two last-mentioned statutes contains any saving of rights acquired under the statutes which it repealed, but expressly limited the enlarged powers which it gave to purchasers at sales for revenue arrears to purchasers at future sales. A sale for arrears of revenue cannot of itself merely, and without any act, proceeding, or demonstration of will on the part of the purchaser, alter the character of an under-tenure. *Semble:* S. 5, Regulation XLIV of 1793, is now of no force for any purpose but that of declaring the general ...

... settlement, the only right which the zamindar could exercise over it was that conferred by s. 51

SALE FOR ARREARS OF REVENUE— *contd.*

5. PURCHASERS, RIGHTS AND LIABILITIES OF—*contd.*

of Regulation VIII of 1793. The decision in the case of *Surnomoyee v Suttees Chunder Roy, 10 Moo. I. A 123*, commented on, explained, and reiterated SATYASARAN GHOSAL v MAHESH CHANDRA MITTER . . . **2 B. L R. P. C. 23**

S.C. SUTTO SURRUN GHOSAL v MOHESH CHUNDER MITTER

12 Moo. I. A. 263 : 11 W. R. P. C 10

S.C in High Court, SUTTO CHURN GHOSAL v. MOHESH CHUNDER MITTER. SUTTO CHURN GHOSAL v. TARINEE CHURN GHOSE . . **3 W. R. 178**

10. ———— Certified purchaser—*Act XI of 1859, s 36—Suit by certified purchaser—Benamidar* A certified purchaser at a sale for arrears of revenue, suing to recover possession of land from which he has been ousted, is not debarred from the benefit of s 36, Act XI of 1859, unless he has acknowledged himself to be a benamidar. JADUB RAM DEB v RAMLOCHUN MUDDUCK

5 W. R. 56

Review rejected . . . **19 W. R. 189**

11. ———— —— —— *Act XI of 1859, ss 36 and 53—Purchase by former proprietor.* One of the co-sharers in an estate which had been sold under Act XI of 1859 sued to recover her share from the certified purchaser (*M*), himself one of the original owners Her case was that she provided a portion of the purchase-money, but that her name was not registered on account of *M's* having no written authority to act on her behalf *M*, however, executed an ikramamah in which he admitted receipt of the purchase-money of plaintiff's 2 annas

admitting execution of the ikramamah *Held*, that no separate title was given to the plaintiff by the ikramamah, and that the suit was substantially one to oust a certified purchaser on the ground that part of the purchase was made on behalf of another person, and the suit was therefore barred by s. 36 of Act XI of 1859 *Held*, also, that there is nothing in Act XI of 1859 which makes it illegal for a former proprietor or co-sharer to be a purchaser of his estate at a sale for arrears due on that estate. NEYNUM v. MUZUFFUR WAHID

11 W. R. 265

12. ———————— *Decree setting aside sale, effect of not executing within six months*

execute till after the expiry of six months from its date. *Held*, in a suit brought by the auction-purchaser to recover possession of the share he had brought at the sale, that such non-execution of the decree had the effect of restoring the sale so far as it concerned the defaulter, and that the plaintiff was entitled to succeed. ABDUL LOTIF v. YOUSUFF ALI

I. L. R. 21 Calc. 255

13. —— ———————— *Liability of purchaser at a sale, who enters into possession of the purchased property, to account for mesne profits to the person in whose favour the decree is subsequently reversed* A purchaser of property at a sale under the Madras Revenue Recovery Act, who enters into possession thereof, is in rightful possession until the decree is set aside. He is not therefore a trespasser and liable to make good ...

proper discharge of the stewardship of the property. *Dakhina Mohun Roy Chowdhry v. Saroda Mohun Roy Chowdhry, I L. R. 21 Calc. 142 : L R. 20 I A. 160*, cited and followed PERUMAL UDAYAR v KRISHNAMA CHETTYAR . **I. L. R. 17 Mad. 251**

14. ———————— *Act XI of 1859, s 54—Sale of share of Hindu widow—Effect of sale on reversionary interest* Where a share of an estate held by a Hindu widow was sold for arrears of revenue, it was contended that under, s. 54 of Act XI of 1859, the estate acquired by the purchaser lasted only during the lifetime of the widow. *Held*, that the purchaser did not take any interest limited to the life of the widow, but that the entire share passed by the sale. DEBI DAS CHOWDHRY v. BIPRO CHARAN GHOSAL . **I. L. R. 22 Calc. 641**

15. ———————— *Act XI of 1859, s 14—An ijmali portion of an estate in arrear—Arrear separately deposited by co-sharers of other portions—Certificate of sale issued jointly to all the co-sharers—Share of each co-sharer in the purchased portion—Transfer of Property Act (IV of 1882), s 45 Presumption* Where an estate was

each of the funds an equal share. DEBI PERSHAD v. AKLIO KOER . . **4 C. W. N. 465**

16. ———————— *Purchaser at a revenue sale—Act XI of 1859, ss. 28, 35 and 37—*

SALE FOR ARREARS OF REVENUE —*contd.*

5. PURCHASERS, RIGHTS AND LIABILITIES OF—*contd*

"*Entire estate,*" *meaning of—Effect of estate being recorded under a distinct number on the rent roll, with a separate revenue assessed upon it—Protected interest* When an estate is recorded under a distinct number on the touzi or rent-roll of the Collector with a separate revenue assessed upon

W. N. 229, referred to PREONATH MITTER *v* KIRAN CHANDRA ROY **I. L. R. 27 Calc. 290**

17. ——— *Mad Reg. XXV of 1802, s 12—Madras Revenue Recovery Act II of 1864, ss 32, 41.* The purchaser at a revenue-sale is *primâ facie* entitled to claim the faisal rate of rent. PALANI *v.* PARAMASIVA

I. L. R. 13 Mad 479

18. ——— *Madras Revenue Recovery Act (Mad. Act II of 1864), ss 1, 39, 42—Rights of jenmi in Malabar—Grant by Government of waste land on a cowle* The Collector of Malabar in 1869 let defendant 2 into possession of certain waste land under a cowle, and in 1872 granted to him a pottah for it. The cowledar brought the

plaintiff, who was the jenmi of the land, had no notice of the grant of either the cowle or the pottah; he asserted his right to jenamibhogam in a petition presented to the Collector at the time

STATE *v.* ASHTAMURTHI . **I. L. R. 13 Mad. 89**

19. ——— *Madras Revenue Recovery Act (II of 1864), ss. 42, 44—Sale of part of a holding for arrears of revenue due on another part* The plaintiff sued, as the purchaser under a Court-sale, for possession of certain land, which the defendant's vendor had purchased at a sale held under the Madras Revenue Recovery Act for arrears of revenue accrued due on other land belonging to the judgment-debtor *Held,* that, under the sale for arrears of revenue the land had passed to the defendant's vendor, and that the suits should be dismissed. SAMA *v* STRINIVASA

I. L. R. 13 Mad. 477

20. ——— *Madras Revenue Recovery Act (Mad Act II of 1864), s 42—Incumbrance—Permanent lease at a low rent.* One of the villages in a mitta was demised by the mittadar to *A* on a permanent lease, at a rate below

SALE FOR ARREARS OF REVENUE—*contd.*

5. PURCHASERS, RIGHTS AND LIABILITIES OF—*concld*

both the faisal assessment and the proportion of revenue payable upon it. The leasee's interest was brought to sale in execution of a decree and purchased by *B*, and ultimately was sold in 1884 to the plaintiff, who now sued the tenant in possession to enforce an exchange of pottah and muchalka. In the interval, *viz*, in 1883, the village was sold for arrears of revenue under Madras Act II of 1864 to *C*, and the defendant claimed to hold the land from *C* *Held*, that the permanent lease was an incumbrance under the Madras Revenue Recovery Act, 1864, s 42, and was voidable by the purchaser at the revenue-sale, although it had not been declared to be invalid by the Collector. NARASIMMA *v.* SURIANARAYANA . **I. L. R. 16 Mad. 144**

21. ——— *Meaning of the words* "*the purchaser shall not acquire any rights which were not possessed by the previous owner or owners*" The words "the purchaser shall not acquire any rights which were not possessed by the previous owner or owners," in s 54 of Act XI of 1859, mean that the purchaser shall not acquire any rights not possessed by the previous owner or owners at some time or another, and shall acquire no more than what was the property of the previous owner or owners They do not mean any right not possessed by the previous owner or owners at the date of the sale ANNODA PROSAD GHOSE *v.* RAJENDRA KUMAR GHOSE (1901)

I. L R. 29 Calc. 223
s.c. 6 C. W. N. 375

6. DEPOSIT TO STAY SALE.

1. ——— **Tender of full amount of arrears of revenue**—*Madras Revenue Recovery Act, s. 37—Sale for arrears accrued since*

v. RAJA GOUNDAN . . **I. L. R. 22 Mad. 6**

2. ——— **Right of person making deposit**—*Act I of 1845, s 9.* By Act I of 1845, s 9, it is enacted, with reference to sales for arrears of revenue, that Collectors shall, at any time before sunset of the latest day of payment, receive as a deposit, from any party not being a proprietor of the estate in arrear, the amount of the arrear of revenue due from it, to be carried to the credit of the said estate, and if the party depositing, whose money shall have been so credited as aforesaid, shall prove before a competent Civil Court that the

SALE FOR ARREARS OF REVENUE—*contd.*

6. DEPOSIT TO STAY SALE—*contd*

deposit was made in order to protect an interest of the said party which would have been endangered or damaged by the sale of the estate, he shall be entitled to recover the amount of the deposit, with interest, from the proprietors of the estate. *Held*, that the person so depositing money for arrears does not thereby acquire any lien on the estate. FAGAN v. SREEMOTEE DOSSEE Marsh. 228

s c. SREEMOTEE DOSSEE v FAGAN 2 Hay 75

3. ——— **Right of one proprietor against co-proprietors**—*Right against patnidar of co-proprietor* A proprietor who has paid his own and his defaulting co-proprietor's share of the Government revenue to save the estate from sale, can recover from him the co-proprietor's share of the revenue, but he cannot recover it from the latter's patnidar, whose only liability was to pay his rent to his lessor. BYKUNTNATH ACHARJEE v. GOOROO CHURN BOSE . 7 W. R. 247

4 ——— **Right of person both proprietor and mortgagee**—*Payment made as mortgagee to save estate from sale* A person who is both proprietor and mortgagee is not entitled as mortgagee to claim a deduction on account of Government revenue paid by him to save the estate from sale for arrears of revenue, when after resumption it ceased to be a lakhiraj estate, which payment it was his duty to have made in his capacity of proprietor. DOOLAB CHUNDER v DAMOODUR NARAIN 3 W. R. 162

5. ——— **Voluntary payment**—*Right of mortgagee to recover revenue paid* Suit for Government revenue paid by mortgagee in posses-

creed. BADAUM KOOWUR v. LALLA SEETUL PERSHAD . . . . . . 5 W. R. 126

6 ——— *Act XI of 1859, s. 9—Suit by mortgagee to recover deposit of arrears of revenue* A mortgagee who obtained a decree for possession with mesne profits on 11th May 1864 sued the mortgagor, under s 9, Act XI of 1859, to recover a sum alleged to have been paid by plaintiff on account of Government revenue for the quarterly kist falling due on the 25th June following *Held*, that as at the time the deposit was made the plaintiff was the proprietor of the estate in arrears, he was not a party contemplated in s 9, and the suit did not lie. JUSSODA DOSSEE v MATUNGINEE DOSSEE . . . 12 W. R. 249

SALE FOR ARREARS OF REVENUE —*contd.*

6. DEPOSIT TO STAY SALE—*contd.*

7. ——— *Sale afterwards set aside—Payment by purchaser made pending proceedings to set aside sale to save estate from further sale* Plaintiff, the inchoate owner of an estate

revenue or for the amount of a decree for which the estate had been attached, and when the sale to him was set aside and restored to *A*, entitled to be repaid any amounts *bonâ fide* paid by him for the preservation of the estate. If *A* made

which the revenue from the between *A*, who again had his remedy against the mokuraridars. HOSSEIN BUKSH KHAN v ROY DHUNPUT SINGH 18 W. R. 289

8. ——— **Liability of estate held by Hindu widow for debt incurred to person making payment to protect tenure**—*Act I of 1845, s 9.* An estate mortgaged was about to be sold for arrears of Government revenue, when it was

amount due A decree was given in that suit to the mortgagee, and on execution of that decree the reversioners intervened. *Held*, that the mortgagee and those claiming under him had no charge on the estate, and were not entitled to have it sold in its entirety to pay the amount which was paid in to stop the sale of the estate. The auction brought under s. 9, Act I of 1845, was only a personal action, and the decree gave no remedy against the land, the sale of which for arrears of revenue had been stopped by the deposit In such a suit the question is not whether the person who pays the arrears acquires thereby a charge on the talukh which he saves from sale, but whether he seeks to enforce that right · he must do so in a suit properly framed for that purpose and not merely in a suit which is confined to a personal remedy against the person in possession of the talukh If the person who so pays the arrears of rent seeks repayment only, under the section and law cited, as against the person in possession of the talukh, who has only a limited interest therein, and confines his suit to that object, the decree so obtained against the person in possession can only be made effectual against the property of that

SALE FOR ARREARS OF REVENUE—*contd.*

6 DEPOSIT TO STAY SALE—*contd.*

person, including such interest as he had in the talukh. This ruling does not affect the general

DOSSEE . . . .

S C. NUGENDER CHUNDER GHOSE v. KAMINEE DOSSEE . . . . 11 Moo. I. A. 241

9. ——— Payment by patnidar to save tenure from sale—*Mistake in Collectorate in crediting payment as deposit.* The payment of revenue into the Collectorate by a patnidar to save the estate from sale is equivalent to payment

for which he took a receipt showing that the money was received as a deposit, and not as a payment of revenue, does not render the patnidar liable JOTENDER MOHUN TAGORE v KISHEN MONEE DABEE . . . . W. R. 1864, Act X, 11

10. ——— Payment by shareholder—*Voluntary payment of arrear of revenue—Right to reimbursement—Act XI of 1859, s 13* A shareholder voluntarily coming forward and paying an arrear of revenue due by a defaulting co-shareholder who has a separate account, before the share of such defaulter has been put up for sale under the provisions of s 13, Act XI of 1859, cannot claim to be reimbursed by such defaulter, nor is the defaulter under any legal obligation to repay the amount advanced. KISHEN CHUNDER GHOSE v. MUDDUN MOHUN MOZOOMDAR 7 W. R. 365

11. ——— Right of suit to recover amount of deposit—*Act XI of 1859, s. 9—Suit to recover amount paid as deposit to save estate from sale* Where a party pays into the Collectorate under the provisions of s 9, Act XI of 1859, ar-

12 ——— Right of suit to recover amount deposited—*Payment made by mokuraridar for predecessor—Payments of revenue in excess of lease — Voluntary payment.* Instalments of Government revenue paid by a mokuraridar on account of his predecessor, being necessary payments made to save the estate from sale, are recoverable, but not under Act X of 1859 Payments on account of Government revenue in excess of lease are not recoverable. BUNWAREE KISHORE v. JOY CHUNDER GOSSAIN . . 2 W. R. 262

13. ——— Obligation of lender of money to stay sale—*Necessity* A lender is not bound to inquire into the exact amount necessary to be borrowed to save an estate from a sale for arrears of Government revenue It is sufficient if he satisfy himself of the existence of a necessity to justify him in looking to the estate for repayment. NUFFER CHUNDER BANERJEE v GUDDADHUR MUNDLE

3 W. R. 122

14. ——— Right to contribution where part-owner pays revenue due on whole estate to save his own interests—*Madras Revenue Recovery Act, s. 35—Contract Act, ss. 69, 70* In 1881, while the pottah of certain land held on raiyatwari tenure stood in the name

defendants 1 to 4 a portion of the arrears paid by him He also prayed that the land in the possession of defendant No 4 might be held liable. The claim was decreed, but on appeal by defendants 3 and 4 the suit was dismissed as against them. Plaintiff appealed, making defendant No 4 alone respondent. *Held,* that plaintiff was entitled to a decree for contribution against defendant No. 4 and to a charge on the land in his possession. SESHAGIRI v PICHU . I. L. R. 11 Mad. 452

15. ——— Payment of arrears of village revenue by the assingee of mortgagee of portion of the village property in order to stay the sale—*Madras Revenue Recovery Act (Mad. Act II of 1864), s 30—Defaulter—Registered and real owners.* The plaintiff was

1885, he, in 1887 and 1888, paid certain arrears of revenue due, from the village, in order to prevent its sale. In 1888 the plaintiff's 38½th pangus were

shares purchased by him, were liable for the debt

I. L. R. 11 Mad. 247

SALE FOR ARREARS OF REVENUE —*contd.*

6. DEPOSIT TO STAY SALE—*concld.*

16. ——— Mortgage lien—*Act XI of 1859, s. 9—Act I of 1845—Mortgagee—Part-proprietor—Transfer of Property Act (IV of 1882), s. 72—Cesses—Personal decree—Contract Act (IX of 1872), s. 70—Misjoinder—Civil Procedure Code (Act XIV of 1882), s. 578.* A mortgagee of a share of an estate, who was also a part-proprietor, deposited in the Collectorate revenue and cesses payable by the defaulting mortgagor, to

to the amount of the original line. *Nugender Chunder Ghose* v. *Sreemutty Kaminee Dossee, 11 Moo. I. A. 241,* relied upon. *Kinu Ram Das* v. *Mozaffer Hosain Shaha, I. L. R. 14 Calc.*

of 1872). *Smith* v. *Dinonath Mookerjee, I. L. R. 12 Calc. 213,* referred to. UPENDRA CHANDRA MITTER *v.* TARA PROSANNA MUKERJEE (1903)
I. L. R. 30 Calc. 794
s.c. 7 C. W. N. 609

7 SALE-PROCEEDS.

1. ——— Right to surplus proceeds—*Estate subject to mortgage.* When mortgaged lands are sold for arrears of Government revenue,

10 W. R. 222

2. ——— Right to payment out of surplus proceeds—*Liability of purchaser to reimburse judgment-debtor—Act XIX of 1873 (N.-W. P. Land Revenue Act), s 146—Act X of 1877, s. 316.* A share of a mehal, arrears of Government revenue being due in respect of the whole mehal, was sold in execution of a decree The existence of the arrears was notified at the time of sale. The title of the purchaser to the share vested from the date of the sale, Act X of 1877, s 316, being in force at that date. The Collector attached and realized the amount of the arrears out of the surplus sale-proceeds *Held,* that, inasmuch as at the date of the realization of the arrears out of the surplus sale-proceeds the purchaser was the proprietor of the share, and it and he were responsible under s 146 of Act XIX of 1873 (N.-W. P. Land Revenue Act) for the arrears, the payment of the arrears out of the surplus sale-proceeds must be regarded as a payment made *in invitum* by the judgment-debtor for the purchaser, and the judgment-debtor was entitled to be reimbursed by the purchaser. RAM CHAND *v.* FATEH SINGH . **I. L. R. 6 All. 112**

SALE FOR ARREARS OF REVENUE—*contd.*

7. SALE-PROCEEDS—*concld.*

3. ——— Suit for sale-proceeds by mortgagee—*Omission to give notice of charge on estate sold.* *A* purchased certain villages in the name of his son *B* *A,* being indebted to *C,* executed a mortgage-bond and deposited the title-deeds of those villages with *C* as security for the debt. *C* afterwards sued *A* for recovery of the mortgage-debt, and ultimately obtained a decree in his favour. Pending this suit, *A* died and was succeeded by *B,* his heir, against whom the suit was revived. *B* became a defaulter to Government, when the Government authorities seized the villages and took steps for bringing them to sale to satisfy the Government demands. *C* informed the

against the effects of *A,* and only applied to such property as *B* was in possession of at that time; and that, as it had been sold to realize the demands of Government, the decree did not apply to the villages This decision was reversed on appeal, the Judicial Committee holding, first, that the suit was properly instituted for recovery of the sale-proceeds in possession of Government, as the decree

of the auction-proceeds received by them, and an account was directed of the amount received by the Collector from the sale of the villages with interest, so far as the amount received would extend to the payment of *C's* mortgage-debt. *Semble.* Where property is sold by Government for general debts and not for arrears of revenue, they sell only the interest of the debtor, and do not guarantee the vendor a title DOUGLAS *v.* COLLECTOR OF BENARES . . . . **5 Moo I. A. 271**

8 SETTING ASIDE SALE.

(a) IRREGULARITY.

1. ——— Irregularity in conduct of sale—*Act XI of 1859, ss. 25, 26, 27-33—Substantial injury—Form of petition—Remedy by suit* The object of the Revenue Sale Law (XI of 1859) is to give a title to the purchaser which shall not be open to challenge by anybody; and the only ground on which a revenue sale can be set aside is (s. 25) that of irregularity in conducting the sale,

SALE FOR ARREARS OF REVENUE— *contd.*

6. DEPOSIT TO STAY SALE—*contd.*

person, including such interest as he had in the talukh. This ruling does not affect the general

[illegible]

sionary interest. NOGENDER CHUNDRO GHOSE *v* DOSSEE . . . . . 8 W. R. P. C. 17

s c. NUGENDER CHUNDER GHOSE *v.* KAMINEE DOSSEE . . . . . 11 Moo. I. A. 241

9. ——— **Payment by patnidar to save tenure from sale**—*Mistake in Collectorate in crediting payment as deposit* The payment of revenue into the Collectorate by a patnidar to save the estate from sale is equivalent to payment of the patni rents to the zamindar The fact that the zamindar had himself paid money into the Collectorate which he intended as revenue, but which by mistake was credited to a deposit account, and for which he took a receipt showing that the money was received as a deposit, and not as a payment of revenue, does not render the patnidar liable. JOTENDER MOHUN TAGORE *v* KISHEN MONEE DABEE . . . . W. R 1864, Act X, 11

10. ——— **Payment by shareholder**—*Voluntary payment of arrear of revenue—Right to reimbursement—Act XI of 1859, s. 13.* A shareholder voluntarily coming forward and paying an arrear of revenue due by a defaulting co-shareholder who has a separate account, before the share of such defaulter has been put up for sale under the provisions of s. 13, Act XI of 1859, cannot claim to be reimbursed by such defaulter, nor is the defaulter under any legal obligation to repay the amount advanced KISHEN CHUNDER GHOSE *v.* MUDDUN MOHUN MOZOOMDAR 7 W. R. 365

11. ——— **Right of suit to recover amount of deposit**—*Act XI of 1859, s 9—Suit to recover amount paid as deposit to save estate from sale* Where a party pays into the Collectorate under the provisions of s. 9, Act XI of 1859, ar-

[illegible]

BURMONYA *v* HILLS . . . . 11 W. R. 377

12 ——— **Right of suit to recover amount deposited**—*Payment made by mokuraridar for predecessor—Payments of revenue in excess of lease — Voluntary payment.* Instalments of Government revenue paid by a mokuraridar on account of his predecessor, being necessary payments made to save the estate from sale, are recoverable, but not under Act X of 1859 Payments on account of Government revenue in excess of lease are not recoverable. BUNWAREE KISHORE *v.* JOY CHUNDER GOSSAIN . . 2 W. R. 262

13 ——— **Obligation of lender of money to stay sale**—*Necessity.* A lender is not bound to

SALE FOR ARREARS OF REVENUE— *contd.*

6. DEPOSIT TO STAY SALE—*contd.*

inquire into the exact amount necessary to be borrowed to save an estate from a sale for arrears of

[illegible] atisfy [illegible] ustify [illegible] FFER

3 W. R. 122

14. ——— **Right to contribution where part-owner pays revenue due on whole estate to save his own interests**—*Madras Revenue Recovery Act, s. 35—Contract Act, ss 69, 70* In 1881, while the pottah of certain land held on raiyatwari tenure stood in the name

[illegible]

of revenue and plaintiff paid the whole amount to prevent a sale Plaintiff sued to recover from defendants 1 to 4 a portion of the arrears paid by him. He also prayed that the land in the possession of defendant No 4 might be held liable The claim was decreed, but on appeal by defendants 3 and 4 [illegible] hem. Plaintiff [illegible] alone responden[illegible] to a decree fo[illegible] No. 4 and to a [illegible] ssion. SESHAGIRI *v.* PICHU . I. L. R. 11 Mad. 452

15. ——— **Payment of arrears of village revenue by the assingee of mortgagee of portion of the village property in order to stay the sale**—*Madras Revenue Recovery Act (Mad. Act II of 1864), s. 30—Defaulter—Registered and real owners* The plaintiff was assignee of a mortgagee of 38¼th pangus in a village

[illegible]

shares purchased by him, were liable for the debt conjointly with the remaining shares and the other

[illegible]

SALE FOR ARREARS OF REVENUE —contd.

6 DEPOSIT TO STAY SALE—*concld*

16. ———— **Mortgage lien**—*Act XI of 1859, s 9—Act I of 1845—Mortgagee—Part-proprietor—Transfer of Property Act (IV of 1882), s. 72—Cesses—Personal decree—Contract Act (IX of 1872), s 70—Misjoinder—Civil Procedure Code (Act XIV of 1882), s 578.* A mortgagee of a share of an estate, who was also a part-proprietor, deposited in the Collectorate revenue and cesses payable by the defaulting mortgagor, to save the property from being sold *Held*, that, on general principles of justice, equity and good conscience, the mortgagee was entitled to have the amount paid by him on account of revenue added to the amount of the original line *Nugender Chunder Ghose v Sreemutty Kaminee Dossee, 11 Moo I A 241*, relied upon *Kinu Ram Das v Mozaffer Hosain Shaha, I L R 14 Calc* [illegible] *12 Calc 213*, referred to UPENDRA CHANDRA MITTER v. TARA PROSANNA MUKERJEE (1903)
I. L. R. 30 Calc. 794
s.c 7 C. W. N. 609

7 SALE-PROCEEDS

1. ———— **Right to surplus proceeds** —*Estate subject to mortgage* When mortgaged lands are sold for arrears of Government revenue, [illegible]

2 ———— **Right to payment out of surplus proceeds**—*Liability of purchaser to reimburse judgment-debtor—Act XIX of 1873 (N.-W. P Land Revenue Act), s 146—Act X of 1877, s. 316.* A share of a mehal, arrears of Government revenue being due in respect of the whole mehal, [illegible]

SALE FOR ARREARS OF REVENUE—contd.

7. SALE-PROCEEDS—*concld.*

3. ———— **Suit for sale-proceeds by mortgagee**—*Omission to give notice of charge on estate sold* A purchased certain villages in the name of his son B A, being indebted to C, executed a mortgage-bond and deposited the title-deeds of those villages with C as security for the debt C afterwards sued A for recovery of the mortgage-debt, and ultimately obtained a decree in his favour Pending this suit, A died and was succeeded by B, his heir, against whom the suit was revived. B became a defaulter to Government, when the Government authorities seized the village and took steps for bringing them to sale to [illegible]

villages in the hands of the Government in satisfaction of his mortgage-debt. The Sudder Dewany Court dismissed the plaintiff's claim, on the ground that the decree made in the suit against A was against the effects of A, and only applied to such property as B was in possession of at that time; and that, as it had been sold to realize the demands of Government, the decree did not apply to the villages This decision was reversed on appeal, the Judicial Committee holding, first, that the suit was properly instituted for recovery of the sale-proceeds in possession of Government, as the decree [illegible] debts and not for arrears of revenue, they sell only the interest of the debtor, and do not guarantee the vendor a title DOUGLAS v. COLLECTOR OF BENARES . . . . . **5 Moo I. A. 271**

8. SETTING ASIDE SALE.

(a) IRREGULARITY.

1. ———— **Irregularity in conduct of sale**—*Act XI of 1859, ss. 25, 26, 27-33—Substantial injury—Form of petition—Remedy by suit.* The object of the Revenue Sale Law (XI of [illegible]

SALE FOR ARREARS OF REVENUE— *contd.*

8. SETTING ASIDE SALE—*contd.*

(*a*) IRREGULARITY—*contd*

in which case the Commissioner can set it aside on a petition of appeal presented to him within fifteen days of the sale. The petition may disclose a case of hardship or injustice where irregularity does not exist, as, for instance, that the sale has taken place where no arrear is due, and under such circumstances the Government, under s 26, may set aside the sale If the Commissioner will not [illegible]

gularity producing substantial injury is proved, the Civil Court cannot entertain an action to set aside a sale for arrears, and the only course open to an injured party is by a suit for damages as provided for in s. 33. WOMESH CHUNDER CHATTERJEE *v.* COLLECTOR OF 24-PERGUNNAHS. WOOMESH CHUNDER CHATTERJEE *v* ISHARUTOOLLAH]

8 W. R. 439

2. ——— **Omission to give notice of sale**—*Act IX of 1859, s. 33—Material injury—Setting aside sale* [illegible]

Court in annulling the sale under s. 33 MOHABEER PERSHAD SINGH *v* COLLECTOR OF TIRHOOT

15 W. R. 137

3. ——— **Omission to serve notice on minor defaulter**—*Madras Revenue Recovery Act (II of 1864), ss. 25, 27—Mad. Reg. V of 1804, s 20.* A mitta consisting of an unsurveyed village, of which the plaintiffs (minors) were the registered proprietors of an undivided moiety, was brought to sale for arrears of kist and was purchased for the plaintiffs by their guardian, duly appointed under Reg. V of 1804, s. 20 The sale was subsequently cancelled; and further arrears having accrued, the mitta was attached again. Before the second attachment took place, the guardian died, and no one having been appointed to succeed him, though an application was made to the Court for that purpose, a written demand under Revenue Recovery Act, s. 25, was tendered to the plaintiff's mother and affixed to the wall of the house on 17th January, and notice under s 17 was served on 17th February The sale took place in [illegible]

[illegible] *Held*, since service of a demand upon the defaulter is an essential preliminary to sale, that the sale was invalid so far as the share of the plaintiffs was concerned, and the sale

SALE FOR ARREARS OF REVENUE —*contd.*

8. SETTING ASIDE SALE—*contd.*

(*a*) IRREGULARITY—*contd.*

as a whole was vitiated by the irregularity. MEKAPERUMA *v* COLLECTOR OF SALEM

I. L. R. 12 Mad. 445

4. ——— **Irregularity in issue of notice**—*Ground for setting aside sale—Damage to defaulter.* A sale under Act XI of 1859 may not be set aside on the ground of irregularity in the issue of notices, unless such irregularity is shown to have caused loss or damage to the defaulter. LULEETA KOOER *v.* COLLECTOR OF TIRHOOT

19 W. R. 283

5. ——— **Notification of sale, necessary contents of**—*Act XI of 1859, s. 33.* It is unnecessary to specify in the notification of sale the names of the mouzahs included in the property sougth to be sold. All that is necessary is to specify the estates or shares of estates, and the number they bear in the Collector's office. AMIRUNNESSA KHATOON *v.* SECRETARY OF STATE FOR INDIA

I. L. R. 10 Calc. 63

s c. AMIRUNNESSA KHATOON *v* BROWNE

13 C. L. R. 131

ZERKALEE KOOER *v.* LALLA DOORGA PERSHAD.

16 W. R. 149

6 ——— **Sale Notification**—*Act XI of 1859, s 6—Description—" Residue " of an estate* In a notification of sale under Act XI of 1859 the share of an estate intended to be put up for sale must be so described that there can be no mistake about it. Merely advertising that the " residue " of an estate is to be sold without giving fur- [illegible]

7. ——— **Notification of sale, omission in**—*Revenue-paying estate—Sale of share of an estate—Recorded proprietors—Omission of names of proprietors—Irregularity—Act XI of 1859, ss 6, 33* When a notification of sale of a [illegible]

STATE FOR INDIA *v.* RASHBEHARY MOOKERJEE

I. L. R. 9 Calc. 591 : 12 C. L. R. 27

8. ——— **Irregularity in publishing notification of sale**—*Suit to set aside sale—Act XI of 1859, ss. 6, 20, 35—Beng. Act VII of 1868, s. 8—Certificate of title.* A notification by the [illegible]

May 1878 Subsequently, the 31st May being ascertained to be a holiday, and the 1st June being a Sunday, the Collector, purporting to act under s. 20

SALE FOR ARREARS OF REVENUE—*contd.*

8. SETTING ASIDE SALE—*contd.*

(*a*) IRREGULARITY—*contd.*

of the Act, issued a notification on the 26th May, postponing the sale till the 2nd June. On that day the sale was held, and the Commissioner having upheld it on appeal, a certificate of title was given to the purchasers. *Held*, in a suit to set aside the sale, that, inasmuch as the notification under s 6 of the Act had not been affixed thirty days before the day fixed by it for holding the same, the requirements of that section had not been fulfilled, and the irregularity was not cured by the notification of the 26th May. *Held*, further, that the Court was not bound, under s. 8 of Bengal Act VII of 1868, to presume conclusively that the provisions of s. 6 of Act XI of 1859, as regards the fixing of the date of sale, had been complied with. Under s. 8 of Bengal Act VII of 1868, the effect of a certificate of title having been given to the purchaser is merely that the Court is bound to presume conclusively the due service and posting of notices. BAL MOKOOND LALL *v* JIRJUDHUN ROY . . I. L. R. 9 Calc. 271

s c. BUL MOKAND LAL *v* TRIJOODHUN ROY 11 C. L. R. 466

9. ——— *Material irregularity—Substantial injury—Act XI of 1859, ss 6, 7, 20, 28, 33—Certificate—Beng Act VII of 1868, s 8*—*Per* GARTH C J, MITTER, PRINSEP, and PIGOT, *JJ.*—A non-compliance with the provisions of s 6, Act XI of 1859, is not a mere irregularity, and is not one of those errors in procedure which are intended to be cured by s 8 of Bengal Act VII of 1868 Where a sale for arrears of revenue has been held, and non-compliance with s 6 has been found,

of the price realized by a sale is due to the irregularity of the sale-proceedings. *Per* TOTTENHAM, *J.*—Where the date fixed for a sale in the sale notification is less than thirty clear days from the date on which the notification is affixed in the Collector's office, there is a legal defect in the notification, which is not cured by s 8 of Bengal Act VII of 1868; but a sale held under such conditions is not *ipso facto* null and void, but is liable to be annulled only

inadequacy of the price realized by the sale was due to the irregularity of the sale proceedings LALA MOBARUK LAL *v.* SECRETARY OF STATE FOR INDIA I. L. R 11 Calc. 200

10. ——— *Civil Procedure Code, 1859, s 248—Act XIX of 1873, s. 3.* In the case of a sale by the Civil Court of forest land, which formed a grant from Government under a deed describing the property as a "Khalsa Mahal,"

SALE FOR ARREARS OF REVENUE—*contd.*

8. SETTING ASIDE SALE—*contd.*

(*a*) IRREGULARITY—*contd*

subject to the payment of revenue after a term of

1873, and that therefore the sale should have been held by the Collector SHOWERS *v.* GOBIND DAS I. L. R. 1 All. 400

11. ——— Irregular publication of sale—*Act I of 1845, ss 6 and 14, and Act IX of 1854* Sale for arrears of revenue set aside,—the

Act Such an irregularity is not cured by Act IX of 1854, which relates only to technical errors of procedure in the lower Court which are not productive of injury to either party. MAHASHUR SINGH BAHADUR *v.* HURRUCK NARAIN SINGH 9 Moo. I. A. 268

12. ——— *Sale for arrears of road-cess—Certificate of title—Certificate of unpaid demand—Collector of the district—Defects in service of notice and in proclamation of sale—Act XI of 1859, ss. 27, 28—Beng Act VII of 1868, ss. 5, 8, 11—Public Demands Recovery Act (Beng Act VII of 1880), ss 2, 4, 7, 8 cl. (4), 10, 19—Code of Civil Procedure (Act XIV of 1882), ss 289, 314* A certificate of title under Act XI of 1859, s. 28, and Bengal Act VII of 1868, s. 11, issued before the expiry of the period of sixty days required by s. 27 of Act XI of 1859 from the date of sale, is not a certificate duly issued under the provisions of these Acts, and cannot cure defects in the service of notice or in the proclamation of sale The certificate in execution of which the plaintiff's estate was sold was not made or signed by the Collector of the district, but by a Deputy Collector. *Held*, that under s. 7 of the Public Demands

I. L. R. 18 Calc. 125

13. ——— *Public Demands Recovery Act (Beng. Act VII of 1880), ss 9 (b) and 10—Notice under s. 10 compulsory—Sale.* When the notice required under s. 10 of Bengal Act VII of 1880 was not served, and in execution of the certificate the judgment-debtor's property was sold :—*Held*, that the whole of the proceedings which resulted in the sale were invalid. SARODA

SALE FOR ARREARS OF REVENUE—*contd.*

8. SETTING ASIDE SALE—*contd.*

(*a*) IRREGULARITY—*contd.*

CHARAN BANDOPADHYA *v* KISTO MOHUN BHATTACHARJEE . . . 1 C. W. N. 516

14. ——————— *Suit to set aside sale—Notice of sale, Publication of—Act XI of 1859, ss. 5 and 7.* Where it was contended that a sale under Act XI of 1859 was bad on the ground that the notices prescribed by ss. 5 and 7 of that Act were not published —*Held*, that, there being no subsisting attachment on the property at the time it was sold, omission to issue notice under s. 5 did not vitiate the sale. *Held*, that, in the absence of proof that the plaintiff had sustained substantial injury on account of the omission to issue notice under s 7, such omission did not invalidate the sale. MAHOMED AZHAR *v.* RAJ CHUNDER ROY I. L. R. 21 Calc 354

15. ——————— *Madras Revenue Recovery Act (Mad. Act II of 1864), ss 38, 59—Sale for arrears of peishcush—Material irregularity or mistake in conduct of sale—Grounds for setting sale aside—Posting notice of sale in Collector's office—Jurisdiction of Civil Courts* A

When a party seeks to set aside a sale in a Civil Court on the ground of material irregularity or mistake in the conduct of the sale, he must estab-

... where such inference is reasonable. But where the only irregularity shown was an omission to display ...

the irregularity referred to had caused substantial loss, and that there was therefore no ground for setting the sale aside. BOMMAYYA NAIDU *v.* CHIDAMBATRAM CHETTIAR I. L. R. 22 Mad. 440

16. ——————— *Act XI of 1859, s. 5—Attachment by order of Civil Court—Latest day of payment, attachment subsequent to* In a suit to set aside the sale ...

... an order of the Civil Court at the time of the sale, was sold without due observance of the formalities prescribed by s. 5, Act XI of 1859. The date fixed for payment of the arrears for which the estate was sold was the 7th June 1890 The date of attachment was 2nd August following. *Held*, that s 5 of Act XI of 1859 provides for cases in which the attachment has been made at least fifteen days before the last date of payment for which it is sought to bring the estate to sale. That section would not therefore ...

RADHA KRISTO BHUTTACHARJEE I. L. R. 22 Calc. 738

17. ——————— *Bombay Land Revenue Code (Bom Act V of 1879), ss 56, 57, 150, and 153—Confirmation of sale by Collector—Omission of Collector to make ...*

fact that a sale has taken place is *primâ facie* evidence that forfeiture had been declared GANPATI *v.* GANGARAM . I. L. R. 21 Bom. 381

18. ——— **Irregularity in refusing** ...

... In sales held by the Collector for the realization of Government demands realizable as arrears of revenue, the procedure laid down in Bengal Act VII of 1868 is to be followed. Therefore, where a fine had been imposed for non-attendance of proprietors before a ...

8 B L. R. 230 : 17 W. R. 21

19. ——— **Irregularity in not accepting highest bid**—*Obligation of Collector to sell to highest bidder.* At a sale for default of payment of Government revenue, the Collector is bound to sell to the highest bidder, even though (as in this

SALE FOR ARREARS OF REVENUE —*contd.*

8. SETTING ASIDE SALE—*contd.*

(*a*) IRREGULARITY—*contd.*

case) that bidder be the husband of the person in arrear. CORNELL *v* OODOY TARA CHOWDHRAIN 8 W. R. 372

20.———— Description of property sold

inform intending purchasers what may be the precise property that is to be sold, the notification was wholly insufficient under the law *Annada Charan Mukhuti v Kishori Mohan Rai, 2 C W N 479,* followed. Where the property was sold at an

21. ———— Notice—*Sale—Revenue—Suit—Act XI of 1859, ss 5, 6, 7, 33—Bengal Act VII of 1868, s 8—Certificate of sale—Onus of proof—Notice—Irregularity and illegality in form and service—Bengal Cess Act (Ben Act IX of 1880), s. 52—Evidence Act (I of 1872), s 114, Ill (e)—Presumption—Beng Reg. VIII of 1819, ss 8, 14* In a suit to set aside a sale for arrears of revenue, the *onus* of proving that there has been irregularity or illegality in the preparation, service or posting of notice rests on the person who seeks to have the sale set aside *Ashanullah Khan Bahadur* v. *Trilochan Bagchi, I. L. R. 13 Calc. 197*, and *Hurro Doyal Roy Chowdhry* v *Mahomed Gazi Chowdhry, I L R. 19 Calc. 699*, distinguished The fact that the inadequacy of price fetched at the sale was the result of the irregularity complained of may be either established by direct evidence or inferred, when such inference is reasonable, from the nature of the irregularity and the extent of the inade-

Jirju Dhun Roy, I. L R 9 Calc. 271, dis-

SALE FOR ARREARS OF REVENUE—*contd.*

8. SETTING ASIDE SALE—*contd.*

(*a*) IRREGULARITY—*concld.*

Azhar v. *Raj Chunder Roy, I. L R. 21 Calc 354*, referred to. SHEORUTTON SINGH *v.* NET LOLL SAHU (1902) . . . . I. L R. 30 Calc. 1 s c. 6 C. W. N. 688

22. ———————— *Act XI of 1859, ss. 3, 5, 6—Construction and meaning of words "current year"—Special notice under s 5—Revenue Recovery Act (Ben. Act VII of 1868), s 8—Presumption under, extent of—Ground of objection not set forth in appeal to Commissioner* The expression " current year," in s 5 of Act XI of 1859 is to be understood as referring to the year in which the latest date for payment falls, as fixed under s. 3, and not the year in which the sale of the property ultimately takes place In a suit to set aside a sale for arrears of revenue on the ground of irregularity

fied in an appeal to the Commissioner. *Gobind Lal Roy* v *Ramjanam Misser, I. L R 21 Calc. 70*, followed. JAHNNOVI CHOWDHARANI *v* SECRETARY OF STATE FOR INDIA (1902) . 7 C. W. N. 377

23. ———— Sale of ancestral property —*Civil Procedure Code (Act XIV of 1882), s 320—Rules framed by Local Government—Application under Rule 17 (XIIIA)* One of several co-owners of ancestral property, which has been sold by the Collector under the rules framed by

the first application was pending, applied under Rule 17 (XIIIA) to have the sale set aside making at the same time the necessary payments into Court required by the rule. *Held*, that upon the presentation of the latter application under Rule 17 (XIIIA) the Collector was bound to set aside the sale, and was in no way precluded from so doing by the existence of the former application under Rule 17 (XII) *Net Lall Sahoo* v. *Kareem Bux, I. L. R 23 Calc 686*, and *Paresh Nath Singha* v. *Nabogopal Chattopadhya, I L. R. 29 Calc 1*, referred to TUHI RAM *v.* IZZAT ALI (1908) I. L. R. 30 All. 192

(*b*) OTHER GROUNDS.

24. ———— Fraud—*Act XI of 1859, ss. 6, 7, 18—Ground for setting aside sale.* In a suit to

SALE FOR ARREARS OF REVENUE—*contd.*

8. SETTING ASIDE SALE—*contd.*

(*b*) OTHER GROUNDS—*contd.*

set aside a sale for arrears of Government revenue held on the 26th March 1879, it was alleged as grounds for setting the sale aside (i) that the arrears had been paid into the Collector's treasury on the previous day and a receipt granted for them, and that, according to the custom which had prevailed in the Collectorate of the district on payment of arrears being so made, the property had always

had been made by the Collector in writing exempting the property from sale under s 18 of Act XI

s. 7 of Act XI of 1859 being to give notice to the raiyats not to pay rent to defaulting zamindars, non-service of such notification could not be a ground for invalidating the title of the auction-purchaser; and that, inasmuch as the irregularity

for persons at a sale for arrears of revenue to combine not to bid against each other See *Bal Mokoond Lall* v. *Jirjudhun Roy, I. L. R. 9 Calc 271; 11 C L R., 466* GOBIND CHUNDRA GANGOPADHYA *v* SHERAJUNNISSA BIBI . **13 C. L R. 1**

25. ———————— *Act X of 1876, s. 4—Jurisdiction of Civil Court—Fraud of officers conducting sale.* S 4, cl (c), of Act X of 1876 excepts from the jurisdiction of the Civil Court claims to set aside, on account of irregularity, mistake, or any other ground except fraud, sales for arrears of land revenue *Quære* Whether the exception of fraud in the above enactment is confined to fraud on the part of officers conducting sales for arrears of land revenue BALKRISHNA VASUDEV *v* MADHAVRAV NARAYAN . **I. L. R. 5 Bom. 73**

26. ———————— *Act XI of 1859, s. 33* S 33 of Act XI of 1859 should not be read as meaning that under no possible circumstances can a suit be brought to set aside a sale on the ground of fraud. AMIRUNNESSA KHATOON *v.* SECRETARY OF STATE FOR INDIA

I. L. R. 10 Calc. 63

S. C. AMIRUNNESSA KHATOON *v.* BROWNE.

13 C. L. R. 131

27. ———————— *Beng. Act VII of 1868—Sale improperly conducted.* In a suit by a mortgagee for possession of the mortgaged property which had been sold under Bengal Act VII of 1868, where plaintiff alleged that the sale was brought about by fraudulent withholding of the rents and that the mortgagor had purchased it benami:—*Held*, that, where a sale has been held

BIBEE . . . . **23 W. R. 82**

28. ———————— *Bidders, dissuasion of* In a suit by some of the co-sharers in a mouzah against the others to set aside a sale for arrears of revenue, the finding of the Court of first instance established that a certain co-sharer in a mouzah had intentionally withheld the payment of a small arrear of Government revenue, and had thereby caused the property to be sold under Act XI of 1859, purchasing it himself at a small sum in the name of certain other persons; and had

was not based upon any right of interest common to himself and his co sharers, and that, in the absence of misrepresentation or concealment, the fact that he had intentionally defaulted as found, did not constitute fraud, nor did the fact that he had deterred others from bidding for the property, necessarily constitute an act of fraud. *Bhoobun Chunder Sen* v. *Ram Soonder Surma Mozoomdar, I. L. R 3 Calc. 300,* distinguished. DOORGA SINGH *v* SHEO PERSHAD SINGH . **I. L. R. 16 Calc. 194**

29. ———————— *Sale without attachment—Attachment of property sold, not necessary—Sale ultra vires—Act XI of 1859, ss. 5, 17.* The right to set aside a sale for arrears of Government revenue under Act XI of 1859 is not confined to proprietors alone, but extends to all persons, such as mortgagees, having an interest in the property antecedent to its sale. *Watson v. Sreemunt Lal Khan, 5 Moo I. A. 447,* relied on. There is nothing in s 5 of Act XI of 1859 which indicates that property sold for arrears of Government revenue should be under attachment at the time of sale. A sale in contravention of ss. 5 and 17 of Act XI of 1859 is *ultra vires* and therefore void. The principle laid down by the Full Bench in the case of *Lala Mobaruk Lal* v. *Secretary of State for India in Council, I. L R 11 Calc. 200,* applied. GOBIND LAL ROY *v* BIPRODAS ROY

I. L. R. 17 Calc. 398

30. ———————— *Act XI of 1859 (Bengal Revenue Sale Law), ss. 3, 8, and 33—Bengal Excise Act (Beng Act VII of 1868), s. 2—Unauthorized sale by Collector—Jurisdiction of Civil Court.* Act XI of 1859, the Bengal Revenue Sale Law, providing for the sale of estates in arrear of payment of revenue, does not sanction, and by

SALE FOR ARREARS OF REVENUE—*contd.*

8. SETTING ASIDE SALE—*contd.*

(b) OTHER GROUNDS—*contd.*

plain implication forbids, the sale of any estate

had sold an estate, purporting to act under Act XI of 1859 for a supposed arrear of revenue There was, however, only an erroneous debit in the Col-

the Commissioner of Revenue, did not exclude that jurisdiction. The enactment in s. 8 had no application to such a case This was not a question about a transfer from the account of one revenue-paying estate to that of another, nor was it a claim for remission or abatement, which had not been duly allowed by the Government S 8 has no application, except there be (i) default in payment of the revenue, and (ii) possession by the Collector of money of the defaulter not indisputably placed to his credit. But here there was no default. All moneys paid by the appellants were credited, and their alleged default was based upon erroneous debit entries to which they were not parties. BALKISHEN DAS v SIMPSON

I L. R. 25 Calc. 833
L R. 25 I A. 151
2 C. W. N. 513

31. ——— Sale where no arrears due —*Bonâ fide purchase* The sale of an estate for arrears of revenue where no such arrears exist is null and void, even though it is regularly conducted and the purchase is made *bonâ fide* SREEMUNT LALL GHOSE v SHAMA SOONDUREE DASSEE

12 W. R. 276

RAM GOBIND ROY v. KUSHUFFUDOZA.

15 W. R. 141

See BAIJNATH SAHU v LALLA SITAL PRASAD.

2 B. L R. F. B. 1 : 10 W. R. F. B 66

and HARKHOO SINGH v BUNSIDHUR SINGH

I. L. R. 25 Calc 876

32. ——— *Act XI of 1859.* Where there has been a sale under Act XI of

33. ——— *Suit to set aside sale—Sanction of Commissioner.* A suit to set aside a sale for arrears of revenue on the ground that no arrears were due may be brought without previous sanction of the Commissioner. THAKOOR CHURN ROY v COLLECTOR OF 24-PERGUNNAHS

13 W. R. 336

34. ——— *Act XI of 1859, s. 5—Act XI of 1838—Suit to set aside sale—Costs of partition—Sanction of Board of Revenue—Beng. Reg XIX of 1814.* On 12th June 1867 some of the proprietors of an estate applied to the Collector for a partition under Regulation XIX of 1814. On the same day the Collector issued a notice to all the shareholders, including the plaintiffs in this suit, calling upon them to come in within one

the Collector drew out a tabular statement purporting to be in pursuance of s. 4, Regulation XIX of 1814 In it was a column giving the shares into which the expenses of the partition were to be divided. On the same day a notice was issued to the proprietors, ordering in them to pay their respective quotas of the expenses accordingly. It was said by the defendants that the apportionment was confirmed by the Commissioner on the 20th January 1868 On the 6th March 1868 it was

the Government revenue. On the 28th March such proclamation was issued accordingly. Subsequently one of the plaintiffs came in, and offered to pay all that was then due and outstanding,

brought a suit against the purchasers and the Collector for the recovery of the property and for cancelment of the sale. *Held*, that the sale was void. There was no arrear of Government revenue justifying a sale under Acts XI of 1838 and XI of 1859, s. 5 There could be no arrear until demand after sanction by the Board of Revenue and by the Lieutenant-Governor of the estimate of expenses prepared by the Collector and fixed by the Commissioner The Board must give its sanction in each case, and the defendants failed to show that it had done so But even if the Commissioner had power finally to determine the amount and date of payment, it was not fixed

SALE FOR ARREARS OF REVENUE—contd.

8. SETTING ASIDE SALE—*contd.*

(b) OTHER GROUNDS—*contd.*

—*Accounts—Costs* The sale by a Collector of a whole talukh in one lot for arrears of revenue without specific authority previously conferred by the Board of Revenue, was held to be an act unauthorized by the general rules and principles of the regulations, and not rendered valid by the subsequent authorized confirmation of it by the Board, and by the appropriation of the surplus proceeds of the money by the defaulting proprietor. The proprietor's acquiescence in a sale made, as he believed, by the authority of the Board of Revenue did not give legal efficacy to a sale altogether void for the want of such authority, or bar his claim to annul the sale on that ground. The Courts below, without entering into any investigation of the profits made by the purchaser during his occupation of the estate, assumed that he had reimbursed himself the amount of the purchase-money and interest out of the profits of the estate. The Privy Council, however, saw no ground for such an assumption, and directed that an account should be taken of the principal and interest due to the purchaser in respect of the purchase-money paid by him, and also of the net profits made by him, out of the estate during his occupation; and that on payment to him of whatever may appear due to him on taking such account possession of the talukh should be delivered to the proprietor. The Privy Council, further, acquitting the purchaser of all blame in the transaction, reversed so much of the decrees of the Courts below as condemned him in costs, and ordered each party to bear his own costs in all the Courts. MITTERJEET SINGH *v* HEIRS OF THE WIDOW OF JUSWUNT SINGH . 6 W R P. C. 15 : 3 Moo. I. A. 42

36. ——— **Sale for arrears of revenue of mitta held by tenants-in-common during minority of some of the owners**—*Mad Reg X of 1831, ss 1, 2, 3—Mad Reg V. of 1804, s 14 (4), s 20* A mitta held by tenants in-common was sold for arrears of revenue at a time the owners of a moiety thereof were minors. In a suit brought by the mother of these minors on their behalf against the Collector to set aside the sale, the District Court held that Regulation X of 1831, s. 2, absolutely debarred the Collector from selling the estate of the minors during their minority and set aside the sale so far as their interests were concerned. *Held*, on appeal, that the minors not ...

37. ——— **Payment of arrears of revenue through post office**—*Act XI of 1859, s 2—Payment by postal money-order* Where the revenue of an estate was sent through the post office by a money-order in sufficient time, but it did not, owing to the negligence of the post office, reach the Collector in due time and the estate was sold for arrears of revenue *Held*, that the sale was rightly held. Payment to the post office is not equivalent to payment to the Collector, and the post office cannot be considered as the agent of the Collector. BAIKANTHA NATH DUTT *v*. GUNGA PROSAD PUTNAYAK . . . 4 C. W. N. 103

38. ——— **Collector's order of exemption**—*Act XI of 1859, ss. 18, 33.* A Collector's order under s 18 of Act XI of 1859 for exempting an estate from sale for arrears of revenue must be an absolute exemption, and not an order having effect as an exemption or not, according to what may happen, or be done, afterwards It must not depend on an act which may, or may not, be performed The High Court having set aside a sale, as contrary to the provisions of Act XI of 1859, upon a ground other than that declared and specified in an appeal made to the Commissioner of Revenue against the order for the sale, the Judicial Committee, referring to s 33 as prohibiting such a course, reversed the decision of the High Court. LALA GAURI SANKER LAL *v* JANKI PERSHAD . . . I. L. R. 17 Calc. 809
L. R. 17 I. A 57

39. ——— **Exemption from sale of land under attachment by Collector**—*Act XI of 1859, ss 17, 25, 33—Beng Act VII of 1868—Suit to set aside sale—Bengal Cess Act (Beng Act IX of 1880)—Omission to specify ground of objection in revenue appeal* An estate sold for arrears of revenue had been previously brought to a judicial sale by a mortgagee, whose charge preceded that of a puisne incumbrancer, whom the present plaintiffs represented. It was not the consequence of the execution-sale that puisne incumbrancers, who were not parties to the prior mortgagee's suit, were displaced, or left with nothing but a claim against the surplus proceeds of the sale, if any;

that Act, in every case where a sale for arrears of revenue is impeached, as being contrary to the provisions of Act XI of 1859, ...

applies where the sale has been irregularly conducted, and also where the sale has been illegal in consequence of an express provision for exemption of

SALE FOR ARREARS OF REVENUE—*contd.*

8. SETTING ASIDE SALE—*contd.*

(*b*) OTHER GROUNDS—*contd.*

the land from sale for arrears having been contravened. *Lala Gauri Sanker Lal* v *Janki Pershad, I. L. R 17 Calc 809 L R 17 I. A 57*, referred to GOBIND LAL ROY v RAMJANAM MISSER

I. L. R. 21 Calc. 70
L. R. 20 I. A. 165

40. ———— Sunset law—*Beng Act VII of 1868, s 11—Revenue Sale Law (Act XI of 1859), s 6.* S 11 of Bengal Act VII of 1868 makes the sunset law as enacted in s 6 of Act XI of 1859 applicable to sales of tenures under the former Act. The refusal, therefore, of the Collector to accept payment of the amount due when tendered after sunset on the latest day for payment does not make the sale under Bengal Act VII of 1868 illegal. AZIMUDDIN PATWARI v. SECRETARY OF STATE FOR INDIA . . . I. L. R. 21 Calc 360

41. ———— Payment of arrears before sale without obtaining exemption from sale—*Act XI of 1859, ss 6, 13, 14, and 33—Proceedings when share of estate is not sold at auction-sale—Ground for annulling sale not declared and specified in appeal to Commissioner* The plaintiffs and defendants were sharers in a certain estate, the plaintiffs being owners of a joint share, and the defendants the owners of other shares, in respect of which separate accounts had been opened in the Collector's register. The plaintiffs in March 1890 made default in the payment of Government revenue for their share, and it was advertised to be put up for sale on the 18th September 1890, under ss. 6 and 13 of Act XI of 1859, for recovery of the amount due, R18-6 On the 16th September the plaintiff paid into the treasury of the Collectorate [illegible]

share was not exempted from sale. On the 18th [illegible]

acting under s 14 of the Act, granted on the 5th December 1890 a certificate of purchase, and gave delivery of possession to the defendants. The [illegible]

and conveyed no title to the defendants, and for possession of the joint share with mesne profits.—

SALE FOR ARREARS OF REVENUE—*contd.*

8 SETTING ASIDE SATE—*contd.*

(*b*) OTHER GROUNDS—*contd*

Held, by PETHERAM, *C.J.*, and BEVERLEY, *J.* [illegible]

chase was not made invalid by the fact of their not having paid in the arrears within ten days [illegible]

Per AMEER ALI, *J*, *contra* *Per* PETHERAM, [illegible]

Privy Council in *Gobind Lal Roy* v *Ramjanam Misser, I L R. 21 Calc 70*, is a public sale held at a place prescribed by the proper authorities at which there are bidders and a possibility of competition. GOSSAIN CHUTTURBHOOJ DUT v. ISHRI MUL . . . I. L. R. 21 Calc. 844

42. ———— Benami purchase for de- [illegible]

43. ———— Fraudulent purchase by [illegible]

been knocked down by the Collector to another party in an execution sale under Act XI of 1859, where it was found that the plaintiff's purchase [illegible]

SALE FOR ARREARS OF REVENUE— *contd.*

8. SETTING ASIDE SALE—*contd.*

(*b*) OTHER GROUNDS—*contd.*

properly sell either the estate of the said right, title, and interest LALLA JUGGESSUR SAHOY *v.* GOPAL LALL . . . . . 15 W. R. 54

44 ——— **Failure of consideration**—*Suit to set aside sale and recover purchase-money on the ground that subject of sale was alluvial land and practically non-existent.* An estate does not necessarily mean land but may denote julkur,

may, in accordance with the Privy Council decision in *Lopez v Muddun Mohun Thakoor, 13 Moo I A. 467,* be sold as an estate. A suit, therefore, by a purchaser of such an estate to have the sale set aside and recover his purchase-money, on the ground that the subject of his purchase was non-existent at the time of sale, and had since remained so, was held to be not maintainable GOVERNMENT *v* RADHAY SINGH . . 20 W. R. 117

45. ——— **Award of compensation to purchaser**—*Sale set aside under Beng. Reg I of*

affirmed by the Judicial Committee But the sale having taken place by direction of the Government, and there being no fraud on the part of the purchaser, the Judicial Committee, under cl. 2 s, 4 of Regulation I of 1821, awarded the purchaser compensation to be paid by the Government. ISHUREE PERSAD NARAIN SINGH *v.* LAL CHUTTERPUT SINGH 3 Moo. I. A. 100

S C DEEP NARAIN SINGH *v* LAL CHUTTERPUT SINGH . . . . . 6 W. R P. C. 27

46. ——— **Revenue sent by money-order—Mistake**—*Estate, wrong description of —Revenue in arrear—Revenue Sale Law (Act XI of 1859), ss 8, 20, 33—Land Revenue rules in the Land, Revenue and Cesses in Bengal, rule 29—Jurisdiction* Where the actual amount of revenue remitted by money-order reached the Collectorate in time, but the remitter made a mistake in the towji

lectorate to rectify the mistake under rule 29 of the Land Revenue Rules, and not to put up the property to sale which, if held, would be without jurisdiction and ought to be set aside. *Bal Krishna Das v Simpson, I L. R. 26 Calc. 883; L R 25 I. A. 151,* referred to. HAMID HOSSEIN *v* MUKHDUM REZA (1905) . I. L. R. 32 Calc. 229 9 C. W. N. 306

SALE FOR ARREARS OF REVENUE— *contd.*

8. SETTING ASIDE SALE—*contd*

(*b*) OTHER GROUNDS—*contd*

47. ——— **Irregularity**—*Separate shares, sale of—Act XI of 1859, ss. 5, 6, 13, 25, 32—Equitable relief—Fraud—Irregularity—Notice—Description of property—Appeal to Commissioner, specification of grounds in* No revenue sale can be set aside on the ground of fraud, when the sale would have taken place whether or not the fraud had been committed; nor can the equitable relief of reconveyance to the party affected by the fraud be enforced against the auction-purchasers, when some of them are innocent and *bond fide* purchasers. *Amirunessa Khatoon* v. *The Secretary of State for India, I L R. 10 Calc 63,* followed. *Bhoobun Chander Sen v Ram Soonder Surma Mozoomdar, I. L R 3 Calc 300,* distinguished. An erroneous

followed. *Mohabeer Pershad Singh* v. *The Collector of Tirhoot, 15 W. R. 137,* dissented from. DEONANDAN SINGH *v.* MANBODH SINGH (1905) I. L. R. 32 Calc 111

(*c*) PARTIES.

48. ——— **Secretary of State, if a necessary party**—*Act XI of 1859, s 33—Patnidar's right to sue.* In an action to set aside the sale

447, and *Gobind Lal Roy v. Biprodas Roy, I. L R 17 Calc. 398,* followed. A *patnidar* is therefore entitled to institute such a suit. JAHNAVI CHOWDHARANI *v.* SECRETARY OF STATE FOR INDIA (1902) 7 C. W. N. 377

9. MISCELLANEOUS CASES.

1. ——— **Act XI of 1859, s 5**—*Effect of notification under Act—Attachment.* A notification issued under s. 5, Act XI of 1859, is simply a public call on the debtor to pay his debt by a fixed date; it does not operate as an attachment by the

SALE FOR ARREARS OF REVENUE— *concld.*

9 MISCELLANEOUS CASES—*concld.*

Civil Court. NURKOO RAM v. RAMJOORAWUN SINGH . . . . . . 9 W. R. 481

2. ———— **Transfer of tenure from one Collectorate to another**—*Payment of revenue—Notice of transfer* If a tenure is transferred from one Collectorate to another, and the holder of the tenure, after receiving notice of the transfer, continues to pay his revenue into the former Collectorate, he is not entitled to take credit for such payment But if he pays before notice and obtains a receipt, such receipt is a quittance as against Government. THAKOOR CHURN ROY v COLLECTOR OF 24-PERGUNNAHS . 13 W. R. 336

3. ———— **Act XI of 1859, s. 31**—*Recorded proprietor, Representative of—Execution of decree—Purchaser in execution of decree—Revenue sale—Deposit—Assignee.* S 31 of Act XI of 1859 must be read strictly. An assignee of the recorded proprietors is not their representative within the meaning of that section, and the Collector is justified in refusing to pay to such assignee, claiming on his own behalf, money held in deposit on account of the recorded proprietors. SECRETARY OF STATE FOR INDIA v. MARJUM HOSEIN KHAN I. L. R. 11 Calc. 359

SALE FOR ARREARS OF ROAD CESS.

See BENGAL CESS ACT, 1871, s. 3. I. L. R. 12 Calc. 430

See BENGAL CESS ACT, 1880, s 47. I. L. R. 24 Calc. 27

See BENGAL TENANCY ACT, s 65 I. L. R. 21 Calc. 722

See LIMITATION ACT, 1877, SCH. II, ART. 12. I. L R. 23 Calc. 775 L. R. 23 I. A. 45

See PUBLIC DEMANDS RECOVERY ACT, s. 2 I. L R. 14 Calc. 1 I. L. R. 23 Calc. 641

See PUBLIC DEMANDS RECOVERY ACT, s 7 I. L. R. 23 Calc. 775 L. R. 23 I. A. 45

See SALE FOR ARREARS OF CESSES

SALE IN EXECUTION OF CERTIFICATE UNDER BENGAL ACT VII OF 1880.

See PUBLIC DEMANDS RECOVERY ACT 1880 . . . . 6 C. W. N. 302

SALE IN EXECUTION OF CERTIFICATE UNDER BENGAL ACT I OF 1895.

See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT I OF 1895), ss 15, 19, 32 AND 33 . . I. L. R. 30 Calc. 619

———— **what passes at such a sale—**

See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT VII OF 1880), ss. 2, ETC. I. L. R. 29 Calc. 537

SALE IN EXECUTION OF DECREE.

SALE IN EXECUTION OF DECREE— *contd.*

See Appeal—Execution of Decree—Questions in Execution.
I. L. R. 25 Bom. 418
I. L. R. 23 All. 476

See Arms Act, 1878, ss. 1 cl. (b), 5
I. L. R. 9 Bom. 518

See Benami Transaction—Certified Purchasers—Civil Procedure Code, s. 317 . . 5 C. W. N. 341
I. L. R. 23 All. 34

See Bengal Tenancy Act—
s. 13 . 7 C. W. N. 388, 591
ss. 65 and 188
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See Collector . I. L. R. 23 Bom. 531

See Excise Acts (III of 1856 and Bengal Act I of 1903)
I. L. R. 31 Calc. 798

See Execution of Decree—Effect of Change of Law pending Execution.
I. L. R. 3 Bom. 214, 217
I. L. R. 17 Bom. 289
I. L. R. 21 Calc. 940
I. L. R. 22 Calc. 767
I. L. R. 18 Mad. 477
I. L. R. 19 Bom. 80
I. L. R. 20 Bom. 565
I. L. R. 29 All. 196

See Fraud—Effect of Fraud
I. L. R. 2 Mad. 264
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See Hindu Law—Alienation—Alienation by Father.

See Hindu Law—Joint Family—Powers of Alienation by Members.

See Hindu Law—Joint Family—Sale of Joint Family Property in Execution and Rights of Purchasers.

See Hindu Law—Widow—Decrees against Widow as representing the Estate or Personally.

See Husband and Wife.
I. L. R. 1 All. 772

SALE IN EXECUTION OF DECREE— *contd.*

See Limitation Act, 1877, Sch. II, Art. 12.

See Limitation Act, 1877, Sch. II, Art. 134 . . I. L. R. 25 Mad. 99

See Limitation Act, 1877, Sch II, Art. 138.

See Limitation Act, 1877, Sch. II, Arts. 166, 167 . I. L. R. 9 Bom. 468
I. L. R. 5 Calc. 331
I. L. R. 5 Mad. 113

See Limitation Act, 1877, Sch. II, Arts. 178, 179 . I. L R. 30 Mad. 209

See Lis pendens . I. L. R. 23 All. 60
I. L. R 27 Bom 266
I. L. R. 13 Mad. 504
I. L. R. 11 Bom. 473

See Mortgage—Sale of Mortgaged Property.

See Onus of Proof—Sale in Execution of Decree.

See Pleader—Purchase by Pleader at Sale in Execution of Decree
4 B L. R. A. C. 181
I. L. R. 10 Mad. 111
I. L. R. 15 Mad. 389

See Pre-emption—Right of Pre-emption . . I. L. R. 1 All. 272, 277
6 N. W. 243, 272
7 N. W. 97, 281
I. L. R. 2 All. 850
I. L. R. 3 All. 112, 827
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See Right of Occupancy—Transfer of Right . I. L. R. 1 All. 353, 547
I. L. R. 4 Calc. 925
22 W. R. 169
I. L. R. 2 All. 451
I. L. R 26 Calc. 727

See Right of Suit—
Fraud . I. L. R. 29 Calc. 395
Sale in Execution of Decree.

See Sheriff—Sale by Sheriff.
I. L. R. 27 Calc. 264

See Transfer of Property Act, s. 99.
I. L. R. 35 Calc. 61

See Waiver . 11 C. W. N. 848

——— mortgaged property—

See Mortgage—Sale of Mortgaged Property.

See Sale for Arrears of Rent—Setting aside Sale—General Cases.
I. L R. 29 Calc. 1

——— setting aside sale—

See Civil Procedure Code, 1882, s. 244—
Questions in Execution of Decree . 6 C. W. N. 279, 283
Parties to Suit . 6 C. W. N. 127

SALE IN EXECUTION OF DECREE— *contd.*

——— **setting aside sale**—*concld.*

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.
6 C. W. N. 663

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—GENERAL CASES
I. L. R. 29 Calc. 1

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.
6 C. W. N. 836

I. PLACE OF SALE.

1. ——— Place of holding the sale—*Sale of moveable property in execution of decree—Practice* Under the Code of Civil Procedure (Act XIV of 1882), it is intended that a sale of moveable property attached in execution of a decree

it was found by the Court that a fair sale could be had on the spot —*Held*, that no sufficient reason was shown for departing from the usual practice LAKSHMIBAI *v* SANTAPA REVAPA SHINTRE
I. L. R. 13 Bom. 22

2. PERSON SELLING PROPERTY OF WHICH HE IS NOT BUT AFTERWARDS BECOMES, OWNER.

1 ——— Obligation to make good the sale out of subsequently-acquired interest—*Vendor and purchaser* The doctrine—that where a person sells property of which he is not the owner, but of which he afterwards becomes the owner, he is bound to make good the sale to the purchaser out of his subsequently-acquired interest—does not apply to a case where the sale was made

3. OBJECTION TO SALE.

1. ——— Dispossession of third party in execution—*Resistance or obstruction by stranger on delivery to auction-purchaser—Civil Procedure Code, 1859, s. 269.* There was no provision in the Civil Procedure Code, 1877, similar to that contained in s. 269 of Act VIII of 1859, which enabled the Court executing a decree to inquire

sessed was by regular suit. *A*, a decree-holder,

SALE IN EXECUTION OF DECREE— *contd*

3 OBJECTION TO SALE—*concld.*

purchased certain property belonging to *B*, his judgment-debtor, at a sale, in execution of his decree, and delivery of possession to him was ordered. A stranger to the suit thereupon presented a petition to the Court executing the decree, setting up a title to a moiety of the property in question,

BROJONATH GHOSE
I. L. R. 3 Calc. 729 : 1 C. L. R. 517

2. ——— Decree, impeachment of, by

was obtained, who is in possession of such property,

RAM (1907) . . **I. L. R. 29 All. 612**

4. STAY OF SALE.

1. ——— Stay of sale in regard to a particular property—*Other property of judgment-debtor* To save a particular property from

property already attached. DEB KUMARI BIBEE *v.* RAM LALL MOOKERJEE
3 B. L. R. Ap. 107 : 12 W. R. 66

2. ——— Stay of sale pending administration suit—*Mortgage decree—Right of secured creditor.* In execution of a decree on a mortgage-bond executed by the father of the judgment-

SALE IN EXECUTION OF DECREE—*contd.*

4. STAY OF SALE—*contd.*

debtors, since deceased, which decree directed that the mortgage-lien should be enforced, first, by sale of the property specifically mortgaged; and, secondly, if the debt remained unsatisfied by the sale

a receiver be appointed and arrangements made for paying off the mortgage-debt and saving the property from sale. *Held*, that the Court was wrong in passing such order, inasmuch as there were no reasonable grounds why a secured creditor should be debarred from enforcing his security pending the administration suit. KRISTOMOHINY DOSSEE *v.* BAMA CHURN NAG CHOWDRY

I. L. R. 7 Calc. 733 : 9 C. L. R. 344

3. ———Tender of debt by transferee of property—*Civil Procedure Code, s 291. Held*, that the assignees of a purchaser from a judgment-

I. L. R. 10 All. 1

4. ——— Civil Procedure Code, ss. 276, 305. S 305 of the Civil Procedure Code (which enables the Court in certain cases to stay the sale of immoveable property to enable the debtor to raise the amount of the decree by mortgage, lease, or private sale of the property) contemplates a mortgage or lease of private sale only where "the amount of the decree can be thus provided for" A Court executing a decree can neither grant a certificate under this section, nor confirm a mortgage or other alienation of property, unless it appears that by such alienation

5 ——— Payment into Court of decretal money and costs—*Transfer of Property Act (IV of 1882), s 90—Execution of decree—Stay of sale.* Where the sale of mortgaged property has been directed by an order absolute under s. 8 of the Transfer of Property Act, 1882, it is open to the person holding the

SALE IN EXECUTION OF DECREE—*contd.*

4. STAY OF SALE—*concld.*

equity of redemption should wait, until the property is actually put up for sale. *Raja Ram Singhji* v. *Chunni Lal, I L. R. 19 All. 205*, and *Harjas Rai* v. *Rameshar, I L R. 20 All. 354*, followed. *Bibijan Bibi* v. *Sachi Bewah, I. L. R 31 Calc 863*, referred to. MISRI LAL *v.* MITHU LAL (1905)

I. L. R. 28 All. 28

5. IMMOVEABLE PROPERTY.

1 ——— Interest in decree against mortgaged property—*Civil Procedure Code, 1859, s 259—Sale of decree—Interest in immoveable property.* A decree for the sale of mortgaged property was attached and sold in execution of a decree *Held*, that the interest in immoveable property thereunder conveyed to the purchaser was im-

9 Bom. 64

2. ——— *Decree creating charge on land—Interest in immoveable property* The sale of a decree charging land for its satisfaction in the course of execution-proceedings against the judgment-creditor is a sale of an interest in immove-

MOBKOONISSA *v.* DEWAN ALI MISTREE

4 W. R. Mis. 22

3. ——— *Civil Procedure Code (Act XIV of 1882), ss 235, 247, 284, 287—Execution of decree, application for sale of tenure in—Incumbrance, notification of existence of—Incumbrance—Arrears of rent due in respect of the tenure—Rules made by the High Court—Omission to state existence of arrears of rent, effect of—Costs recoverable by judgment-debtors against decree-holder; inclusion of, in application for execution, effect of—Liability of hypothecated property on release of principal by acts of landlord* Although there is no express provision in the Code of Civil Procedure casting on the decree-holder the duty of notifying

bring to sale. An arrear of rent due in respect of the property sought to be sold is to be regarded as one of the matters to be notified, as being material for the purchaser to know in order to judge of the

SALE IN EXECUTION OF DECREE—*contd.*

5. IMMOVEABLE PROPERTY—*concld.*

lien he has upon the property *Nursing Naran Singh* v *Roghoobur Singh, I L. R 10 Calc 609,* and *Kasturi* v *Venkatachalapathi, I L. R 15 Mad 412,* referred to and followed Under s. 247 of the Code of Civil Procedure, all that the decree-holder is entitled to enforce execution of is the difference between the amount found recoverable by him and the amount which the judgment-debtor is entitled to recover against him When a decree-holder loses his remedy to enforce his decree for arrears of rent by the sale of the property in default, by reason of his own negligence, laches and acts, he cannot be allowed to enforce it as against a third party into whose hands the property passes at the sale, and to make any property hypothecated for the rents liable for the whole amount due to him when, by the security bond, the hypothecated property is made liable only for so much of the arrears due as may not be realized by the sale of the property in default. GIRIBALA DEBI v MINA KUMARI (1900) . . . . 5 C. W. N. 497

4. ——— **Property to be sold, ancestral in part only**—*Execution of decree—Transfer of decree to Collector—Notification (Local Government) No 671, dated August 31st, 1880 Held,* that where the Civil Court is satisfied that the land, which is ordered to be sold or any portion of it is ancestral, it should transfer the decree for execution to the Collector so far as regards ancestral land only. AHMAD GHAUS KHAN v. LALTA PRASAD (1906) . . . . . L. L. R. 28 All. 631

5 (a) IMPARTIBLE ESTATE.

5 ——— *Sale of "right, title and interest" of holder of impartible zamindari and member of joint family governed by Mitakshara law—Subsequent reversal of interpretation of law under which sale was held—Change in nature of interest owned by holder of impartible estate—Change of law whether retrospective—Effect of sale under new interpretation of law* In execution of a

power of alienation beyond his lifetime Subsequently this interpretation of the law was reversed by the Judicial Committee in the cases of *Sartaz Kuari* v *Deoraj Kuari, L. R 15 I A. 51 : I L R 10 All 272,* and *Rao Venkata Surya Mahipati* v. *Court of Wards, L. R 26 I. A 83 I. L R 22 Mad. 383,* which decided that the holder of an

SALE IN EXECUTION OF DECREE—*contd.*

5 (a). IMPARTIBLE ESTATE—*concld.*

the ground that the plaintiff had purchased an absolute interest in it.—*Held,* that the reversal of the previously accepted interpretation of the law did not displace its application to the contract contained in the certificate of sale of 1876, the parties to which were bound by the law as then understood and that only the life-interest of the then holder passed by the sale. ABDUL AZIZ KHAN v APPAYASAMI NAICKER (1904)
I. L. R. 27 Mad. 131

6. BIDDERS

1. ——— **Withdrawal of bid**—*Civil Procedure Code, 1882, s 290.* It is competent to a bidder at a Court auction-sale to withdraw his bid. AGRA BANK v. HAMLIN . I. L. R. 14 Mad. 235

7 PURCHASERS, RIGHTS OF.

(a) GENERALLY.

See ACCRETION—RIGHT OF PURCHASERS TO ACCRETIONS.

1 ——— **What passes by sale**—*Sale under money-decree—Right, title, and interest of judgment-debtor* Nothing passes to the auction-

KHUB CHAND v. KALIAN DAS I. L. R. 1 All. 240

BARTON v BRIJONATH SURMAH . 3 W. R. 65

RAM ONOOGROHO SINGH v. MONTORUN W. R. 223

SETH OODEY KURRUN v. CHAIT RAM 2 Agra 125

JYKISHOON SOOKUL v. SHUNKUR SOOKUL 3 Agra 168

ZALIM v CHOONEE LALL . . 3 Agra 194

BHUKAN BHAIBAVA v. BHAIJI PRAG 1 Bom. 19

2. ——— *Sale under Bom. Reg IV of 1827—Right, title, and interest of judgment-debtor.* All that passed under a Court's sale under Bombay Regulation IV of 1827 was the right, title, and interest of the judgment-debtor whose property was proclaimed for sale. KUSHABA BIN SANKROJI v PITAMBARDHARI . 12 Bom. 15

appearing no provisions in the Procedure Code to contemplate the sale or transfer of anything more than the right and interest of the judgment-debtor;

SALE IN EXECUTION OF DECREE—*contd.*

7. PURCHASERS, RIGHTS OF—*contd.*

(*a*) GENERALLY—*contd.*

and the auction-purchaser at a sale in execution acquires by the express terms of the conveyance to him not the presumed title of the person in possession, or the apparent title in the Collector's books, but the right, title, and interest of the judgment-debtor in the property sold. MAHOMED BUKSH *v.* MAHOMED HOSSEIN
3 Agra 171 : Agra F. B. Ed. 1874, 145

See BALUK DOSS *v.* NIMAYE CHUNDER SIRCAR . . . 17 W. R. 511

4. ——————— *Description of property in specification under s 237 of Civil Procedure Code on application for attachment—Execution against joint family property* The specification required by s. 237 of the Civil Procedure Code of the judgment-debtor's share or interest in immoveable property sought to be attached should state distinctly whether it was the judgment-debtor's undivided share or the family property in which the judgment-debtor had an undivided share which was sought to be attached and should also specify what that family property was. If the specification merely referred to the judgment-debtor's share and interest in what was the family property the Court would hold, unless something to the contrary appeared, that the sale was of that share and interest only. MUHAMMAD HUSAIN *v* DIP CHAND . . . I. L. R 14 All. 190

5. ——————— *Sale of rights and interests in mouzah consisting of two mehals—Submersion of mehal at time of sale—Sale-certificate not specifically mentioning submerged mehal—Passing of rights in submerged mehal to purchaser* The rights and interests of certain judgment-debtors in a mouzah consisting of two separate mehals, respectively known as the Uparwar mehal and the Kachar mehal, were brought to sale in execution of the decree. At the time of the sale the Kachar mehal was submerged by the river Ganges, and in the sale-notification the revenue assessed upon the Uparwar mehal only was mentioned, and there was no specific attachment of the Kachar or submerged land, but the property was sold as that of the judgment-debtors in the mouzah. Subsequently the river having receded, the auction-purchaser attempted to obtain possession of the Kachar land, but was resisted by the judgment-debtors on the ground that their rights and interests in that land had not been conveyed by the auction-sale, but only their rights and interests in the Uparwar mehal. *Held*, that either the whole rights of the judgment-debtors in both mehals were sold, or, if not, their rights in the Uparwar mehal with the necessary and contingent right to any lands which might subsequently appear from the river's bed and accrete to such mehal, and the mere fact of the mention in the sale notification of the revenue of the Uparwar mehal did not affect what passed by the

SALE IN EXECUTION OF DECREE—*contd.*

7 PURCHASERS, RIGHTS OF—*contd.*

(*a*) GENERALLY—*contd*

[illegible] dissented from. MUHAMMAD ABDUL KADIR *v* KUTUB HUSAIN. KUMAL-UD-DIN AHMAD *v.* KUTUB HUSAIN
I. L. R. 9 All. 136

6. ——————— *Increase of judgment-debtor's interest occurring after attachment and before sale.* Previously to a mortgage of it, a fractional interest in certain property (which interest was purchased by the plaintiff, the mortgagee,

[illegible]

Held, that the two sons had taken definite interests capable of being attached within s. 266 of the Civil Procedure Code, not being mere expectancies. *Held*, that a judicial sale of property, purporting to be of all the interest of a judgment-debtor, carries with it any enlargement thereof that may have occurred after the attachment and before the sale; and that accordingly the above-mentioned settlor having died without a child by that wife, between the date of the attachment and the sale, the sons' augmented interests passed thereby. UMES CHUNDER SIRCAR *v* ZAHUR FATIMA . I. L. R 18 Calc. 164
L. R. 17 I. A. 201

7. ——————— *Civil Procedure Code (Act XIV of 1882), s 274, cl (c)—Rights of purchaser of mortgage-bond at sale in execution of decree* Where a person at an execution-sale purchases a mortgage-bond under which certain

[illegible]

the properties mortgaged. KASINATH DAS *v.* SADASIV PATNAIK . I L. R. 20 Calc. 805

8. ——————— *Sale of raiyat's interest—Want of zamindar's consent to alienate.*

[illegible]

9. ——————— *Sale of specified share—Property coming to debtor before sale.* When there was a sale of a specified share belonging

SALE IN EXECUTION OF DECREE— *contd.*

7. PURCHASERS, RIGHTS OF—*contd.*

(*a*) GENERALLY—*contd.*

10. ——— ——— *Interest in purchase-money—Civil Procedure Code, 1877, s. 266—Property not subject to attachment and sale.* The purchaser at a sale in execution of a decree of the right or interest which the vendor of immoveable property has in the purchase-money, where it has been agreed that the same shall be paid on the

I. L. R. 3 All. 12

11. ——— *Right to mesne profits—Civil Procedure Code (Act VIII of 1859), s. 259—Certificate of sale.* The possession, with mesne profits, of land comprised in a zur-i-peshgi lease of the year 1851 was decreed to the zur-i-peshgidars in 1860, and litigation as to their rights under the lease was carried on till 1874, when, after their deaths, it ended in favour of their represen-

third party *Held* (reversing the decision of the High Court), that the right to the mesne profits awarded by the decree of 1860 did not pass by the sale, but remained in the representatives. GANESH LALL TEWARI *v* SHAMNARAIN

I. L. R. 6 Calc. 213

12. ——— *Life-interest in property of testator.* A life-interest in the residue of

perty of the testator. The sale therefore passes nothing to the purchaser. TOKAI SHEROR *v.* DAUOD MULLICK FUREEDOON BEGLAR

4 W. R. P. C. 87 : 6 Moo I. A. 510

13. ——— *Sale of legacy under writ against executor.* A seizure and sale by

14. ——— *Right and interest of proprietor of resumed revenue-paying estate.* By a sale in execution of the rights and interests of a judgment-debtor as recorded proprietor of a

Government

6 W. R. 110

15 ——— *"Right, title, and interest" of a judgment-debtor in a partly-executed decree—Possession of land attached under Beng*

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things, then right, title, and interest in the

DABIA GRISHCHUNDER CHUCKERBUTTY *v* BISESWARI DEBIA

I. L. R. 6 Calc. 243 : 7 C. L. R. 420

16. ——— *Sale of right, title, and interest of zamindar—Impartible primogenitary zamindari—Interest taken by purchase.* In 1873 and 1876, portions of an impartible primogenitary zamindari, which were in the possession of a lessee from the zamindar, were attached and brought to sale in execution of decrees against the zamindar The purchase-money was very inadequate as the price of the full ownership of the property (subject to the lease), but what was sold according to the sale-certificate was the right, title, and inter

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1881, and the

now sued in

plaintiff must be taken to have purchased an interest for the life only of the judgment-debtor. ABDUL AZIZ KHAN SAHIB *v* APPAYASAMI NAICKAR . . . I. L. R. 22 Mad. 110

17. ——— *Sale of rights of deceased debtor whose representatives hold certificate of administration.*

SALE IN EXECUTION OF DECREE—*contd.*

7. PURCHASERS, RIGHTS OF—*contd.*

(a) GENERALLY—*contd.*

it subject to all legal and equitable rights of inheritance. SHAM COOMAR ROY *v.* JUTTUN BIBEE 14 W. R. 448

RAJKRISTO SINGH *v.* BUNGSHEE MOHUN 14 W. R. 448 note

18. ——— *Sale of zamindari rights—Building appurtenant to zamindari rights.* The "rights and interests" of a zamindar in a certain village were sold in execution of a decree. At the time of the sale a certain building was his

19. ——— *Sale of house and lands to different purchasers—Decree-holder, purchase of land by, and sale of house to third person.* Where a decree-holder who had attached certain land and a house upon it caused the land to be sold in execution and purchased it, and then caused the house to be sold to a third party :—*Held,*

20. ——— *Sale of property with incumbrances—Right, title, and interest of debtor.* The purchaser at a Court's sale buys only the right, title, and interest of the debtor, burdened with all

21. ——— *Interest adverse to judgment-debtor—Effect of sale—Incumbrances by debtor after attachment.* Under an execution

by him after the attachment of the property sold. DINENDRONATH SANNIAL *v.* RAMKUMAR GHOSE TARAKCHANDRA BHUTTACHARJEE *v.* BAIKANTNATH SANNIAL I. L. R. 7 Calc. 107 : 10 C. L. R. 281 L. R. 8 I. A. 65

BHUGOBAN CHUNDER DOSS *v.* LALLA THAKOOR PERSHAD . . . . . W. R. 1864, 359

22. ——— *Sale free of decree-holder's interest—Reservation of rights.* When a judgment-debtor's property is sold at the instance of the judgment-creditor, the sale, whether directed by the decree or not, must be a sale free of the judgment-creditor's rights in the property, unless these are reserved. DOOLEE CHUND *v.* OOMDA BEGUM . . . . . 24 W. R. 263

See DULLAB SIRKAR *v.* KRISHNA KUMAR BAKSH 3 B. L. R. 407 : 12 W. R. 303

23. ——— *Prior right of former purchaser at unconfirmed sale—Laches.* ... the then ... udgment- ... subject to ... ion, of a ... purchase ... *Quære :*

24. ——— Effect of sale—*Right of purchaser as compared with purchaser by private sale —Right as against charges on estate sold.* A purchaser at a judicial sale is in a position different from that of a mere representative of the old pro-

25. ——— *Purchase subject to decree for sale—Incumbrance.* A decree-holder having attached certain property in the execution

judgment-debtor for the return of certain alleged

See SOORAJ BUKSH *v.* RAMJEEAWUN . 4 N. W. 5

26. ——— *Fraudulent alienations before decree.* An auction-purchaser can question the fraudulent acts and alienations of the old proprietor in fraud of the decree. BAICHOO *v.* HOWARD . . . . . 3 Agra 15

DEWAN ROY *v.* RIDDELL . 9 W. R. 521

SALE IN EXECUTION OF DECREE— *contd.*

7. PURCHASERS, RIGHTS OF—*contd.*

(a) GENERALLY—*concld.*

27. ——— *Fraudulent award, right of purchaser to contradict* The *locum tenens* of a purchaser at a sale in execution of a decree is not bound by an award in fraud of the decree to which the judgment-debtors were parties. ALFATUN *v.* RAO KARAN SINGH . 7 N. W. 362

28. ——— *Right of purchaser to set aside deeds.* There is no authority for the proposition that the purchaser at a sale in execu-

29. ——— *Right to set aside patni—Mortgage—Covenant not to alienate.* A gave a mortgage to B of certain property as a security for money lent, and covenanted not to alienate the property by gift, ijara, patni, or otherwise, by which loss might be caused to the existing actual assets of the property A subsequently

maintain his suit against C to set aside the patni and for possession. BRAJARAJ KISORI DASI *v* MOHAMMED SALEM . . 1 B. L. R. A. C. 152

s.c. BROJO KISHOREE DOSSIA *v* MAHOMED SULEEM . . . . . . 10 W. R. 151

30. ——— *Sale—Execution—Right of purchaser—Estoppel by conduct—Mortgage.* In execution of a money-decree certain property was purchased. The said property was subject to a mortgage, but not a mortgage executed by the judgment-debtor, although the judgment-debtor would himself have been estopped from denying

SALE IN EXECUTION OF DECREE— *contd.*

7. PURCHASERS, RIGHTS OF—*contd.*

(b) EASEMENTS.

31. ——— **Right to easements.** The rule that the right to easements goes with the property when sold by the owner himself, applies also when the property is sold by the Court in execution of a decree against him. HUREE MADHUB LAHIREE *v.* HEM CHUNDER GOSSAMEE 22 W. R. 522

(c) EMBLEMENTS.

32. ——— **Right to emblements**—*Mortgage, sale under* On the 14th of July 1876, B obtained a decree against D directing D to pay the amount advanced upon a mortgage of D's lands within six months from the date of decree, or, in default of payment, the lands to be sold with liberty to B to bid at the sale. Default having been made, the lands were sold on the 21st of June 1877, and B became the purchaser. At the time of the sale the lands were in the occupation of D's tenants under an agreement to give to D a moiety of the crops On the 11th December 1877, P, another judgment-creditor of D, attached the crops on those lands which had been cut and stored by D's tenants since the date of the sale *Held*, that by the sale to B all right, title, and interest of D, including his right to the moiety of the crops in the hands of his tenants, passed to B, and no residual right remained in D on which P's execution could operate, the crops not having been actually carried away and appropriated by D LAND MORTGAGE BANK OF INDIA *v.* VISHNU GOVIND PATANKAR I. L. R. 2 Bom. 670

33. ——— *Crop standing on land sold in execution of a decree obtained by a mortgagee in possession.* A mortgagee in possession sued on his mortgage, and having obtained a decree brought the land to sale in execution: and the execution-purchaser was placed in posses-

(d) RENT.

34. ——— **Right to rents**—*Rents paid for former proprietor after sale—Notice of title*

SALE IN EXECUTION OF DECREE—*contd.*

7. PURCHASERS, RIGHTS OF—*contd.*

(*d*) RENT—*concld.*

35. ———— Apportionment of rents—*Purchaser of share of estate.* A purchasor at a sale

patni rent properly apportioned among the several zamindars by a civil suit in which all the zamindars should be parties. PORESH NATH ROY *v.* BISHROOP DUTT . . W. R. 1884, Act X, 16

(*e*) REVERSIONARY INTEREST.

36. ———— Reversionary right of grantor—*Property liable to attachment and sale—Grant to Hindu widow for maintenance for life—Act VIII of 1859, s. 205—Civil Procedure Code, s. 266 (k)* One *N*, the sole owner of a certain village, had a son *J*. *J* had two wives. By his first wife he had a son *U* *J's* second wife was *G*, by whom he had a son whose widow was *K*, the defendant in the suit. *J* died leaving *U* his son, *G* his widow, and *K* his son's widow, and on his death *U* inherited the village Prior to the year

land was of the same

SALE IN EXECUTION OF DECREE—*contd.*

7. PURCHASERS, RIGHTS OF—*contd.*

(*e*) REVERSIONERY INTEREST—*concld.*

Chunder Tantra Das v. *Dhurmo Narain Chukarbatty, 7 B. L. R 341 : 15 W. R. F. B. 17 ; Tuffuzzool Husain Khan* v. *Raghunath Pershad, 7 B. L. R 186 : 14 Moo. I. A. 40,* distinguished. KACHWAIN *v* SARUP CHAND . I. L. R. 10 All. 462

(*f*) STRIDHAN.

37. ———— Malabar law—*Personal decree against karnavan—Civil Procedure Code, s. 335.* *A* sued for possession of certain shops belonging to a Malabar tarwad, which had been attached in execution of a personal decree passed against a karnavan in a suit for a private debt. In the execution-proceedings, an objection petition was put in, stating that the shops were stridhanam and was rejected, and the order of rejection was not appealed against for one year Respondents Nos 1 to 4, the husbands of the persons who put in the objection petition, were in possession and were

I. L. R. 10 Mad. 357

8. ERRORS IN DESCRIPTION OF PROPERTY SOLD.

1. ———— Subject of purchase—*Certificate of sale, description in—Obligation of purchaser to see that certificate is correct* It is the

26 W. R. 104

2. ———————— *Certificate of*

3. ———— Subject of sale—*Discrepancy*

SALE IN EXECUTION OF DECREE—*contd.*

3. ERRORS IN DESCRIPTION OF PROPERTY SOLD—*contd.*

In execution of a decree for arrears of rent, an application was made for a sale of the tenure for the arrears of which the decree had been obtained. A notification was issued purporting to be a sale proclamation under Act VIII of 1859, s 249, and in pursuance of that notification the sale of the right, title, and interest of the judgment-debtor took place. *Held*, that the tenure did not pass by that sale, notwithstanding that the sale-certificate stated it was the tenure itself which had been sold UMA CHURN SEN *v* GOBIND CHUNDER MOZUMDAR
1 C L R. 460

4. ———————— *Misdescription of tenure sold—Right of purchaser.* *A*, in satisfaction of a decree against *B*, caused the sale of a tenure, styling it a jote-jumma *C*, the superior zamindar, purchased the tenure as such for R900, but failing to pay the balance of the purchase-money, the tenure with the same description was re-sold, and purchased by *C* for one rupee *A*, on discovering his mistake in having advertised the property as a jote-jumma, when in fact it was a shamilat talukh (a more permanent and valuable holding), caused a sale of *B's* rights and interests in the shamilat talukh, and, having purchased them himself, was put into possession *A* then sued for rent under Act X of 1859, when *C* intervened as in

consideration, but a purely speculative purchaser, as he must have known that no such tenure as that which he purchased under the denomination of jote-jumma had any real existence HURO NATH ROY *v* MOTHOORA NATH ACHARJEE
7 W. R. 4

5. ———————— *Description in notification of sale—Sale under mortgage-decree—Vendor and purchaser* The proprietors of a talukh and mehal called B, assessed with revenue at R6,800-4-7, to which certain lands which had been gained by alluvion appertained, which lands had been formed into a separate mehal and assessed with

original and appended rights, water and forest produce, high and low lands, cultivated and uncultivated lands, etc., etc, and all and every portion of our proprietary, possessory, and demandable rights, without excepting any right or interest obtained or obtainable, etc." Subsequently, the mehal talukh B, "together with original and attached mehal and all the zamindari rights appertaining thereto," was sold in the execution of a decree enforcing the mortgage. The auction-purchaser subsequently contracted to sell the "entire talukh B, jumma R6,800-4-7," but afterwards refused to perform the contract, and was sued for its specific performance. The plaint in this suit stated that the subject-matter of the contract was the "entire talukh B, jumma R6,800-4-7," and the decree which the purchasers obtained for the specific performance of the contract referred to its subject-matter in similar terms *Held*, in a suit by the purchasers for the possession of the alluvial mehal, that the terms of the mortgage were sufficiently comprehensive to include that mehal, and it was not intended by the entry of the jumma of mehal B, exclusive of the jumma of the alluvial mehal, to exclude the latter from the mortgage, the entry of the jumma being merely descriptive. Also that the alluvial mehal passed to the auction-purchaser at the auction-sale, under the words "attached mehal." Also that the sale to the plaintiffs passed the alluvial mehal, the words "the entire talukh B" being sufficient to include it, the entry of the jumma of mehal B in the sale contract, plaint, and decree being merely descriptive. GANPATJI *v* SAADAT ALI . . **I. L. R. 2 All. 787**

stated also that the whole interest in the house was to be sold The sale took place, and the plaintiff

of his title, and that the certificate of sale was conclusive evidence of the property which had

offered for sale and bid for by the plaintiff was the property ordered to be sold and proclaimed for sale. What was sold to the plaintiff was the interest mentioned in the Court's order and proclamation, and the sale of that property became absolute by the order which confirmed the sale. BALVANT BABAJI DHONDOE *v* HIRACHAND GULABCHAND GUJAR (1903) . **I. L. R. 27 Bom. 334**

SALE IN EXECUTION OF DECREE—*contd.*

8. ERRORS IN DESCRIPTION OF PROPERTY SOLD—*contd.*

7. ———— Misdescription of area—*Sale in execution of a decree obtained outside the jurisdiction of the Original Side of the High Court—Misdescription of area of property sold—Deficiency in quantity of land—Compensation, suit for—Abatement of rent.* An auction-purchaser of a tenure, sold in execution of a decree outside the jurisdiction of the Original Side of the High Court, brought a suit against the decree-holder for a refund of part of the purchase-money, on account of a deficiency in the actual area of land purchased, as compared with the area stated in the sale proclamation, and for abatement of rent in respect of such deficiency. It was alleged that the decree-holder made false

ings as to compensation for errors or misdescription. The purchase-money was not in Court, and the decree-holder offered to pay back the auction-purchaser his purchase-money and release him from his purchase, but this was refused *Held*, that, although there was a deficiency in area, the auction-purchaser was not entitled to compensation, as he had failed to prove he had sustained loss by misdescription in the sale proclamation, but he was entitled to an abatement of rent for such deficiency. *Kissory Mohan Roy* v. *Kali Charan Ghose, 1 C W. N. 106*, distinguished *Held*, *per* MACLEAN, *C.J*, that, in order to enable the auction-purchaser to claim compensation, it was not essential to make out a case of fraud against the decree-holder *Abdullah Khan* v *Abdur Rahman Beg, I. L. R 18 All 822*, dissented from. DOYAL KRISHNA NASKAR *v.* AMRITA LAL DAS (1901) I. L R. 29 Calc. 370

Sch. II, Art 21—Rights of a purchaser at an execution-sale. A suit to set aside a sale, either in

description *Sundara Gopalan* v. *Venkatavaradar Ayyangar, I L. R. 17 Mad 228*, followed. SONARAM DAS *v.* MOHIRAM DAS (1900) I. L. R. 28 Calc. 235

SALE IN EXECUTION OF DECREE—*contd.*

8. ERRORS IN DESCRIPTION OF PROPERTY SOLD—*concld.*

9. ———— Statement of value—*Execution sale—Sale proclamation—Enquiry as to approximate value when to be made* It cannot be laid down generally that in no case should any enquiry be made as to the value of the judgment-debtor's property to be sold before issuing the sale-proclamation. *Kashi Pershad Singh* v. *Jamuna Pershad Sahu, I. L. R 31 Calc. 922*, commented on Where the decree-holder stated the value of the property to be R15,000, but the judgment-debtor objected that the value was R1,50,000 and the Court adopted the former valuation without any inquiry —*Held*, that in the face of the discrepancy in the value as stated by the decree-holder on the one hand and the judgment-debtor on the other,

9 JOINT PROPERTY.

1. ———— Sale of joint property as if separate—*Effect of sale—Right taken by purchaser.* Under a sale in execution of a decree no

is entitled to an equal share with *A*. the interest of *A* alone is acquired by the purchaser KISHEN CHUNDER GHOSE *v.* ASHOORUN . Marsh. 647

SREEPERSHAD SURMAH BHUTTACHARJEE *v.* SHUROOPA DOSSIA . . . . . 9 W. R. 452

2. ———— Sole right of member of joint Hindu family in undivided property—*Decree in suit for damages for tort—Costs* There may be a valid sale upon an execution in an ac-

1 Mad. 471

3. ———— Partnership property—*Sale-decree against one of several partners in mercantile firm—Right against partnership property* A suit

title, and interest of *A* in a stable, which in fact belonged to the firm, was sold to the plaintiff. In a suit brought by the plaintiff against *B*, the other partner in the firm, to recover possession of the

SALE IN EXECUTION OF DECREE—*contd.*

9. JOINT PROPERTY—*contd*

property :—*Held*, that the plaintiff was in no better position than a purchaser at a sale of partnership property made in execution of a decree against a single partner, and that he could not be allowed to effect a partial partition, which the judgment-debtor, to whose right he succeeded, would not have been entitled to obtain. All that the plaintiff could do was to bring a suit for an account and settlement of the whole concerns of the firm, and claim that interest in the property which upon a final settlement might be ascertained to belong to his judgment-debtor. KALYANBHAI *v* MOTIRAM JAMNADAS . . . . 10 Bom. 378

See KESHAV GOPAL GINDE *v* RAYAPA 12 Bom 165

4. ———— Property of co-parceners—*Share of one of several co-parceners—Undivided Hindu family—Unascertained share, purchase of* In the Bombay Presidency the share of one of the co-parceners in a Hindu undivided family in the ancestral estate may before partition be seized and sold in execution for the separate debt in his lifetime. The purchaser of such an unascertained share cannot, before partition, insist on the possession of any particular portion of the undivided family estate, and he takes any such share subject to the prior charges or incumbrances affecting the family estate or that particular share. The attachment of a co-parcener's share in the family property under an ordinary money-decree should go against the share, right, title, and interest of the judgment-debtor in such parts of the family property (naming and describing them) as the judgment-creditor can specify and against the share, right, title, and interest in all other parts of the family property UDARAM SITARAM *v* RANU PANDUJI . . . . 11 Bom. 76

5. ——————— *Attachment and sale of the interest of one of several co-parceners* [illegible]

share of the co-parcener whose interest alone had been attached and sold, though this share might be defined as it existed at the time of the mortgage made by him in 1848 PANDURANG ANANDRAV *v.* BHASKAR SHADASHIV . . 11 Bom. 72

6. ———— Property of joint tenants—*Share in joint family property—Family dwelling-house—Service rents—Right of purchaser.* Where the interest of one of several joint tenants in a family dwelling-house and in certain lands let out on service tenure is sold in execution, the purchaser is entitled to joint possession of the dwelling-house with the other shareholders, and also to a right to share in the service rents. *Kowar Bijoi Kesal Roy v. Samasundari, B L. R. Sup. Vol. 172 : 2 W. R Mis 30*, commented on. RAJANIKANTH BISWAS *v.* RAM NATH NEOGY . I. L. R. 10 Calc. 244

See ESHAN CHUNDER BANERJEE *v* NUND COOMAR BANERJEE . . . . . 8 W. R. 239

7. ———— Property of joint tenure-holders—*Decree against one of several joint sharers—Effect of sale under such decree.* In execution of a decree against one of several joint holders of a tenure, when it is clear that what is sold, and intended to be sold, is the interest of the judgment-debtor only, the sale must be confined to that interest, [illegible] however, it appears that the judgment-debtor has [illegible]

See NITAYI BEHARI SAHA PARAMANICK *v.* HARI GOVINDA SAHA . . I. L. R. 26 Calc. 677

and ANUNDA KUMER NASKAR *v* HARI DASS HALDAR . . . I. L. R. 27 Calc. 545

8. ———— Property of joint family— [illegible] 16 W. R. 31

9. —————— *Personal decree against karnavan of tarwad—Right of purchaser.* If, in execution of a money-decree obtained against a person who happens to be the karnavan of a Malabar tarwad, the tarwad property [illegible]

SALE IN EXECUTION OF DECREE—*contd.*

9 JOINT PROPERTY—*contd*

ELAYACHANIDATHIL KOMBI ACHEN v. KENATUMKORA LAKSHMI AMMA . I. L. R. 5 Mad. 201

10. ———— *Right of minor brother—Sale advertisement under decree against entire property.* A minor brother's share in a joint family estate was *held* not liable under a sale advertisement which referred solely to the rights and interests of his elder brothers who did not represent him, though the decree was against the entire property. RAM LOCHUN SAHHA v. UNNO POORNA DOSSEE . . . . 7 W. R. 144

NETYE ROY v ODEET ROY . 10 W. R. 241

11. ———— *Mortgage for legal necessity by managing brother of joint family —Sale in execution of decree obtained against mortgagor alone—Rights of purchaser and other member of joint family* A, the managing member of a joint Hindu family governed by the Mitakshara law, for joint family purposes and legal necessity mortgaged the joint family property. The mortgagee subsequently sued *A* alone upon the mortgage, obtained a decree, and had the property comprised in the mortgage put up for sale *B*, a brother of *A*'s, who was no party to the mort-

gage suit, and that the purchaser was not entitled to the relief he sought as regards his share. *Subramaniyayyan v. Subramaniyayyan, I. L. R 5 Mad. 125*, followed. ABILAK ROY v. RUBBI ROY I. L. R. 11 Calc. 293

12. ———— *Purchase by decree-holder of family property in execution of decree against member of joint family—Effect of sale—Right of purchaser* The property of an undivided Hindu family consisting of brothers having been hypothecated by one brother was sold ...

by the manager of the family. ARMUGAM v SABAPATHI . . . I. L R. 5 Mad. 12

13 ———— In an undivided ...

... The younger having brought a suit for partition against the elder brother and the alienee of the mortgagee ...

mortgage-debt, and that it was immaterial whether or not the mortgage was executed to discharge a prior mortgage debt of the father. SUBRAMANIYAYYAN v. SUBRAMANIYAYYAN I. L. R. 5 Mad. 125

14. ———— *Execution of decree against one brother—Rights of other brothers.* *J* purchased a 10 biswas share in a village, and *Y* purchased a village, both of which properties were, at the time they were respectively purchased, mortgaged to secure one debt. *J* died leaving four sons. After *J's* death, *Y*, whose village had been sold in execution of a decree for the sale of the mortgaged property, sued *R*, eldest son of *J*, for rateable ... secured ... for R21 ... share to ... amount Upon attachment of the share in execution of the decree, the three younger sons of *J* claimed $7\frac{1}{2}$ biswas as belonging to them, and prayed that the same might be released from attachment. This objection was disallowed as made too late, and the sale ...

... cree in a suit to which they were not parties ... a sale to w... the terms ... defeat ther... ... YAKUB ALI I. L. R. 6 All. 362

15. ———— *Property of Hindu judgment-debtor—Right of purchaser. Held,* that the property in the hands of a Hindu judgment-debtor was liable to sale in the same way and to the same extent as would the other immoveable property of a Hindu having sons be liable: and that the question of the extent of the right to be sold should have been left an open question for adjudication in a suit between purchasers and other persons claiming right therein. BULDEO SINGH v. DWARKA DASS . . 1 Agra 169

16. ———— *Sale of ancestral family property in execution of decree against father —Delay in impeaching sale.* A son's interest may pass on a sale of ancestral property in execution of a money-decree against his father, but whether it does or does not pass will have to be determined by the circumstances of each case.

SALE IN EXECUTION OF DECREE—*contd.*

9 JOINT PROPERTY—*contd.*

Delay in bringing proceedings to impeach sales is a matter for consideration in determining what interests pass on the sale BASO KOER *v.* HURRY DASS . I. L. R. 9 Calc. 495 : 12 C. L. R. 292

17. ——————— *Son's interest in joint ancestral property—Sale of right, title, and interest of father* The sale of the right, title, and interest of a father in ancestral property, in execution of a decree for a debt incurred by him, passes as well the right, title, and interest of the son, where the debt was not incurred for an immoral purpose, and where the purchaser has inquired whether there was a decree against the father, and that the property was properly liable to process and sale in satisfaction of the decree and has purchased the estate *bonâ fide* under the execution, and *bonâ fide* paid a valuable consideration for it. In determin-

an immoral purpose, the question as to the nature of the debt must be held to be determined against the son by there having been a decree against the father, and his right, title, and interest in the family property. PANDIT HAIT RAM *v.* MULU

N. W. 110

18. ——————— *Right of father of joint Hindu Mitakshara family—Suit by sons to set aside sale* In execution of a simple money-decree against the father of the plaintiffs who were members of a joint Mitakshara family, the right,

to succeed BHAGWAT DASSA *v.* GOURI KUNWAR 7 C. L. R. 218

19. ——————— *Mortgage by father of Mitakshara family—Notification of sale*

debtor as set out in the proclamation of sale was

9 C. L. R. 350

SALE IN EXECUTION OF DECREE—*contd.*

9. JOINT PROPERTY—*contd.*

20. ——————— *Attachment of*

21. ——————— *Money-decree against father—Attachment of son's shares* In a suit brought against the father of a Hindu family

22. ——————— *Impartible zamindari—Money-decree against zamindar—Attachment*

able property—portion of the zamindari—which

recover. SIVAGANGA *v.* LAKSHMANA

I. L. R. 9 Mad. 188

23. ——————— *Joint Hindu family—Sale of ancestral estate in execution of decree against father—Effect of sale on son's rights and interests* When a decree has been made

SALE IN EXECUTION OF DECREE—*contd.*

9 JOINT PROPERTY—*contd*

and they are bound by the sale, unless and until they establish that the debt incurred by the father, and in respect of which the decree was obtained against him, was a debt incurred for immoral purposes of the kind mentioned by *Yajnavalkya*, Ch II,

terms, is to be interpreted as a decree against the father alone and personal to himself, and all that is put up and sold thereunder in execution is his right and interest in the joint ancestral estate, then the auction-purchaser acquires no more than that right and interest,—*i e*, the right to demand partition to the extent of the father's share. In this

may maintain a suit for ejectment to the extent of their shares upon the basis of the terms of the decree obtained against the father and the limited nature of the rights passed by the sale thereunder. *Girdharee Lall* v. *Kantoo Lall, 14 B L. R. 187 ; Deendyal Lall* v *Jugdeep Narain Singh, I. L R. 3 Calc 198 ; Suraj Bunsi Koer* v. *Sheo Pershad Singh, I L. R. 5 Calc 148 ; Bissessur Lall Sahoo* v. *Luchmessur Singh, L. R 6 I. A. 233 , Muttayan Chetti* v *Sangili Vira Pandia Chinnatambiar, I L. R 6 Mad 1 , Hurdi Narain Sahu* v. *Rooder Perkash Misser, I L. R 10 Calc 626 ; Nanomi Babuasin* v. *Modun Mohun, I. L. R. 13 Calc. 21 , Ram Narain Lal* v. *Bhawani Prasad, I L. R 3 All 443 ; Gaura* v. *Nanak Chand, Weekly Notes, All. 1883, p. 194 · Weekly Notes, All 1884, p 23 ; Appovier* v *Rama Subba Aiyan, 11 Moo. I. A. 75 ; Phul Chand* v *Man Singh, I. L. R 4 All. 309 ; Chamaili Kuar* v *Ram Prasad, I L R 2 All 267 ;* and *Rama Nand Singh* v. *Gobind Singh, I. L R 5 All. 384,* referred to. BASA MAL *v.* MAHARAJ SINGH . . . I. L R. 8 All. 205

24. ——————— *Son's liability for father's debt—Sale of ancestral property—Bona fide purchaser.* By the sale of ancestral property in execution of a mere money-decree against the father for his separate debt, only the right, title, and interest of the father pass to the purchaser and nothing more, and this holds good whether the purchaser is a stranger or the decree-holder himself. A purchaser at a Court sale cannot set up the

I. L. R. 8 Bom. 489

SALE IN EXECUTION OF DECREE—*contd.*

9. JOINT PROPERTY—*contd.*

25. ——————— *Mitakshara law —Alienation, voluntary and involuntary, by the members of a family governed by the Mitakshara law* *A*, a Hindu governed by the Mitakshara law, after the attachment of a property, part of his an-

Collector, against *C* and *A* to recover possession of the property, on the ground (1) that when it was sold it was not the property of *A*, the judgment-debtor : and (2) that the

NARAIN SHAHAI

I. L R. 5 Calc. 425 : 5 C. L. R 112

26. ——————— *Civil Procedure Code (Act VIII of 1859), s. 264—Execution of decree against a member of an undivided family by sale of his personal interest in the family estate, which was an impartible zamindari ; such interest, by reason of his death before the sale, consisting

SALE IN EXECUTION OF DECREE—*contd.*

9 JOINT PROPERTY—*contd.*

stances, it could sell, and was bound to sell (or), because the debts, the subject of the decrees under execution, not having been incurred by the late

All that required decision was what the Court had

terest passed to the purchaser PETTACHI CHETTIAR v SANGILI VIRA PANDIA CHINNATAMBIAR

I. L. R 10 Mad. 241
L. R 14 I. A. 84

27. ——— *Purchaser at a sale in execution of a decree directing sale of the whole right, title, and interest of grandfather—Assignment by grandsons of the same property subsequently to such sale, effect of.* In 1858 *S* mortgaged certain ancestral property to the first defendant for a term of nine years In 1864, *S*

cousin The certificate of sale was drawn up in

appeal, the lower Appellate Court reversed that decree, and remanded the case for re-trial. Against

regarded as having bargained for, and purchased the entire interest in, the land *Nanomi Babuasin* v. *Modhun Mohun, I. L. R 13 Calc. 21,* followed. SAKHARAM SHET v SITARAM SHET

I. L. R. 11 Bom. 42

28. ——— *Joint Hindu family—Fraudulent hypothecation by father—Suit upon the personal obligation against the father only—Money-decree, sale in execution of—Sale certificate referring to rights and interest of father only in joint family property—Suit by sons for declaration of right to their shares—Form of decree.* If a person in possession of property which originally belonged to the members of a joint Hindu family, of whom the father was one, can produce as his document of title only a sale-certificate showing *him to have bought,* in execution of a money-decree against the father only, the right, title, and interest of the father, then he has bought nothing

father and manager of a joint Hindu family exe-

his part, as he had no interest in this property,

Jugdeep Narain Singh, L. R. 4 I. A. 247 : I. L R. 3 Calc. 198 ; and *Hurdey Narain Sahu* v. *Ruder Perkash Misser, L. R. 11 I. A. 26 : I. L R. 10 Calc. 626,* referred to RAM SAHAI v KEWAL SINGH

I. L. R. 9 All. 672

29. ——— *Decree against father—Sale of ancestral estate in execution of money-decree—Son's rights and liabilities.* A purchased the half share of the judgment-debtors in certain immoveable family property, at a Court

joined as defendants—to recover a share in the land, alleging that his interest was not bound by the sale

SALE IN EXECUTION OF DECREE— *contd.*

9. JOINT PROPERTY—*contd.*

but he did not prove that the debt for which the decrees were passed was immoral, and it appeared that *A* had bargained and paid for the entire estate. The plaintiff was a minor at the time of the sale, and *B* was now the managing member of the family. *Held*, that the Court sale was binding on the plaintiff's share *Nanomi Babuasin* v. *Modhun Mohun, L. R 13 I. A. 1 I. L R. 13 Calc. 21*, discussed and followed. KUNHALI BEARI *v.* KESHAVA SHANBAGA . . . I. L. R 11 Mad. 64

30. ———— *Joint family—Mortgage by father and eldest son—Death of father and eldest son—Decree obtained by mortgagee against minor son represented by the widow—Sale in execu-*

and passed a fresh mortgage-bond to him. In 1868 *A* died In 1869 *B's* assignee filed a suit

tion of this decree, *D* purchased property in dispute in 1870. In 1881 *P* filed the present suit to recover possession of the property, alleging that *B's* purchase was invalid as against him, he having been a minor at the time of the Court-sale. *Held*, upon the merits, that the debt for which the decree was

31. ———— *Joint family—Money-decree—Decree against father alone—Purchaser at execution-sale under such decree—How far such sale binding on the interest of the sons not*

parties contracted about in the case of a conveyance, or what the purchaser had reason to think he was buying, if there was no conveyance, but only a sale in execution of a money-decree In the case of an execution-sale, the mere fact that the decree was a mere money-decree against the father as distinguished from one passed in a suit for the realization of a mortgage security directing the property to be sold, is not a complete test The plaintiff claimed certain property from the defendant, alleging that he had purchased it from a third person who had purchased it at an auction-sale held in execution of a money-decree obtained against the first defendant alone The first defendant was the father of the remaining defendants, and they constituted a joint Hindu family. The sons contended that only the father's interest was bound by the sale; and the lower Courts decided in their favour. On appeal, the High Court reversed the decree, and sent back the case for a fresh decision, on the ground that the lower Courts had decided the question in the case exclusively on the ground that the property had been purchased in execution of a money-decree without referring to the execution-proceedings. KAGAL GANPAYA *v.* MANJAPPA

I. L R. 12 Bom. 691

32. ———— *Sale for debt of father—Suit by son to set aside sale—Failure to prove immoral purpose of debt.* A sale in execution of a decree against a zamindar for his debt purported to comprise the whole estate of his zamindari.

purpose. *Held*, that the impeachment of the debt failing the suit failed; and that no partial interest, but the whole estate, had passed by the sale, the debt having been one which the son was bound to pay. *Hardi Narain Sahu* v. *Ruder Perkash Misser, I L R. 10 Calc. 626 : L. R. 11 I. A. 26*

L. R. 16 I. A. 1

33 ———— *Personal decree against managing member of joint family not impleaded as such—Effect of sale in execution of such decree—Transfer of Property Act, s. 99—Sale of mortgage property in execution of decree on a money-bond for interest due on the mortgage.* The managing member of a joint Hindu family executed in 1878 a mortgage on certain lands, the property of the family, to secure a debt incurred by him for family purposes, and in 1881 he together with his brother executed to the mortgagee a money-bond for the interest then due on the mortgage.

chased by a third person *Held*, that the sale did not convey the interest of another undivided brother who was not a party to the decree. *Held*, further, *per* KERNAN, *J.*, that the sale in execution was invalid under the Transfer of Property Act, s. 99 SATHUVAYYAN *v.* MUTHUSAMI

I. L R. 12 Mad. 325

SALE IN EXECUTION OF DECREE— *contd*

9 JOINT PROPERTY—*contd.*

34. ——————— — *Judgment-debtor's share in joint ancestral estate—Mitakshara law—Execution of decree by sale of such share—Rights of co-sharers not being parties to the decree or execution-proceedings—Sale-certificate.* The question was whether the whole estate belonging to a joint family, living under the Mitakshara, including the shares of sons, or the share of their father alone, passed to the

right, the *primâ facie* conclusion was that the purchaser took only the father's share, a conclusion which other circumstances—the omission on the part of the creditor to make the sons parties and the price paid—not only did not counteract, but supported. The enquiry in recent cases regarding the liability of the estate of co-sharers in respect of transfers made by, or execution against, the head of the family has been this, *viz*, what, if there was a conveyance, the parties contracted about or, what, if there was only a sale in execution, the purchaser had reason to think he was buying. Each case must depend on its own circumstances. *Upooroop Tewary v. Lalla Bandhjee Suhay, I L. R. 6 Calc. 749*, distinguished SIMBHUNATH PANDE *v* GOLAP SINGH . I. L. R. 14 Calc. 572 L. R. 14 I A. 77

35. ——— — — *Hindu law—Joint family—Court-sale of right, title, and interest of the father, effect of* One *R* and his sons were members of an undivided family In execution of certain money decrees passed against *R*, the lands in dispute were sold to various persons, from whom they were afterwards bought by the defendant In 1875 *R* died, and in 1887 his sons and grandson filed this suit against the defendant to recover the lands. They alleged that the lands were service vatan

case a mixed question of law and fact to determine what the Court intended to sell and what the purchaser expected to buy. APPAJI BAPUJI *v.*

KESHAV SHAMRAV. KESHAV SHAMRAV *v* APPAJI BAPUJI . . . I. L. R. 15 Bom. 13

36. ——————— *Son's interest in ancestral property—Death of son before sale* Where the son died between attachment and sale, the judgment-creditor was *held* to have no property in what he had attached, so as to entitle him to sell it in execution of his decree. GOOR PERSHAD *v* SHEODEEN . . . . 4 N. W. 137

37. ——————— *Right of purchaser—Sale of reversionary interest.* *A*, a Hindu was possessed of an undivided moiety in certain

sent possessory right, MACPHERSON, *J.*, gave a decree for the present possessory right, but refused to make any decree as to the contingent reversionary interest of *A* KISTO DHONE GANGOOLY *v* RABUTTY DOSSEE . 1 Ind. Jur. N. S. 324

38. ——————— *Interest of co-widows in estate undivided* The co-widows of one and the same husband take a joint interest in one undivided estate *Semble:* The interest of one or two such widows cannot be sold in execution of decree KATHAPERUMAL *v.* VENKABAI I. L. R. 2 Mad. 194

39. ——————— *Right of purchaser under joint decree—Error in certificate.*

CHOWDHRY ZUHOORUL HUQ *v* GOOROO CHURN ROY . . . . . . 15 W. R. 329

40. ——————— *Decree on mortgage of joint family property executed by the father alone—Sale of joint family property—Subsequent exemptions of son's interests—Suit by purchaser for refund of purchase-money—Rights of auction-purchaser as against the decree-holder and as against the sons—Civil Procedure Code, s 315—Transfer of Property Act (IV of 1882), s. 52.* In execution of a decree for sale, upon a mortgage executed by the father of a joint Hindu family, certain joint family property was put up to sale without specification of the interests of the other members of the family. On suit by the sons, their interests, amounting to four-fifths of the entire property, were exempted. The auction-purchaser thereupon brought a suit against the decree-holders and the sons, to recover fourfifths

SALE IN EXECUTION OF DECREE— *contd.*

9. JOINT PROPERTY—*concld.*

of the price paid by him. *Held*, (i) that the auction-purchaser's remedy by suit was not excluded [illegible]

I. L. R. 13 All. 383; *Sundara Gopalan* v. *Venkata*- [illegible] *Dorab Ally* [illegible] 16; *Ram* [illegible] *2 All* [illegible] *C. 337*; [illegible] *L. R 19* [illegible] *L. R. 21 All. 301*; and *Muhammad Askari* v *Radhe Ram Singh, I. L. R 22 All 307*, referred to. SHANTO CHANDAR MUKERJI v NAIN SUKH (1901)

I. L. R. 23 All. 355

41. ———— *Hindu law—Mitakshara—Joint Hindu family—Mortgage of joint family property executed by the father—Decree and sale of mortgaged property—Suit by sons to recover their shares—Transfer of Property Act (IV of 1882), s. 85—Effect of sale* Where property belonging to a joint Hindu family has been sold by auction, in execution of a decree obtained upon a mortgage of such property executed by the father of the joint family, it is open to the sons to sue for the recovery of their shares in the property so sold, if they were not made parties to the suit in which the decree against their father was obtained, provided that the mortgagee had at the time of suit notice of their interests in the property. But their suit must be based upon some ground which under the Hindu law would free them from liability as sons in a Hindu joint family to pay their father's debts A sale once having taken place, the sons cannot succeed, in a suit to recover the property sold, upon the sole ground that they were not made parties to the original suit *Kaunsilla* v. *Chandar Sen, I L R 22 All. 377*, overruled. *Hargu Lal Singh* v *Gobind Rai, I L R 19 All 541*, and *Bhawani Prasad* v. *Kallu, I. L. R 17 All. 537*, distinguished *Rewa* [illegible]

10. MORTGAGED PROPERTY.

1. ——— **Mortgagor, interest of**—*Sale under money-decree—Sale under decree enforcing mortgage.* There are substantial differences between a sale in execution for a money-decree and a sale under a decree ordering a sale to enforce a mortgage. In the former case the Court proposes to sell whatever interest in the property would, under any circumstances, be available to creditors at the date of the attachment; in the latter case, whatever interest the mortgagor was, under any circumstances, competent to create, and did create at the time of the mortgage. PONNAPPA PILLAI v. PAPPUVAYYANGAR . . **I. L. R. 4 Mad. 1**

2. ——— **Interest taken by purchaser.** Where the rights and interests of a judgment-debtor are sold in execution, the purchaser takes the land to which they relate, subject to such mortgages and leases as may be existing. OOJAGUR ROY v. RAM KHELAWAN SINGH

10 W. R. 384

3. ———— *Proclamation of sale—Mortgages noted in proclamation of sale—Civil Procedure Code, 1882, ss. 282—287.* Claims admitted by parties or established by the decree of a Court should be entered in the proclamation [illegible]

Procedure Code. SHANTAPPA CHEDAMBARAYA v. SUBRAO RAMCHANDRA YELLAPUR

I. L. R. 18 Bom. 175

4. [illegible] existence. It cannot be maintained that the purchaser of property sold under a decree in favour of a [illegible]

5. ———— *Conditional sale executed before sale of execution, but after mortgagee's decree* A purchaser under a decree for sale obtained by the mortgagee under a simple mortgage does not purchase subject to a conditional sale executed by the mortgagor after the prior mortgagee had obtained a decree of sale, but before the property was actually sold. RAJNARAIN SINGH v. SHEERA MEAN . . . . . **7 W. R 67**

6. ———— *Nature of mortgagee's security—Sale by mortgagee—Rights of subsequent mortgagee—Civil Procedure Code, 1859, s. 259.* The security to which a mortgagee becomes entitled under the ordinary form of mortgage in the mofussil is the right to sell the entire estate of the mortgagor as the same existed at the date of the

SALE IN EXECUTION OF DECREE—*contd.*

10. MORTGAGED PROPERTY—*contd*

property to sale the sale is an out-and-out sale of the estate of the debtor, and the purchaser takes the property subject only to those incumbrances which were in existence at that date, though such of the subsequent incumbrancers as may, at the time of the sale, have taken out execution may have a right to satisfy their claims from the surplus proceeds of the sale. In applying s 259 of the Code of Civil Procedure to cases of the above description, the words, "the right, title, and interest of the defendant in the property sold," must be understood as meaning the right, title, and interest which the decree ordered to
which
at the
v. PRA

BROJO KISHOREE DOSSIA v MAHOMED SULEEM 10 W. R. 151

s. c. BRAJARAJ KISORI DASI v. MOHAMMED SALEM . . . . 1 B. L. R. A. C. 152

7. ——— *Right to redeem* Where a decree-holder sells a mortgagor's right and interest in property already mortgaged and declared liable to sale in liquidation of the debt for which it was mortgaged, the purchaser purchases merely the mortgagor's right to redeem. LALLA JOOGUL KISHORE LALL v BHUKHA CHOWDHRY . . . . . 9 W R. 244

8 ——— *Right of purchaser —Rights of respective mortgagees* A mortgage made by way of security for money advanced remains

purchaser. A purchaser at a sale in execution of

vendor was a personal one for a simple debt, not secured by any security connected with any portion of the land in dispute. DHOREE ROY v. BULDEB NARAIN SINGH . . . W. R. 1864, 345

9. ——— Purchase by mortgagee—*Lien of mortgagee—Liability of purchaser—Incumbrances.* Certain mouzahs were granted in zur-i-peshgi lease by *G* to plaintiff's ancestor. After *G's* death, his heir, *F*, pledged one of the mouzahs, B, with others as collateral security, in a bond in favour of plaintiff, and some years later executed a zur-i-peshgi pottah in favour of defendant to obtain possession by paying to plaintiff the money due under the first zur-i-peshgi lease Plaintiff then sued *F* alone on his bond and obtained a decree, in execution of which he sold a share in B and purchased it himself. In a suit for possession and to have the superiority of his lien declared over defendant's zur-i-peshgi,—*Held*, that plaintiff was not entitled to possession until he paid off the whole of the amount advanced by the defendant to clear off the debt due under the first zur-i-peshgi lease. *Held,* also, that the holder of a subsequent incumbrance, by paying off a prior incumbrance, acquires all the rights of the latter so far as the amount actually paid by him for that purpose is concerned BEKON SINGH v. DEEN DYAL LALL . . . 24 W. R. 47

10. — Right of purchaser of mortgaged property—*First and second mortgages.* Where a mortgagee sues upon his mortgage-bond and his claim is decreed, the decree should be sa-

demption If there was a second mortgage, all that it could pass from the mortgagor was his equity of redemption, and the decree in a suit on such mortgage could only authorize the sale of the equity of redemption, unless the first mortgagee was made a party, and his mortgage shown to be invalid and the second mortgage to have priority. DOOLAL CHUNDER DEB v. GOLUCK MONEE DEBIA. 22 W. R. 360

11. ——— *Effect of sale—Parties* The usual mode in the mofussil Civil

One *U* mortgaged certain immoveable property to *A R* (defendant No 1) for R400 on the 7th May 1865. On the death of *U*, the mortgagee *A R* brought a suit (No 311 of 1871) against his widow *K* (defendant No. 2), but did not make his (*U's*) children (who were minors) parties to it. On the 28th July 1871 *A R* obtained a decree for R460,

widow, *K* (defendant No. 2). *K* having failed to satisfy the decree the Court, on the application of

SALE IN EXECUTION OF DECREE—*contd.*

10 MORTGAGED PROPERTY—*contd.*

A R (the decree-holder), sold the mortgaged property on the 19th September 1872 for R400 to the brother of *A R.* On the 7th August 1873 the auction-purchaser obtained a certificate of sale to the effect that he had purchased at the Court-sale "the right, title and interest of *H*" (the widow) in the mortgaged property. On the 17th August 1874 the auction-purchaser sold the property for

... of 1871 and that they were entitled to

contracted by *O.* This decree was reversed on

both the sales having been found to be unimpeach-

fendants Nos. 3, 4 and 5 precluded from redeeming the property which should be delivered up to the plaintiff. ABDULLA SAIBA *v* ABDULLA

I. L. R. 5 Bom. 3

See also SHRINGAPURE *v.* PETHE

I. L. R. 2 Bom. 662

12. ——— *Decrees enforcing mortgages—Priority* Certain immoveable property

SALE IN EXECUTION OF DECREE—*contd.*

10. MORTGAGED PROPERTY—*contd.*

was sold on the same day in the execution of two decrees, one of which enforced a charge upon such property created in 1864 and the other a charge created in 1867. *Held,* that the purchaser of such property at the sale in the execution of the decree which enforced the earlier charge was entitled to the possession of such property in preference to the purchaser of it at the sale in the execution of the decree which enforced the later charge, notwithstanding the latter had obtained possession of the property in virtue of his purchase *Ajoodhya Pershad* v. *Moracha Kooer, 25 W. R. 254,* distinguished JANKI DAS *v.* BADRI NATH

I. L. R. 2 All. 698

13. ——— *Right of prior*

not having been paid, the house was sold at the Court's sale on the 15th July 1870 and purchased by *C.* In an action brought by the plaintiff to recover possession of the house on the ground that he had purchased it on the 2nd August 1868 at an execution-sale under a common money-decree

the plaintiff's purchase in 1868 RAVJI NARAYAN *v* KRISHNAJI LAKSHMAN . **11 Bom. 139**

14. ——— *Sale under mortgage for payment of Government revenue—Rights of respective purchasers.* In 1855 a decree for an ac-

suit for possession by *C* against *B*:—*Held,* that,

SALE IN EXECUTION OF DECREE— *contd.*

10. MORTGAGED PROPERTY—*contd.*

of 1865 had not been made for the purpose of paying Government revenue, as it did not appear that the mortgagee, at the date of the mortgage, knew that there were unpaid creditors of *A*, and that *A's* representatives intended to misapply the money so advanced to them *Greender Chunder Ghose* v. *Mackintosh*, *I. L R 4 Calc 897*, followed. KASSIMUNNISSA BIBEE *v* NILRATNA BOSE

I. L. R. 8 Calc. 79
9 C. L. R. 173 : 10 C. L. R. 113

in execution of his decree, and such property was put up for sale in execution of that decree, and was purchased by *S*. *S* sued, by virtue of such purchase, to recover possession of such property from *C*. *Held*, that, inasmuch as under Act X of 1877 what is sold in execution of a decree purports to be the specific property, and as *C* had purchased the property in suit with notice of the existing lien on it and subject to its re-sale in execution of the decree in execution of which *S* had purchased it, what actually was sold in execution of that decree to *S* was such property, and *S* was entitled to possession of such property under such sale. Sales under Act VIII of 1859 and Act X of 1877, distinguished SHEO RATAN LAL *v* CHOTEY LAL . . . I. L. R 3 All. 647

16 ——— *Unauthorized sale of mortgaged property—Payment by vendor of mortgage-debt—Lien of vendee* The plaintiff as purchaser at a Court's sale sued to recover land in possession of the defendant The defendant alleged that he had bought the land from the widow of the previous owner by whom it had been mortgaged, and that he (the defendant) had paid off the mortgage The previous owner had left a minor son. The lower Courts passed a decree for the

I. L. R. 3 Bom. 234

17. ——— *Sham mortgage*

execution of a money-decree against *J*, and the

SALE IN EXECUTION OF DECREE— *contd.*

10 MORTGAGED PROPERTY—*contd*

plaintiff became the purchaser. Thereupon the defendant attached the land in execution of the decree obtained by him in 1864 The Court found that the mortgage of 1861 was not *a bonâ fide* mortgage In a suit for possession:—*Held*, that the plaintiff was entitled to succeed The decree obtained in 1864, being based upon a colourable mortgage, gave the defendant no claim as against a subsequent *bonâ fide* purchaser for value What was purchased by the plaintiff at the execution-sale *in 1869 was the real interest of J in the lands* in question, not his interest as diminished by a fictitious derogation arising out of a sham transaction GOPI WASUDEV *v.* MARKANDE NARAYAN BHAT . . . I. L. R. 3 Bom. 30

18 ——— *Suit for rent after execution of mortgage-decree. P* got a decree on a mortgage-bond in the terms of a compromise by *C* and others to the effect that the amount due should be paid by instalments, the property mortgaged

under which plaintiff purchased POORNO CHUNDER BOSE *v.* NOBIN CHUNDER GHOSE

14 W. R. 77

19. ——— *Sale of decree-holders' right and interests—Notice of assignment.*

any trusts or obligation in favour of the assignees. NUNHUK SAHOO *v.* JUGGESSUR OOPADHYA

20 W. R. 408

20. ——— *Notice. G* borrow-

SALE IN EXECUTION OF DECREE—*contd.*

10. MORTGAGED PROPERTY—*contd.*

A R (the decree-holder), sold the mortgaged property on the 19th September 1872 for R400 to the brother of *A R.* *On the 7th August 1873 the*

... mortgaged property. On the 17th August 187...

that these defendants had colluded with ...

(respectively the widow, two sons and a daughter of ...

binding on defendants Nos 2, 3, 4 and 5, inasmuch as the debt for which the property was sold had been contracted by *U.* This decree was reversed on appeal, on the ground that the Court-sale extended only to the right, title, and interest of *K* (defendant No 2) in the mortgaged property, and did not affect the rights of defendants Nos. 3, 4 and 5. who were not parties to it On appeal to the High Court.—*Held* that the defendant ...
purchaser
that the s
and sale
both the sales having been found to be unimpeachable in all other respects, and that the defendants Nos. 3, 4 and 5 were entitled to the same relief which they would have obtained if they had been made parties to that suit, *viz.*, the right of redeeming the property by paying off the mortgage. The High Court ...

... plaintiff. ABDULLA SAIBA *v.* ABDULLA

I. L. R. 5 Bom. 3

See also SUBINGAPURE *v.* PETHE

I. L. R. 2 Bom. 662

12. ———————— *Decrees enforcing mortgages—Priority* Certain immoveable property was sold on the same day in the execution of two decrees, one of which enforced a charge upon such property created in 1864 and the other a charge created in 1867. *Held*, that the purchaser of such property at the sale in the execution of the decree which enforced the earlier charge was entitled to the possession of such property in preference to the purchaser of it at the sale in the execution of the decree which enforced the later charge, notwithstanding the latter had obtained possession of the property in virtue of his purchase. *Ajoodhya Pershad* v. *Moracha Kooer*, 25 *W. R.* 254, distinguished JANKI DAS *v* BADRI NATH

I. L. R. 2 All. 698

13. ———————— *Right of prior mortgagee.* On the 31st August 1873 *A* mortgaged

...

Court's sale on the 15th July 1870 and purchased by *C* In an action brought by the plaintiff to recover possession of the house on the ground that he had purchased it on the 2nd August 1868 at an execution-sale under a common money-decree against *A*.—*Held*, that the plaintiff's sale was subject, not only to the mortgage of 1863, but also to the decree upon it under which the ...

14. ———————— *Sale under mortgage for payment of Government revenue—Rights of* ...

in payment, a writ of *fieri facias* was issued, under which the property was sold by the Sheriff of Calcutta, and conveyed by him to *B* on 1st April 1867. Previously to this, the representatives of *A* had, on 11th January 1865,

... the same even if the mortgage

SALE IN EXECUTION OF DECREE—*contd.*

10. MORTGAGED PROPERTY—*contd.*

of 1865 had not been made for the purpose of paying Government revenue, as it did not appear that the mortgagee, at the date of the mortgage, knew that there were unpaid creditors of *A*, and that *A*'s representatives intended to misapply the

nder

ned

I. L. R. 6 Calc. 79

9 C. L. R. 173 : 10 C. L. R. 113

15. ———————— *Money-decree—Decree enforcing hypothecation—Act X of 1877 (Civil Procedure Code), ss. 287, 316—Act VIII of 1859 (Civil Procedure Code), ss 249, 259* Certain immoveable property was put up for sale, under the

in execution of his decree, and such property was put up for sale in execution of that decree, and was purchased by *S*. *S* sued, by virtue of such purchase, to recover possession of such property from *C*. *Held, that,* inasmuch as under Act X of 1877 what is sold in execution of a decree purports to be the specific property, and as *C* had purchased the property in suit with notice of the existing lien on it and subject to its re-sale in execution of the decree in execution of which *S* had purchased it, what actually was sold in execution of that decree to *S* was such property, and *S* was entitled to possession of such property under such sale. Sales under Act VIII of 1859 and Act X of 1877, distinguished SHEO RATAN LAL *v* CHOTEY LAL . . . I. L. R 3 All. 647

16. ———————— *Unauthorized sale of mortgaged property—Payment by vendor of mortgage-debt—Lien of vendee.* The plaintiff as purchaser at a Court's sale sued to recover land in possession of the defendant The defendant alleged that he had bought the land from the widow of the previous owner by whom it had been mortgaged, and that he (the defendant) had paid off the mortgage The previous owner had left a minor son The lower Courts passed a decree for the plaintiff, on the ground that the sale by the widow to the defendant was invalid, as she had not obtained a certificate of administration to her hus-

I. L. R. 3 Bom. 234

17. ———————— *Sham mortgage* In 1861 *J* mortgaged certain lands to the defendant, who in 1864 sued upon the mortgage, and obtained a decree for sale. The decree remained unexecuted by the defendant In 1869 the lands were sold in execution of a money-decree against *J*, and the

SALE IN EXECUTION OF DECREE—*contd*

10. MORTGAGED PROPERTY—*contd.*

plaintiff became the purchaser. Thereupon the defendant attached the land in execution of the decree obtained by him in 1864 The Court found that the mortgage of 1861 was not a *bonâ fide* mortgage. In a suit for possession :—*Held*, that the plaintiff was entitled to succeed. The decree obtained in 1864, being based upon a colourable mortgage, gave the defendant no claim as against a subsequent *bonâ fide* purchaser for value. What was purchased by the plaintiff at the execution-sale in 1869 was the real interest of *J* in the lands in question, not his interest as diminished by a fictitious derogation arising out of a sham transaction. GOPI WASUDEV *v.* MARKANDE NARAYAN BHAT . . . I. L. R. 3 Bom. 30

18. ———————— *Suit for rent after execution of mortgage-decree* *P* got a decree on a mortgage-bond in the terms of a compromise by *C* and others to the effect that the amount due should be paid by instalments, the property mortgaged

Court for rent, and *P* intervened as a party to the

DER BOSE *v* NOBIN CHUNDER GHOSE

14 W. R. 77

19 ———————— *Sale of decree-holders' right and interests—Notice of assignment* Where the rights and interests of decree-holders in a decree are sold in execution, the party purchasing *bonâ fide* without any knowledge of a previous

entitled

free from

assignees.

20 W. R. 408

20. ———————— *Notice* *G* borrowed money from *S*. He then borrowed money from *D*, mortgaging as security the property in suit.

SALE IN EXECUTION OF DECREE— *contd.*

10. MORTGAGED PROPERTY—*contd*

execution of a rent-decree under which they ousted plaintiffs, and got their own names registered as proprietors. Plaintiffs now sued for declaration and enforcement of their rights as purchasers at the above sale. Defendants claimed as purchasers in execution of a money-decree obtained against *G* by the first creditor, *S*, alleging that they paid off the money due to the second creditor, *D*, and were entitled to hold possession, their purchase having been previous to that of the plaintiffs. *Held*, that, in purchasing the rights and interests of *G*, defendants purchased his right to redeem property already subject to two mortgages, and as they purchased with full notice, they could only retain possession by paying off both mortgages *Held*, also, that plaintiffs purchased not merely the equity of redemption, but *G's* rights and interests as they were when the mortgage was created subject to the mortgage held by *D*, but free from subsequent incumbrances. NARAIN SAHOO *v* OCHOOT SAHOO . . 14 W. R. 233

See WAJED HOOSEIN *v* HAFEZ AHMED REZAH 17 W. R. 480

21. ———————— *Money-decree—Mortgage-decree—Notice—Civil Procedure Code (Act XIV of 1882), s. 287.* A creditor obtained two decrees against his debtor, one being a mortgage-decree to enforce his lien on certain property, and the other a simple money-decree. In execution of the second decree the property ...

that the fact that for some purposes it ... time ... the ... notice ... NARAIN SINGH *v.* ROOHOOBUR SINGH I. L. R. 10 Calc. 609

22. ———————— *Priority.* The defendant advanced to *A* four sums of money on four bonds, in each of which certain property was hypothecated. The first two bonds contained a stipulation that, until the debt was discharged, the borrower would ...

he brought the property mentioned above to sale, and became the purchaser The plaintiff now sued for a re-sale of the property by virtue of a mortgage of the same, duly registered. The last two of the defendant's bonds were executed after the Registration Act of 1864 came into force, but were, however, unregistered. *Held*, that, if the plaintiff had come in and offered to satisfy so much of the decree obtained by the defendant as related ...

but the rights of the judgment-debtor, subject to his mortgage; but that, as he did not do so, the auction-sale, having been made in satisfaction ...

23. ———————— *Effect of sale—Estoppel*—On 10th September 1863 *A* mortgaged a house to *B*, who registered the deed, but did not obtain possession of the premises. On 2nd July 1868 *A* mortgaged the same house to *C*, who registered the mortgage-deed and took possession of the premises. On 10th October 1868 *B* sued on his mortgage, and obtained a decree against *A's* son, who was a minor, and who was represented by his mother as his guardian. She, however, had obtained no certificate of administration under the Minors Act, XX of 1864. On 17th December 1869 the mortgaged property was sold by the Court in execution of *B's* decree. The plaintiff bought it, and obtained a certificate of sale. On the plaintiff's attempting to take possession of the property, the defendant, who was *C's* widow and heiress, resisted him, and he thereupon sued to recover it. *Held*, that the plaintiff was entitled to possession. He stood, at least, in the same position as had been occupied by *B* before the sale, and *B*, as prior mortgagee, had a superior title to that of defendant, who claimed under a subsequent deed. Where mortgaged property is sold in execution of a decree ...

I. L. R. 5 Bom. 2

24. ———————— *San-mortgage—Registration of certificate of sale—Civil Procedure ...*

mortgage of previous date. When the Court sells the right, title and interest ...

SALE IN EXECUTION OF DECREE—*contd*

10 MORTGAGED PROPERTY—*contd*

ing equities against the property sold, the registration of the Court's conveyance (*viz*, certificate of sale) cannot enlarge the scope of that conveyance and discharge the property from any unregistered incumbrance which was binding on the judgment-debtor *Per* MELVILL, *J* —In the case of execution-sales under s 287 of the Civil Procedure Code (Act X of 1877), notice is given to purchasers that the sale only extends to the right, title, and interest of the judgment-debtor, and that the Court ordering the sale does not warrant the title. This being so, it seems clear that a person who buys an avowedly doubtful title, and pays for it on that understanding, cannot claim to be a purchaser without notice. SOBHAGCHAND GULABCHAND *v.* BHAICHAND . . . I. L. R. 6 Bom. 193

See LAKSHMANDAS SARUPCHAND *v.* DASRAT
I. L. R. 6 Bom. 168

and RUPCHAND DAGDUSA *v* DALVATRAM VITHALRAV . . . I. L. R. 6 Bom. 495

25. ——————— *Mortgage-debt payable by instalments—Money-decree obtained by mortgagee for two instalments—Sale of mortgaged property in execution of money-decree for such instalments without notice by mortgagee of lien for future instalments—Property sold free of incumbrances—Civil Procedure Code (Act XIV of 1882), ss. 237, 287.* The effect of ss 237 and 287 of the Civil Procedure

in execution of a simple money-decree obtained for some of the instalments due on his mortgage-bond a mortgagee brought to sale the property which he held in mortgage, but in his application for execution did not mention his lien on the property for the instalments that were still to fall due.—*Held*, that the purchaser, if he supposed that he was purchasing the full proprietary title, purchased the property free of the mortgagee's lien. *Agarchand* v. *Rakhma, I L R. 12 Bom. 678*, *Kherraj* v. *Lingaya, I L R 5 Bom 2 ; Sheshgiri* v. *Salvador Vas, I. L. R. 5 Bom 5 ;* and *Dhondo* v. *Ravji, I. L. R 20 Bom 290*, referred to. RAMCHANDRA VITHURAM *v* JAIRAM . I. L. R 22 Bom. 686

26. ——————— *Mortgagee not in possession—Registered lease—Effect of sale in transferring property to purchaser* A mortgaged his land to *B* in 1861, which mortgage was then registered, but the mortgagee did not enter into possession Subsequently, in 1866, *A* leased the same land to *C*. That lease was registered and *C* entered

what the mortgagor had to give him, *viz*, a lease subject to the registered mortgage Where a decree is obtained upon his mortgage by a mortgagee, and the mortgaged property is sold under the decree for the purpose of paying off the mortgagee, the interest of both mortgagor and mortgagee passes to the purchaser The mortgagee is estopped from disputing that such is the effect of the sale, so far as the interest is concerned, although the officer of the Court may only have described the sale as one of the right, title, and interest of the mortgagor It is not the practice in the mofussil to require the mortgagee to convey to the purchaser; the transfer takes place by estoppel SHESHGIRI SHANBHOG *v* SALVADOR VAS
I. L. R. 5 Bom. 5

27. ——————— *Mortgage without possession—Right of mortgagee as against the purchaser—Difference between a mortgage valid as against a private purchaser for valuable consideration and one*

deed of mortgage was not registered. By it defendant No 1 agreed to pay interest at the rate of one pice per rupee per mensem, and it was provided that the mortgagee was to remain in possession for a period of twenty-five years in lieu of principal and interest, and that the mortgagor was not to claim the property back, unless he paid the principal and interest that might accrue due in twenty-five years from the date of the bond. On the 8th July 1872 the land was sold in execution

No 2) that the mortgage did not bind him, because he was a purchaser for value without notice

and was therefore binding as against defendant No. 2, who purchased at a Court-sale under a decree obtained against the mortgagor. A purchaser at such a sale takes only that which the judgment-debtor could himself honestly dispose of. Possession or registration is necessary to validate a mortgage in the Deccan or elsewhere in the Presidency of Bombay (except Gujarat) against a private purchaser for valuable consideration, but not against a purchaser at a Court-sale. BAPUJI BALAL *v.* SATYABHAMABAI
I. L. R. 6 Bom. 490

See SHIVRAM *v.* GENU . I. L. R. 6 Bom. 515

28. ——————— *Unregistered sanmortgage—Sale—Subsequent unregistered mortgage of same property—Decree on latter mortgage and sale*

SALE IN EXECUTION OF DECREE— *contd.*

10. MORTGAGED PROPERTY—*contd*

in execution—Sale certificate registered—Priority—Interest passing on sale of mortgaged property in

In 1886 the same property was mortgaged by *C* alone by a deed which was also unregistered. In 1889 *C's* mortgagee obtained a decree on his mortgage for sale of the mortgaged property, and in execution put up the property to auction in 1892, when defendant purchased it. Defendant got his sale-certificate registered In 1894 the plaintiff brought this suit to enforce his mortgage-lien by sale of the mortgaged property. The defendant contended that, as to *C's* share, his certificate of sale having been registered, his claim had priority to the plaintiff's unregistered mortgage. *Held*, that the plaintiff was entitled to a decree His claim was superior to the defendants The defendant had purchased the interest which *C* had mortgaged in 1889 But that mortgage was unregistered and was therefore subject to the plaintiff's mortgage, which although unregistered, was earlier in date. The defendant, by registering his certificate of sale, could not enlarge the estate which the certificate conveyed to him. By a sale of mortgaged property in execution of a decree obtained by a mortgagee against the mortgagor upon the mortgage, the interest both of the mortgagor and mortgagee passes to the purchaser. But by a sale of mortgaged property in execution of a money-decree obtained by the mortgagee against the mortgagor, the interest of the defendant (mortgagor) alone passes to the purchaser. MAGANLAL *v* SHAKRA GIRDHAR

I. L. R. 22 Bom. 945

29. ——— *Mortgaged land*

at the time of the sale, and in ignorance of which the purchaser has bid for the property and paid the full price. This principle applies, even though the mortgage-deed has been registered In 1867 *R* and *G* mortgaged certain lands to *G R* by a registered deed of that date. In 1870 *G R* obtained a money-decree against *R* and *G*, and in execution put up the mortgaged land for sale. The plaintiff purchased it without notice of the mortgage, and in February 1872 obtained possession through the Court. In the meantime *G R* brought another suit upon his mortgage against

SALE IN EXECUTION OF DECREE— *contd.*

10. MORTGAGED PROPERTY—*contd.*

his morgagors. He obtained a decree and in April 1872 ejected the plaintiff and obtained possession. In 1883 the plaintiff filed the present suit against *R*, *G*, and *G R* to recover the lands. *Held*, that the plaintiff was entitled to recover. *G R* (the mortgagee), when bringing the land to sale in execution of his decree, was bound by s. 213 of the Civil Procedure Code (VIII of 1859) to disclose the limited interest of his judgment-debtors in it By concealing his lien he has induced the plaintiff to pay full value for the property, and he could not therefore retain his lien. By his omission he was estopped from disputing the plaintiff's title. The rule, that registration of a mortgage amounts to notice to all subsequent purchasers of the same property, does not apply to a case where there has been a fraudulent concealment by a judgment-creditor of the extent of his judgment-debtor's interest in the property brought by the judgment-creditor to sale AGARCHAND GUMARCHAND *v*. RAKHMA HANMANT

I. L. R. 12 Bom. 678

30. ——— *Sale of equity of redemption—Suit by mortgagee for sale of mortgaged property—Purchaser not a party to suit—Sale of mortgaged property in execution of decree obtained by mortgagee—What passed—Right of purchaser of equity of redemption—Redemption* On the 21st

of the defendants The plaintiffs, who were not parties to the suit, which resulted in the decree under which the groves were sold, in 1877, instituted this suit for possession of the groves *Held*, that, notwithstanding the sale of 1872, what was sold under the decree of 1877 was the right, title, and interest of the mortgagors, as they existed at the date of the mortgage of the 21st December 1871, with which would go the rights and interest

any puisne incumbrancer or purchaser from the mortgagor prior to the date of mortgagee's decree, and who was not a party to the suit in which the mortgagee obtained his decree, would have the right to redeem the property which the mortgagor would have had, but for the decree. This view is

SALE IN EXECUTION OF DECREE—*contd.*

10. MORTGAGED PROPERTY—*contd.*

consistent with the principles of equity and recognized by the Transfer of Property Act. *Muhammad Samiud-din v. Man Singh, I. L. R. 9 All. 125*, followed. GAJADHAR *v.* MULCHAND

I. L. R. 10 All. 520

31. ——— *Purchase of mortgaged property by mortgagee at judicial sale on leave obtained to bid.* Where mortgagees executed their [illegible]

[illegible]

in the same position as any independent purchasers. MAHABIR PERSHAD SINGH *v.* MACNAGHTEN

I. L. R. 16 Calc. 682
L. R. 16 I. A. 107

DAKSHINA MOHAN ROY *v.* BASUMATI DEBI

4 C. W. N. 474

32. ——— *Equities of mortgagors.* In a suit for possession by the certificated purchaser of one-third of certain mouzahs which had been sold in execution of a decree obtained by the mortgagee against the defendant as mortgagor, it [illegible]

[illegible]

33. ——— *Rights of pur-* [illegible] *in execu-* [illegible] *r holding a* [illegible] *eceded his* [illegible] defendants, [illegible] ree against the same estate, had by leave purchased in execution. Both parties claimed the proprietary right and possessin, the defendants holding the latter. The first of the decrees in date was the plaintiffs' for money against the representatives of the deceased owner of the property, which before then had been mortgaged to the defendants by his widow. The plaintiffs obtained only the equity of redemption, their purchase having been of the right, title, and interest. The mortgagees, having got a decree upon their mortgage against the widow, purchased at the sale in execution, and defended the possession which they obtained. *Held*, that the defendants, in whose favour the decree had been made upon a *bonâ fide* mortgage, without notice that the mort- [illegible]

I. L. R. 22 Calc. 909
L. R. 22 I. A. 129

34. ——— *Purchase of equity of redemption by decree-holder under s. 294 of the Code of Civil Procedure—Execution of decree in respect of balance—Nature of price paid by purchaser on the purchase of the equity of redemption.* *A* mortgaged certain land to *B*, but remained in possession thereof. Subsequently *A* sold a portion of the said land to *C* in consideration of her paying off the mortgage-debt due to *B*. *C* entered into possession, but was unable to satisfy the debt. *C* died, and *A* sued *C's* daughter and legal representative for damages sustained by him from the non-payment of the purchase-money by *C*. *A* obtained a decree, and, the money not being paid as therein decreed, applied for execution, and brought to sale the equity of redemption vested in *C* by virtue of the sale. By leave of the Court, *A* bid at the Court sale and bought the right of redemption and recovered back possession of the land sold to *C*. Subsequently he again applied for execution of the decree in respect of the balance by attachment of certain moveable property, and contended that he was bound to give the defendant credit only for the price which he actually paid at the Court-sale for the equity of redemption. The defendant contended that *A* was bound to give credit for the full value of the land under mortgage. *Held*, that, having obtained leave of the Court to bid under s. 294 of the Code of Civil Procedure, *A's* position was that of an independent purchaser, and that the price, which an independent purchaser must be taken to pay when he buys property under mortgage for a cash payment made to the mortgagor on account of his equity of redemption, is the cash payment for the [illegible]

I. L. R. [illegible] Mad. [illegible]

35. ——— *Application for re-sale in execution of decree—Judgment-debtor purchasing benami—Rights of mortgagee.* Upon an application made on the 28th August 1891 for execution of a mortgage-decree, the mortgaged property was sold and the judgment-debtors purchased it benami at a low price. Thereupon the decree-holders made an application on the 12th November 1891, asking the Court to set aside the

SALE IN EXECUTION OF DECREE— *contd*

10. MORTGAGED PROPERTY—*contd.*

benami purchase and re-sell the property. The first

High Court in second appeal accepted the finding of the Appellate Court as regards the purchase being benami, but upheld the sale with the remark that the said property and any other property of the debtors might be sold in satisfaction of the mortgage-debt. This judgment was passed on the 4th August 1893 On an application for execution made on the 3rd December 1894, objections were raised on the ground that the property was not liable to be sold again in execution of this decree. *Held*, that the previous sale under the mortgage-decree was no bar to a fresh sale under the same decree. *Ram Autar Singh* v. *Tulsi Ram, 5 C L. R. 227; Otter* v. *Lord Vaux, 2 K & J. 650, and 6 DeG. M. & G. 638;* and *Lutf Ali Khan* v. *Futteh Bahadoor, I. L. R. 17 Calc 32,* referred to RAGHUNATH SINGH SAHAY v. LALJI SINGH
I. L. R. 23 Calc. 397

36. ——— *Transfer of Property Act (IV of 1882), s 88—Suit for sale on a mortgage—Purchase at auction-sale by decree-holder—Further execution sought against other property comprised in the mortgage—Amount for which decree-holder must give credit to mortgagee* A mortgagee decree-holder in a suit for sale under s 88 of the Transfer of Property Act, 1882, brought part of the mortgaged property to sale, and, with the leave of the Court, purchased it himself. The amount

was not bound to give credit to the mortgagor to the amount of the market value of the mortgaged property purchased by him, but only to the amount of the actual purchase-money. *Mahabir Parshad Singh* v. *Macnaghten, I. L R. 16 Calc. 682; Sheonath Doss* v. *Janki Proshad Singh, I L R 16 Calc. 132;* and *Ganga Pershad* v. *Jawahir Singh, I. L. R. 19 Calc. 4,* referred to. MUHAMMAD HUSEN ALI KHAN v. DHARAM SINGH . I. L R. 18 All. 31

37. ——— *Transfer of Pro-* ... *for sale* ... *Proce-* ... and ... will apply to a sale held in virtue of an order absolute for sale passed under s. 89 of the Transfer of Property Act, 1882, although no power is given under that Act to postpone the operation of an order under s. 89 RAJARAM SINGHJI v. CHUNNI LAL . . . I. L. R. 19 All 205

But *see* KEDARNATH RAUT v. KALI CHURN RAM
I. L. R. 25 Calc. 703

SALE IN EXECUTION OF DECREE— *contd.*

10. MORTGAGED PROPERTY—*contd.*

38. ——— *Sale in execution of a decree for sale on a mortgage—Stay of sale on payment into Court of decretal amount and costs—Civil Procedure Code, s. 291—Transfer of Property Act (IV of 1882), s. 89. Held,* that s. 291 of the Code of Civil Procedure must be taken to have modified s. 89 of Act IV of 1882 when the debt and costs (including the costs of the sale) are tendered to the officer con-

205, followed. HARJAS RAI v. RAMESHAR
I. L R. 20 All. 354

39 ——— **Administration suit**—*Mortgage suit—Residency legatee, mortgage by—Administration, subsequent, of testator's estate—Receiver of testator's estate pending administration—Receiver, sale*

... for sale ... nt for ad- ... had been ... that suit

of the testator's estate had not been completed. *Held,* that the sale could not be held by the Re-

5 C. W. N. 408

40 ——— **Civil Procedure Code, 1882, ss. 310A, 311,**—Ss 310A and 311 of the Code of

41. ——— **Limitation**—*Mortgage—Pay-*

SALE IN EXECUTION OF DECREE— *contd.*

10 MORTGAGED PROPERTY—*contd.*

(XV of 1877) from instituting a suit, to enforce his mortgage lien over the property comprised in the order rejecting the application, more than a year after the date of the order A subsequent mortgagee, in paying off prior mortgages, has a right to keep them alive for his own benefit or to

Bandho Shaw Chowdhry v. *Nistarini Dasi*, *3 C. W. N 153*, and *Amar Chandra Kundu* v *Roy Golok Chandra Chowdhuri*, *4 C. W. N 769*, relied upon BHIKU v. SHUJAT ALI (1901)
I. L. R. 29 Calc 25

42 **Sale for arrears of revenue** —*Mortgage—Execution of decree—Sale of mortgaged property for arrears of revenue—Purchase of the same by the mortgagor—Realization of surplus sale-proceeds by mortgagees—Subsequent application to sell the same property under a decree on the mortgage.* A mortgagor, by allowing the revenue payable in respect of the mortgaged property to fall into arrears, caused such property to be sold at auction by the Revenue-authorities, and it was purchased by the mortgagor *benami* in the name of a third person. The mortgagees believing that this purchase was a genuine purchase, applied for and obtained payment out of Court of the surplus realized by the sale over and above the revenue due Subsequently the mortgagees discovered the true nature of the purchase made by the mortgagor at the Revenue Court sale, and sought to have the

being sold in execution of the mortgage decree. *Otter* v. *Lord Vaux*, *6 De Gex, M and G. 638*, and *Raghunath Sahay Singh* v. *Lalji Singh*, *I. L. R 23 Calc. 397*, referred to GANGA SAHAI v. TULSHI RAM (1903) **I. L. R. 25 All. 371**

43. ——— **Transfer of Property Act** (*IV of 1882*), *s. 89—Order absolute for sale —Notice to defendant of application—Practice* Notice need not be given to a defendant before an order absolute for sale is made under s. 89 of the Transfer of Property Act. KRISHNA AYYAR v. MUTHUSAMI AYYAR (1901)
I. L. R. 25 Mad. 506

44. ——— *Act IV of 1882, ss. 67, 85, 99—Mortgage—Sale under a decree of equit*

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gagees leased the mortgaged property to Nathu Ram, who, as security for the rent due from him, further pledged his equity of redemption. The original mortgagees died. The rent due under the lease fell into arrears; and the successor in title of the mortgagees instituted a suit against the mortgagor, to recover the amount due to him for arrears of rent by sale of the equity of redemption of the property On the 27th November, 1889, a decree for sale was passed, and on the 31st of March, 1890, an appeal against the decree for sale was rejected. The property was accordingly sold by virtue of the decree for sale, and was purchased by the successor in title of the mortgagees on the 20th of April, 1891

sale had taken place under a decree which had become final, it could not at that time be upset. *Maladin Kasodhan* v. *Kazim Husain*, *I. L. R. 13 All. 432*, and *Tara Chand* v. *Imdad Husain*, *I. L. R 18 All. 335*, referred to PARMANAND v DAULAT RAM (1902) **I. L. R 24 All. 549**

45. ——— *Decree—Setting aside sale—Void sale—Code of Civil Procedure (Act XIV of 1882), s 244—Mortgage—Sale of mortgaged property—Money decree—Transfer of Property Act (IV of 1882), ss 67, 99* A sale in contravention of the provisions of s 99 of the Transfer of Property Act is void, although a third party is the pur- ... was under undivided ... *ran Singh* ... *dass* v. *Kali Kumar Roy*, *I. L. R. 30 Calc. 463*, referred to. Such a sa... Code of ... *Pakuran, I* ... SINGH v.

I. L. R. 33 Calc. 263

46. ——— **Application to set aside sale**—*Execution of decree—Who have a right to apply—Revision* A mortgagee sued for sale on his mortgage impleading, besides the mortgagee, two persons, who claimed a title to the mortgaged property ... was decid... mortgage ... to the oth... obtained a decree for sale and caused the mortgaged property to be sold by auction. The defendants,

... were not entitled to make an application under s. 310A of the Code, they not being judgment-debtors whose property had been sold. *Per* RICHARDS,

SALE IN EXECUTION OF DECREE—*contd.*

10. MORTGAGED PROPERTY—*contd.*

J.—Whether or not applicants were entitled to make the application, which they did make (and they possibly were so entitled) the Court below did not fail to exercise a jurisdiction vested in it by law nor did it act in the exercise of that jurisdiction illegally. Its order was, therefore, not open to revision. *Rajah Amir Hasan Khan* v. *Sheo Baksh Singh, L. R. 11 I. A 237*, referred to. RAM SINGH *v.* SALIG RAM (1905) . I. L. R 28 All. 84

47. ———— *Money-decree—Sale of mortgaged property—Transfer of Property Act (IV of 1882), s. 99—Setting aside sale—Confirmation of sale—Fraud—Civil Procedure Code (Act XIV of 1882), s. 244* A sale held in contravention of

BEHARI LAL KIRTANIA (1908)
I. L. R. 35 Calc. 61
11 C. W. N. 1011

48. ———— Misrepresentation by auctioneer, an officer of Court—*Sale by Court under decree on a mortgage—Contract Act (IX of 1872), ss 18 and 19, Exception—Bid made under misapprehension caused by such misrepresentation—Suit to set aside sale—Purchaser of worthless equity of redemption—Reference of the matter to the Court—Civil Procedure Code (Act XIV of 1882), s 306.* A sale of mortgaged property in execution of a decree was conducted by two officers

only the interest of the judgment-debtor was for sale. Being asked by a native present to explain the terms of the proclamation, the auctioneer made a statement in Hindustani to the effect that "there are four mortgages; on this account there is a sale by order of the Court, the title-deeds can be seen at the Registrar's office," from which the plaintiff who casually attended the sale, was led to believe that the property was being sold at the instance of the mortgagees and free of incumbrances and he bid for the property which was knocked down to him for a sum nearly equal to its full value. After the sale he discovered that it had been sold subject to mortgages amounting to more than its value and that he was the purchaser of the equity of redemption, which was worthless. In a suit to set aside the sale on the ground that he bid for the property under a misapprehension caused by the misrepresentation made by the auctioneer, the

SALE IN EXECUTION OF DECREE—*contd.*

10. MORTGAGED PROPERTY—*contd.*

incumbent on the Court to be scrupulous in the extreme and very careful to see that no taint or touch of fraud or deceit or misrepresentation is found in the conduct of its ministers Here the plaintiff had been misled by the accredited agents of the Court which could not under such circumstances enforce against him so illusory and unconscientious a bargain as the sale to the plaintiff was shown to be. *Held*, also, that the plaintiff had no means of discovering the truth, while the sale was going on, and he was *perfectly justified in relying* on the statement as to the property which was being sold made by the auctioneer. The exception in s. 19 of the Contract Act had no application to the case *Held*, further, that the Chief Clerk was right in referring the matter to the Court, and in not proceeding under s. 306 of the Civil Procedure Code. KALA MEA *v.* HARPERINK (1908)
I. L. R. 36 Calc. 323

49. ———— Simple mortgage—*Purchaser at such sale cannot maintain suit for possession against purchasers of the equity of redemption subsequent to mortgage, but prior to suit, who were not joined as parties. A*, who held lands in kanom tenure, executed a simple mortgage on them in favo

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part, ... D became purchaser at the sale held in execution of a decree In the suit by *D* against *A* and *C* for possession of

as a simple mortgagee. *Hargu Lal Singh* v. *Gobind Rai, I. L. R 19 All 541*, followed ENTHOLI KIZHAKKIKANDY KANARAN *v.* VALLATH KOYLIL UNNOOLI (1907) . . I. L. R 30 Mad. 500

50. ———— Application by mortgagor for restoration to possession—*Decree—Execution of decree—Sale under decree on mortgage—Subsequent appeal from mortgage decree when Ap-* ... *amount* ... *gors—* ... *to pos-* ... *e (Act* ... *order giving possession to mortgagees* The appellants, who were mortgagees, on 20th December, 1900, obtained in a suit on their mortgage in the Court of a Subordinate Judge an ordinary decree for sale

SALE IN EXECUTION OF DECREE— *contd.*

10 MORTGAGED PROPERTY—*contd*

sold on the application of, and purchased by, the

made a decree for sale conditional on the payment by the respondents, the mortgagors, of an increased amount within six months from the date of the appellate decree. The respondents, who had already unsuccessfully taken objections under ss. 311 and 244 of the Civil Procedure Code to the sale being confirmed, then made an application under s. 244 for restoration to possession on the ground that the High Court had by its decree on appeal so modified the decree of the Subordinate Judge as to render the sale under it illegal The Subordinate Judge held that the application was not one within the purview of s. 244, that it was barred by limitation, and that the decree of the High Court did not invalidate the sale, and dismissed the application The High Court on appeal, holding that the application was rightly made under s. 244, and was not barred, and that the sale under a decree, which was subsequently substantially altered on appeal, could not be otherwise than bad, reversed the Subordinate Judge's decree and directed that possession should be restored to the respondents, but refused to disturb the possession of the appellants pending the appeal to His Majesty in Council. *Held*, by the Judicial Committee, that the decree of the High Court was

to take advantage of the error in the decree of 27th January 1904 would entail expense and delay; that the merits of the case were not with them, and they had not offered to redeem the property. Their Lordships therefore allowed the appeal, and restored the decree of the Subordinate Judge. RAM GOLAM SAHU *v.* BARSATI SINGH (1908)

I. L. R. 36 Calc. 336

51. ———— *Rights of purchasers at different Court sales of same property—Purchaser at prior sale on subsequent mortgage takes the entire interest of judgment-debtor—Fraudulent sale, proof of—Relief not claimed in plaint, granting of.* The same property was sold by Court at different times in execution of two mortgage decrees obtained against such property The first sale was in execution of the decree on the subsequent mortgage obtained in a suit in which the prior mortgagee was not impleaded and was held while the suit on the first mortgage to which the second mortgagee was no party was pending. The purchaser at the subsequent sale on the first mortgage sued to recover possession from the prior purchaser of the property and the plaint also contained a prayer for such other relief as the plaintiff may be found entitled to:—*Held*, that all the interest of the judgment-debtor passed to the pur-

SALE IN EXECUTION OF DECREE— *contd*

10 MORTGAGED PROPERTY—*concld.*

maintainable *Venkatanarasammah* v. *Ramiah, I. L R 2 Mad. 108*, followed. *Alatti Moidin Kutty* v. *Chirayil Ambu, I. L. R. 26 Mad. 486*, followed The rights of a prior or subsequent encumbrancer will remain unaffected by a sale held in execution of a decree to which he was no party. Any such rights of the plaintiff cannot be enforced in the suit brought by him for possession, as a claim for redemption or for sale is not of the same nature as a claim for ejectment and

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I. L. R. 32 Mad. 485

11 DECREES AGAINST REPRESENTATIVES

1. ———— **Liability of legal representative of deceased person**—*Right of bonâ fide purchaser without notice at execution sale.* A *bonâ fide* purchaser without notice for valuable consideration at an auction sale is, as a general rule,

is bound to satisfy himself that the party sued as the representative of the deceased is his legal representative

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No

2 ———— **Decree against widow in representative capacity**—*Right and interest acquired by purchaser* A suit was brought against *A's* widow upon a bond given by *A*. In execution of the decree obtained against the widow, *A's* property was put up and sold. The advertisement of sale in one place said that the

SALE IN EXECUTION OF DECREE—*contd.*

II. DECREES AGAINST REPRESENTATIVES—*contd.*

(*Dissentiente* CAMPBELL, *J.*, who held that a public sale carried only the rights which were expressed, and not those which ought to have been expressed, in the proclamation of sale.) BUKSH ALI SOWDAGUR *v.* ESSAN CHUNDER MITTER **W. R. F. B. 119**

s.c. ISHAN CHUNDER MITTER *v.* BUKSH ALI SOWDAGUR . . . . . . **Marsh 614**

See also COURT OF WARDS *v.* COOMAR RAMAPUT SINGH . . . . . **10 B. L. R. 294**

s.c. GENERAL MANAGER, RAJ DURBUNGAH *v.* RAMPUT SINGH . . **14 Moo I. A. 605** **17 W. R. 459**

and SOTISH CHUNDER LAHIRY *v.* NILCOMUL LAHIRY . . . . . **I. L. R. 11 Calc. 45**

3. ———— Property sold as right and interest of widow—*Property wrongly described—Right of deceased debtor—Purchaser, Right acquired by.* Where in execution of a decree in the

original debtor in the property, though in the sale notification those of the widows were advertised to be sold. TARAKANT BHUTTACHARJEE *v.* LUKHEE DABEA. TARAKANT BHUTTACHARJEE *v.* WISE . . . . **2 Hay 8**

4. ———— Interest of persons as representatives—*Property wrongly described—Civil Procedure Code, 1859, s. 203.* Where a property is described at the time of an execution sale as the property of judgment-debtors who were sued as mere representatives of a deceased judgment-debtor, *primâ facie* what is sold is the property of the deceased debtor; and even if the decree is in

5. ———— *Contents of application for execution and of notification and proclamation of sale—Sale of interest of minor—Civil Procedure Code, 1859, ss. 212, 249.* Where an application for execution of a decree omits to give the names of all the parties as required by s. 212,

249 are intended to inform persons what is to be sold, and to give the names of the parties defendants whose rights and interests in it are to be sold. *In the case of a sale in execution of a decree against a party as a representative of a deceased person,* the proper course is to give in the description of the property to be sold the name of the defendant against whom the decree was obtained, and, in describing what was to be sold, to say the right,

property of the minor, the property not having been described as the property of the minor. ABDOOL KUREEM *v.* JAUN ALI . . **18 W. R. 56**

6. ———— *Guardian not properly appointed—Act XX of 1864—Parties—Mad. Reg. V of 1804—Form of decree.* J (defendant No. 1) brought a suit (No. 374 of 1861) against the plaintiff's father *G*. On a mortgage-bond, dated the 2nd April 1856, *G* having died before any decree was passed, his widow (plaintiff's mother) was substituted as defendant, and a decree was made against her *ex parte*. It was, however, set aside after her death on the application of *M* (defendant No. 2), the sister of *G*, on the ground of want of due service of process upon *G* and his widow. *M* was substituted as defendant in the suit, and a new decree was made in her favour.

by the Dis-

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Court, the

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J for R250. *J* obtained certificate of sale headed thus "*J*, son of *L*, plaintiff; *G*, son of *N*, deceased, supplement of substitute) his sister *M*, defendant;" and it certified that *J* had purchased "all the right, title and interest which the said defendant had in the said property." *J* was put into possession of the property. In 1877 the

that decree was reversed by the District Judge,

SALE IN EXECUTION OF DECREE—*contd.*

II. DECREES AGAINST REPRESENTATIVES—*contd*

on the ground that the plaintiff had not been represented in the previous litigation by a guardian duly appointed under Madras Regulation V of 1804, and was no party to it He accordingly allowed the plaintiff's claim On second appeal to the High Court —*Held*, that on the death of *G*, the plaintiff was his sole heir; that the equity of re-

Regulation V of 1804, ss. 2, 10, 23, or under Act XX of 1864, nor was she appointed his guardian *ad litem* in the mortgage suit *Ishan Chunder Mitter v Buksh Ali Soudagur, Marsh. 614*, distinguished. JATHA NAIK *v* VENKATAPA

I. L. R. 5 Bom 14

7. ——— *Sale in execution of a decree against a deceased person represented by a minor son—How far such sale affects interest of an heir not party to decree or execution-proceedings* K, a Mahomedan woman, who was a co-sharer in a certain khoti vatan, died indebted, and was sued after her death as "represented by her minor son represented by his guardian" A decree having been obtained against *K*, as so represented, her share in the khoti was put up for sale in execution, and was purchased by the plaintiff who obtained a sale-certificate reciting that the right, title, and interest of *K* in the said khoti had been purchased by him He now sued the defendants, who were *K's* co-sharers in the khoti, to recover the profits of *K's* share, which they had received. *K*, besides her minor son, had left her surviving a daughter who had not been made a party to the suit or to the execution-proceedings, and the defendants contended that her share in her mother's estate had not passed to the plaintiff *Held*, that the plaintiff was entitled to the whole of *K's* share The debt due by *K* was one for which the daughter was equally responsible; and

8 ——— Representatives of deceased Mahomedan—*Sale subject to mortgage—Power of heirs to alienate.* The heirs of a deceased Mahomedan mortgaged some property of their ancestor. After the mortgage, a judgment-creditor, in respect of a debt due from the estate of their ancestor, attached and sold the mortgaged property in execution of his decree *Held*, that the sale was subject to the mortgage. *Held*, also, that the question with respect to the powers of the heirs and the rights acquired by the mortgagee and the purchaser under the execution, in a suit between the latter, was to be determined not by the Mahomedan law, but by the principles of "justice, equity, and good conscience" *Semble:* That even if the Mahomedan law applied, the sale in execution would be subject to the mortgage CAMPBELL *v.* DELANEY . . . . . Marsh. 509

9 ——— *Purchaser of share of estate, rights of—Purchase from some of the heirs—Absent heir, reappearance of* B R, a Mahomedan, had incurred debts for repairs to a house of which he owned an 8 annas share, and after his death his daughter *S*, who was entitled to a 5 annas share of his estate and who had taken charge of his property and obtained a certificate

session of the share so purchased by him —*Held*, that *S* did not represent the whole estate of *B R*, and the share purchased by the plaintiff did not pass under the execution sale to *H;* the plaintiff, therefore, was entitled to recover HENDRY *v.* MUTTY LALL DHUR. . I. L. R. 2 Calc. 395

10. ——— *Purchase of interest of some of the heirs—Heir not party to suit*

widow nor *B*, who was then absent from the country, were parties to the suit. The Bank, in execu-

SALE IN EXECUTION OF DECREE— *contd.*

11. DECREES AGAINST REPRESENTATIVES *—contd.*

(Markby and Ainslie, *JJ.*, dissenting), that the decree and the execution founded upon it did not affect the share of *B* in the estate of *A*, and consequently that the property in question did not pass to the defendant under the sale made by the Sheriff. Assamathemnessa Bibee *v.* Lutchmeeput Singh . . . I. L. R. 4 Calc 142

s c. Ashruf Ali *v.* Lutchmiput Singh.
2 C. L. R. 223

11. ———— *Mahomedan law—Decree against heir of deceased Mahomedan* Under Mahomedan law, a decree against one heir of a deceased debtor cannot bind the other heirs. A mortgage having been executed ...

... party to the suit A decree was made by consent, and in execution of that decree the right, title, and interest of the mortgagor were sold, the assignee of the sister then sued the purchaser to recover her 6 annas share without making the original mortgagee a party. *Held*, that the mortgagee was not a necessary party to the suit, and that the share of the sister, notwithstanding that the right, title, and interest of the mortgagor had been ... that the ... re-cove ...

11 C. L. R. 268

12. ———— *Civil Procedure Code, s 234—Sale in execution of decree against deceased Mahomedan's estate* ... *deceased* ... *to be* ... ing her ... represen ... obtained against *D*, the creditor attached certain land which belonged to F, and made her husband and two of her children parties to the execution-proceedings. The land was sold and purchased ...

... being minors at the time, had not been represented by a guardian appointed by the Court, that the sale was valid. Kanhammad *v.* Kutti

I. L. R. 12 Mad. 90

13. **Mortgage by one of the heirs of deceased**—*Direction in will for payment of debts—Decree against heirs for debt of ancestor—Charge on property* A testator by his will directed payment of all his debts, and subject thereto devised his property to his heirs. After one of the testator's creditors had obtained a decree against the heirs in their representative capacity, which by its terms was to be satisfied out of the assets left by the testator, one of the heirs mortgaged his share in twelve properties left by the testator Subsequent to the mortgage, one of the ...

... the direction in the will for payment of debts nor the decree in the creditor's suit created a charge on the property of the testator, the property sold ...

... *Hossein v. Dooli Chund, I. L. R. 4 Calc. 402*, distinguished. Ram Dhun Dhur *v.* Mohesh Chunder Chowdhry

I. L. R. 9 Calc. 406 : 11 C. L. R. 565

12 RE-SALES

1. ———— **Defaulting purchaser, liability of**—*Civil Procedure Code (Act X of 1877), ss. 293, 297, 306, 308* The provisions of s. 293, Act X of 1877 (Civil Procedure Code), for making a defaulting purchaser at a sale liable for any deficiency on a re-sale, extend to all sales, whether of moveable or immoveable property, and also to re-sales held under ss. 297, 306 and 308 Ramdhani Sahai *v.* Rajrani Kooer

I. L. R 7 Calc. 337 : 9 C. L. R. 23

2. ———— **Time allowed for payment of purchase money**—*Civil Procedure Code, 1859, s 251—Discretion of officer conducting sale to allow reasonable time for payment of purchase-money* The provisions of s. 251 of the Civil Procedure Code give the officer conducting a sale of moveable property a discretion to allow the purchase-money to be paid at a reasonable time after the sale had been made Farreed Alum *v.* Sheo Charun Ram . . . . 4 N. W. 37

3 ———— *Civil Procedure Code, 1859, s 254, computation of period under—* In computing the fifteen days allowed for payment of the balance of the purchase-money under s. 254, Act VIII of 1859, the day of sale was excluded Amanee Begum *v.* Koorban Ali

3 Agra 204

4. ———— **Failure of purchaser to pay deposit**—*Civil Procedure Code, 1859, s. 254. —Failure to deposit, re-sale on* According to s. 254, Civil Procedure Code, 1859, the property had to be put up again for sale on the purchaser failing to make deposit; and it was the deposit only which could be forfeited, and not any right ...

... 7 A. ... 110

5 ———— **Defaulting purchaser**—*Amount leviable from defaulting purchaser—Interest—Civil Procedure Code, 1859, s. 254.* When

SALE IN EXECUTION OF DECREE— *contd.*

12. RE-SALES—*contd.*

See SOORTJ BUKSH SINGH *v.* SREEKISHEN DOSS 6 W. R. Mis. 126

6. ——— *Failure to pay deposit—Failure to pay balance of purchase-money—Civil Procedure Code, 1859, s 253.* The provisions of s. 253, Act VIII of 1859, were held applicable in a case where the re-sale did not forthwith take place on the day of the sale, but on a subsequent date. It was only on failure of a purchaser to pay in the balance of the purchase-money under s. 254, and not on failure of the purchaser to make the deposit required by s 253, that the purchaser could be compelled to pay up the difference between the first and second sales. AJOODHYA PERSAD *v.* GOPAL DUTT MISSER . 17 W. R. 271

7. ——— *Civil Procedure Code, 1877, ss 293, 294—Failure to pay deposit—Re-sale—Redress against defaulter—Bidding without permission of Court—Benami purchase.* A purchaser of property at a Court-sale who fails to pay the deposit (25 per cent. at the purchase-money) directed to be paid by s. 306 of the Civil Procedure Code is a defaulting purchaser within

[illegible]

8. ——— *Civil Procedure Code, 1859, s. 254* A purchaser at an execution-sale having defaulted to pay in the purchase-money, the property was ordered to be re-sold. Before, however, the re-sale took place, another sale of the same property was effected at the instance of another judgment creditor, but a lower price than on the first occasion. *Held*, that there was no re-sale such as was contemplated in ss 253 and 254, Act VIII of 1859, and that the first purchaser was not

[illegible] and the [illegible] A MOYEE [illegible] W. R. 14

9. ——— *Act VIII of 1859, s. 254.* In execution of a decree, certain property of the judgment-debtor was attached and put up for sale, and a portion thereof was knocked down to a purchaser for a sum sufficient to satisfy the decree The purchaser, however, having made default in payment of the purchase-money, the property was again put up for sale, and the portion previously sold was purchased by the decree holder at a price less than the amount bid for it in the

[illegible]

ally sold. KHERODA MAYI DASI *v.* GOLAM ABARDARI . . 13 B. L. R. 114 : 21 W. R. 149

10. ——— *Civil Procedure Code, 1859, s. 254. Held*, by PHEAR, J. (AINSLIE, J., *dissentiente*), that if for any good reason the auctioneer at an execution-sale under the Code of Civil Procedure does not accept as purchaser the person named by the highest bidder as his principal, he cannot make the bidder himself purchaser against his will; he must simply declare that no sale has been effected and reopen the bidding. *Held*, by PHEAR, J. (AINSLIE, J. dissenting), that where

[illegible]

price became recoverable from the apparent first purchaser under Act VIII of 1859, s. 254, and recourse should first have been had to *D K*, who should have been allowed to show cause against an order of payment. HUREE RAM *v.* HUR PERSHAD SINGH . . . . . . 20 W. R. 80

Held (on appeal under the Letters Patent confirming the judgment of PHEAR, J.), that the party purchasing at an execution-sale under the

[illegible]

11. ——— *Civil Procedure*

[illegible]

I. L. R. 2 Bom. 562

12. ——— *Civil Procedure Code, 1882, s 293—Defaulting purchaser answering*

[illegible]

value of the property having been changed, between the sale and re-sale, owing to causes beyond the control of any person, the decree-holder, if entitled to claim damages against a defaulting purchaser at the first sale, must proceed against him by way of suit,

SALE IN EXECUTION OF DECREE— *contd.*

12. RE-SALES—*contd.*

and not by an application under s 293. BAIJNATH SAHAI *v.* MOHEEP NARAIN SINGH
I. L R. 16 Calc 535

13. ——— *Civil Procedure Code, 1882, ss. 293, 306—Liability of defaulting purchaser.* At a sale in execution of a decree a decree-holder, who had obtained leave to bid, was

sale; the petition was rejected. On appeal —

I. L R. 12 Mad. 454

14. ——— *Civil Procedure Code, s. 293—Order for recovery of deficiency on re-sale—Right of suit to set aside order—Certificate of amount of deficiency* *Held,* that a suit will lie to

NANDAN RAI . . . I. L. R 18 All. 22

15. ——— *Civil Procedure Code (Act*
—Auction
meaning
purchase-

sold" which occur in s. 306. *Ramanam Sahai v Raj Rani Kooer, I L R 7 Calc 337,* relied upon

SALE IN EXECUTION OF DECREE— *contd.*

12. RE-SALES—*concld.*

property of the former tenant. SAMIRADDI KHALIFA *v.* HARIS CHANDRA
3 B. L. R. A. C. 49 : 13 W. R. 451 note

WAHID ALI *v.* SADIQ ALI.
12 B. L. R. 487 note : 17 W. R. 417

MOJON MOLLO *v.* DULA GHAZI KULAN.
12 B. L. R. 492 note

PRAN BANDHU SIRKAR *v.* SARBASUNDARI DEBI.
3 B. L. R. A C. 42 note : 10 W. R. 434

TIRTHANUND THAKOOR *v* PARESMON JHA.
10 B. L. R. 142 note : 13 W. R. 449

DOWLUT GAZI CHOWDHRY *v.* MUNWAR.
12 B L. R. 485 note : 15 W. R. 341

17. ——— *Collector, power of, to set aside a sale and to order a re-sale.* A sale

perty for R650 The purchase-money was duly paid into Court. Subsequently a third party applied to the Collector to set aside this sale, and offered R800 for the property. The Collector

I. L. R. 15 Bom. 684

See NARAYAN *v.* RASULKHAN.
I L. R. 23 Bom. 531

13. *PURCHASERS, TITLE OF.*

(*a*) GENERALLY.

1. ——— Title given by sale—*Implied*

KRISHNAPA VALAD SANTU *v* PANCHAPA VALAD GURPADAPA . . . . **6 Bom. A C. 258**

JUMMAL ALI *v* TIRBHEE LALL DOSS.
12 W. R. 41

2. ——— *Principle of "caveat emptor."* Where a party purchases an estate sold in execution after notice that parties

SALE IN EXECUTION OF DECREE—*contd.*

13. PURCHASERS, TITLE OF—*contd*

(a) GENERALLY—*contd*

[illegible]

3. ——— *Ground for setting aside sale—Writ of fieri facias* A sale by the Sheriff to a *bona fide* purchaser for valuable consideration will not be set aside on the ground that the judgment-creditor had communicated with the Sheriff and desired him to stay the sale. The purchaser need not trace back his title beyond the *fi. fa.* KAMINEE DOSSEE *v.* GOURMONEY DOSSEE

1 Ind. Jur. N. S. 359

4. ——— *Warranty—Caveat emptor* In a sale in the execution of a decree of the rights and interests of a judgment-debtor in an estate of which he is the recorded proprietor in [illegible]

revenue registers were proclaimed for sale in the [illegible]

decree-holder for a refund of the purchase-money proportionate to such interests and for the costs of [illegible]

I. L. R. 2 All. 828

5. ——— *Caveat emptor—Suit to recover purchase-money where judgment-* [illegible]

in purchasing and paying his money for the house without inquiring into or considering the title of it. KELLY *v.* SETH GOBIND DASS

6 N. W. 168

6. ——— *Suit to recover purchase-money—Warranty of title—Caveat emptor—Right of purchaser—Civil Procedure Code, 1859, ss. 256, 257.* The right, title and interest of *G* in certain immoveable property was attached and notified for sale in the execution of a money-decree held by *T*. It was also attached and notified for sale in the execution of a money-decree held by [illegible]

decrees confirmed the sale to *T*, granting him a sale certificate, and disallowing *K's* objection to the confirmation It also confirmed the sale to [illegible]

interest in the property—that the rule of *caveat* [illegible]

7. ——— *Sale in execution set aside—Second sale in execution of a different decree—First sale subsequently confirmed in suit for that purpose—Title of purchasers at first sale—Civil Procedure Code, 1882, ss. 311, 132.* Certain immoveable property was sold in execution of a decree, but on objections being raised by the judgment-debtors under s. 311 of the Code of Civil Procedure, the sale was set aside. After the sale had been thus set aside, the same property was again sold in execution of another decree. Sub-

SALE IN EXECUTION OF DECREE— *contd.*

13. PURCHASERS, TITLE OF—*contd.*

(*a*) GENERALLY—*contd.*

sequently in a suit brought by the purchasers at the first sale (in which suit the judgment-debtors, who alone were made defendants, confessed judgment) the first sale was confirmed. The purchasers at the first sale then sued the purchasers at the second sale for possession of the property sold. *Held* by STRACHEY, C.J., that the second purchasers having acquired their title at a time when the first sale had been set aside, their title was not affected by the subsequent confirmation of the sale and was good as against the first purchasers. *Held*, further (by STRACHEY, C.J., and BANERJI, J.) on the finding that the decree confirming the first sale had been passed in a suit to which the purchasers at the second sale were no parties, and had, moreover, been obtained by means of collusion between the plaintiffs and the judgment-debtors, that such decree could not defeat the title acquired by the purchasers at the second sale. *Dagdu* v. *Panchamsing Gangaram, I. L. R. 17 Bom. 375; Konapa* v. *Janardan, 11 Bom. 193*, *Adhur Chunder Banerji* v. *Aghore Nath Aroo, 2 C. W. N. 589*; and *Ram Chunder Sadhu Khan* v. *Samir Ghazi, I. L. R., 20 Calc. 25*, distinguished. *Zain-ul-abdin Khan* v. *Muhammad Asghar Ali Khan, I. L. R. 10 All. 166 : L. R. 15 I. A. 12*, referred to by STRACHEY, C.J. BANKE LAL *v.* JAGAT NARAIN. BANKE LAL *v.* DAMODAR DAS

I. L. R. 22 All. 168

8. ———— *Civil Procedure Code, s. 316—Sale in execution—Time from which the auction-purchaser's title accrues.* When immoveable property is sold in execution of a decree, the title of the auction-purchaser to mesne-profits or possession does not accrue until the sale has been confirmed. *Gobind Ram* v. *Tulsi Ram, All. Weekly Notes (1887), 217*, and *Prem Chand Paul* v. *Purnima Dassi, I. L. R. 15 Calc. 546*, followed. AMIR KAZIM *v.* DARBARI MAL (1902)

I. L. R. 24 All. 475

9. ———— *Sale in execu-*

A decree passed by a Court having jurisdiction over the subject-matter, is not void but only voidable when it is passed under a misapprehension or is brought about by fraudulent proceedings. The party against whom the decree is passed has only an equity to set aside the proceedings. Where property sold in execution of such a decree is purchased by the decree-holder and by him sold for value to a third party who has no notice of any defect in the decree, the equitable right to set aside such decree cannot prevail against the rights of the subsequent purchaser for value without notice. A person claiming through a Court purchaser, is entitled to rely upon the plea that he is a *bona fide* purchaser for value without notice, though he cannot claim the rights of a stranger purchasing at Court-sale. *Marimuthu Udaiyan* v. *Subbaraya Pillai, 13 Mad. L. J. 231*, followed. SHEIK ISMAL ROWTHER *v.* RAJAB ROWTHER (1906)

I. L. R. 30 Mad. 295

(*b*) CERTIFICATE OF SALE.

10. ———— **Position of purchaser with certificate**—*Certificate of purchase by Registrar—Conveyance—Suit for partition—Declaration of right to share—Rules of Court, 415, 431.* The

a right to a conveyance in virtue of a contract; he does not hold, save as regards the parties to the contract of sale, the position of an owner. When the sale is confirmed, the purchaser is entitled to a conveyance, and until he obtains a conveyance, the property in the estate purchased does not, having regard to rule 431, pass to him so as to give him rights as against parties not bound by the decree under which the sale took place. All that passes to him as against the defendant in that suit is an equitable estate and a right to a conveyance of the property, and therefore as the estate in the property purchased has not passed, the purchaser is not entitled to maintain a suit for partition. In such a suit he could not on partition give a good conveyance to the parties interested in the estate, nor would he be entitled to a declaration of his share in the property. JOHUR MULL KHOORRA *v.* TARANKISTO DEB

I. L. R. 10 Calc. 252

11. ———— **Title of purchaser without certificate**—*Possession—Unregistered certificate of sale—Valid title—Codes of Civil Procedure, Acts VIII of 1859 and XIV of 1882.* A purchaser of immoveable property at a Court-sale under the Civil Procedure Code, Act VIII of 1859, who has been

21 W. R. 349, followed. *Quære*: How far the above ruling will be affected by the language of s. 316 of Act XIV of 1882. SHIVRAM NARAYAN *v.* RAVJI SAKHARAM

I. L. R. 7 Bom. 254

12. ———— *Suit to recover possession of property purchased. Semble*: If it is admitted that the plaintiff purchased immoveable property at a Court-sale, he can recover without producing the certificate of sale. SADAGOPA EDINTARA MAHADESIKA SWAMIAR *v.* JAMUNA BHAI AMMAL

I. L. R. 5 Mad. 54

SALE IN EXECUTION OF DECREE—*contd.*

13 PURCHASERS, TITLE OF—*contd*

(b) CERTIFICATE OF SALE—*contd.*

13. **Evidence of title of purchaser**—*Sale of immoveable property—Confirmation of sale.* The order confirming a sale of immoveable property in execution of a decree is sufficient to pass the title in the property to the purchaser, and its production is sufficient evidence of the purchaser's title The production of the sale certificate is not essential *Doorga Narain Sen v Baney Madhub Mazoomdar, I L R 7 Calc. 199,* followed TARA PRASAD MYTEE v NUND KISHORE GIRI . **I. L. R. 9 Calc. 842 : 12 C. L. R. 448**

14. ——— **Completion of title of purchaser**—*Payment of purchase-money and confirmation of sale—Civil Procedure Code, s. 316* Under s. 316 of the Civil Procedure Code (Act X of 1877) the title of a purchaser at a Court-sale becomes complete upon his payment of the purchase-money and confirmation of the sale by the Court When the sale is admitted, production of a certificate is not necessary to entitle the purchaser to maintain a suit. *Padu Malhari v. Rakhmai, 10 Bom. 435 ; Lallbhai Lakhmidas v. Naval Mir Kamaludin Husen, 12 Bom. 217 ;* and *Harkisandas Narandas v Bai Ichha, I. L R 4 Bom 155,* distinguished NAIGAP TIMAPA v BHASKAR PARMAYA

I. L. R. 10 Bom. 444

15. ——— *Sale in execu-*

nue Court vests in the purchaser on completion of the sale and payment of the full price. In order to perfect his title, it is not necessary that he should obtain a sale-certificate or should be put into possession by the Collector *Held,* therefore, that a suit by a purchaser at a sale in execution of a decree of a Revenue Court for possession of the property was maintainable, although his sale-certificate might be an invalid document and the Collector had not put him into possession MUZAFFAR HUSAIN v. ALI HUSAIN . **I. L. R. 5 All. 297**

16 ——— *Purchaser at execution sale—Suit for possession of property—Proof of title—Act VIII of 1859, ss. 257, 259. Held,*

I. L. R. 6 All. 505

SALE IN EXECUTION OF DECREE—*contd.*

13 PURCHASERS, TITLE OF—*contd.*

(b) CERTIFICATE OF SALE—*contd*

KALEE DASS NEOGEE v HUR NATH ROY CHOWDHURY . . . **W. R. 1864, 279**

17. ——— *Purchasers at successive execution sales—Purchaser at second sale obtaining certificate of sale and possession of property prior to grant of certificate to purchaser at first sale—Priorities* On the 9th December 1876 the plaintiff purchased a house at an auction-sale in execution of a decree against the owner, one *S.* The sale was confirmed on the 9th January 1877, but the certificate of sale was not issued until the 16th June 1880. On the 20th January 1880 the defendant purchased the same house at a sale in execution of a money-decree against *S.* That sale was confirmed on the 28th February 1880, and a certificate was issued on 20th March 1880. The defendant got possession from the judgment-debtor in April 1880. The plaintiff now sued for possession It was contended for the defendant that, having completed his title, under the auction-sale and obtained possession before the plaintiff had taken out his certificate, he had acquired a better title than the plaintiff *Held,* that the plaintiff was entitled to recover. By his prior purchase

18. ——— *Certificate of sale granted to the representative of deceased purchaser—Civil Procedure Code, 1882, s. 316.* When

In re VINAYAK NARAYAN v *In re* DATTATRAYA KRISHNA DATAR **I. L. R. 24 Bom 120**

19 ——— **Period from which title of purchaser dates**—*Date of sale—Date of confirmation of sale.* The title of a purchaser at a judicial sale which has been confirmed and been made absolute relates back to, and takes effect from, the date of the sale, and does not commence only on the date of the confirmation of the sale LUCHMUN NATH v. MAHARAJA OF VIZIANAGRAM

7 N. W. 310

20. ——— *Confirmation of sale—Liability of purchaser for Government revenue* The defendant became a purchaser at an execution-sale of a share of certain property, of which the plaintiff held another share partly as zamindar and partly as patnidar. The sale took place in September 1872, but the defendant did not obtain possession until confirmation of the sale in May 1873. Between the date of the sale and the

SALE IN EXECUTION OF DECREE—*contd*

13 PURCHASERS, TITLE OF—*contd.*

(*b*) CERTIFICATE OF SALE—*contd.*

confirmation a considerable sum became due for Government revenue on the whole property, and

the share purchased by the defendant must be considered to have vested in her from the date of the sale; and therefore she was liable for the amount of Government Revenue in respect of her share which became due between the date of the sale and its confirmation BHYRUB CHUNDER BUNDOPADHYA *v.* SOUDAMINI DABEE

I. L. R. 2 Calc 141

21. ———— *Application for possession—Period from which right to apply accrues—Civil Procedure Code, 1859, ss. 263, 264—Civil Procedure Code, 1877, ss. 318, 319.* *A* obtained a money-decree against *B* on the 25th January 1872, in execution of which property belonging to *B* was sold on the 9th of September 1874, *A* himself becoming the purchaser The sale was

April 1879. *Held*, that the right to apply for possession contemplated in ss 263 and 264 of the Civil Procedure Code (Act VIII of 1859) corresponding with ss 318 and 319 of the Civil Procedure Code (Act X of 1877) accrued on the date the certificate of sale was issued, and not on that on which the sale was confirmed, and that therefore the period of limitation against the purchaser counted from the former date. BASAPA *v* MARYA

I. L. R. 3 Bom. 433

22. ———— **Certificate of sale, application for**—*Civil Procedure Code (Act XIV of 1882), s 316—Court Fee Act (VII of 1870), s 6.*

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HIBA

I. L. R. 13 Bom. 670

23. ———— **Unregistered certificate of sale**—*Interest of purchaser—Second sale of same property in execution of subsequent decree—Interest of purchaser at such subsequent sale subject to interest of purchaser under prior sale—Registered certificate of second sale—Act VIII of 1859.* In 1884 the plaintiff brought the present suit against the defendant to recover possession of a certain house which he had purchased at a sale held on the 15th

held on the 22nd November 1875, in execution of a decree obtained by him as mortgagee against the

SALE IN EXECUTION OF DECREE—*contd.*

13. PURCHASERS, TITLE OF—*contd.*

(*b*) CERTIFICATE OF SALE—*contd.*

in by his subsequent purchase in execution of the money-decree against *C* took subject to that interest The grant to the defendant of the second certificate, which was registered, sufficiently proved that the sale to him had been confirmed CHINTAMANRAV NATU *v* VITHABAI

I. L. R. 11 Bom. 588

24. ———— **Proof of title without production of certificate of sale**—*Civil Procedure Code, 1859, s 259—Registration Act, 1866, s 49—Omnia presumuntur rite esse acta* Assuming that

25. ———— **Title of auction purchaser without certificate of sale**—*Confirmation of sale, effect of.* The plaintiff as an agriculturist sued the defendant to redeem certain land mortgaged to

registered, it could not be received in evidence. The defendant then obtained a fresh certificate, registered it, and renewed his application to the Subordinate Judge, who reversed his previous order, and rejected the plaintiff's claim The plaintiff

versed
case.
Court :—

SALE IN EXECUTION OF DECREE—*contd.*

13 PURCHASERS, TITLE OF—*contd.*

(b) CERTIFICATE OF SALE—*contd.*

should be discharged. A sale certificate was not necessary for the purpose of establishing the de- [illegible]

[illegible]

former KHUSHAL PANACHAND v BHIMABAI

I. L. R. 12 Bom. 589

26. —— **Statement in certificate of sale**—*Evidence—Suit to enforce charge against purchaser* A statement in a sale-certificate, [illegible]

[illegible]

[illegible] Mad. [illegible]

27. ———— **Purchasers at successive execution sales**—*Title obtained by first purchaser—Certificate of sale obtained by second purchaser before certificate obtained by first purchaser—Priority—Civil Procedure Code (Act XIV of 1882), s. 316—Limitation—Confirmation of sale* On 27th February 1886 the plaintiff purchased certain land at a Court-sale held in execution of a decree On the 10th March 1886 the same property was put up for sale in execution of another decree, and purchased by the defendant. The sale to the defendant was confirmed on 3rd July 1886, and the sale to the plaintiff not until the 21st July 1886 Certificates of sale were issued to both plaintiff and defendant on the same day, *viz*, on the 22nd September 1886, and on the 14th February 1887 the defendant was put in possession In 1889 the plaintiff brought this suit to recover possession The defendant relied on s 316 of the Civil Procedure Code He contended that, as under that section the title of a purchaser at a Court-sale vests at the date of the confirmation of the sale to him, his (the defendant's) right was superior to that of the plaintiff, inasmuch as the sale to him was confirmed on the 3rd July 1886, while the sale to the plaintiff was not confirmed until afterwards, *viz*, on the 21st July *Held*, that the plaintiff was entitled to recover. By his prior purchase he had acquired an equitable or inchoate title to the property which was subsequently perfected by the certificate of sale. Nothing therefore passed to the defendant under the second sale The words "the title to the property sold" in s 316 of the Code of Civil Procedure mean the full perfected title arising on the sale becoming absolute. It is that title which under the section does not vest in the purchaser until confirmation. That provision, however, need not necessarily be construed as destroying any lesser interest which arises by reason of general equitable principles. *Quære*. Whether the provision in s 316 as to the date at which the title of the purchaser is to vest does not apply only as between the parties to the suit and persons claiming through or under them. *Per* JARDINE, *J.*—The reference to parties and persons claiming under them would be surplusage if the Legislature had intended the addition to apply to third parties DAGDU v. PANCHAMSING **I. L. R. 17 Bom. 375**

[illegible]

Dagdu v Pancham Singh Gangaram, I L. R. 17 Bom. 375, and *Het Ram v Baldeo, Weekly Notes, All (1894) 54,* approved. CHIDDO v. PIARI LAL

I. L. R. 19 All 188

29. ———— **Certificate of sale**—*Civil Procedure Code (Act XIV of 1882), s 316—Auction-purchaser—Confirmation of possession—Title of auction-purchaser—Suit for damages for cutting trees* An auction-purchaser under the Code of [illegible] title [illegible] certi- [illegible] ab-solute and makes that title relate back to the date of the sale, so as to warrant him when the sale is confirmed and a certificate granted under s 316, Civil Procedure Code, in bringing an action for damages for any injury to that property, committed before that confirmation of the sale So where the defendant cut the trees that stood on a property before the confirmation of its sale —*Held*, that the plaintiff, who is the auction-purchaser of the property, can bring a suit after the date of the confirmation of sale for damages against the defendant for cutting the trees *Dagdu* v. *Pancham Singh Gangaram, I. L. R. 17 Bom. 375,* and *Prangour Mozoomdar* v. *Hemanta Kumari Debya, I. L R 12 Calc. 597,* referred to. ADHUR CHUNDER BANERJEE v AGHORE NATH AROO

2 C. W. N. 589

30. ———— **Decree reversed before confirmation of sale**—*Civil Procedure Code, s. 316—Execution of decree—Held,* that the title of an auction-purchaser at a sale held in execution of a [illegible]

I. L. R. [illegible] All. [illegible]

14. DISTRIBUTION OF SALE-PROCEEDS.

1. ———— **Civil Procedure Code, 1882, s. 295 (1859, ss. 270, 271)**—*Effect of, on rights by contracts—Object of procedure under those sections* The purport of ss. 270 and 271 of Act

SALE IN EXECUTION OF DECREE—*contd.*

14. DISTRIBUTION OF SALE-PROCEEDS—*contd.*

VIII of 1859 (with which s 295 of Act X of 1877 corresponds) was not to alter or limit the rights

execution shall be distributed. HASOON ARRA BEGUM *v.* JAWADOONNISSA SATOODA KHANDAN I. L. R. 4 Calc. 29

RAJCHUNDER SHAHA *v.* HURMOHUN ROY. 22 W. R. 98

2. ——— (1859, s. 270)—*Property not sold in execution of decree.* S 270 of the Civil Procedure Code did not apply to a case in which property has not been sold in execution of a decree BISHEN CHUNDER SURMA CHOWDHRY *v.* MUN MOHINEE DABEE . . . . . . 8 W. R. 501

BALAJI RAMCHANDRA *v.* GAJANAN BABAJI 11 Bom. 159

3. ——— *Civil Procedure Code (Act XIV of 1882), ss 295, 310A—Bengal Tenancy Act (VIII of 1885), s. 174—Sale in execution of decree—Deposit by judgment-debtor—Rateable distribution* S 295, Civil Procedure Code, does not apply to deposit made by the judgment-debtor either under s. 174, Bengal Tenancy Act, or under s. 310A of Civil Procedure Code BIHARI LALL PAUL *v.* GOPAL LALL SEAL . 1 C. W. N. 695

4. ——— *Imperfect attach-*

into Court the amount of the decree, and prayed that the attachment might be removed While the attachment was subsisting and prior to the sale, the holders of other money-decrees against the same judgment-debtor preferred applications purporting to be made under s. 295 of the Civil Procedure

...attachment. *Held*, that, inasmuch as no order for attachment of the property was passed in favour of the decree-holders in the manner provided by s. 274 of the Civil Procedure Code, their claims were not entitled to the protection conferred by s. 276 against private alienations of property under attachment, that these claims were not enforceable under the attachment which was made; that the sale by the judgment-debtor was valid; and that execution of the decrees could not take place. Also *per* MAHMOOD, J.—While s. 395 of the Code gives a special right to judgment-creditors,

place, no such right can be enforced. *Bishen Chunder Surma Chowdhry* v. *Mun Mohinee Dabee, 8 W. R. 501,* referred to GANGA DIN *v.* KUSHALI I. L. R. 7 All. 702

5. ——— *Rights created by s. 295, how affected by insolvency and vesting order—Insolvent Act (11 & 12 Vict, c. 21), s 49.* An order under s 295 of the Civil Procedure Code affects only interests existing at the time The insolvency of the debtor introduces a new state of things from the date of the insolvency, but as regards sums accrued due prior to the date of the insolvency the order under s 295 creates rights which are not affected by the insolvency. *Soobul Chunder Law* v *Russick Lall Mitter, I L. R. 15 Calc 202,* cited. HOWATSON *v* DURRANT. I. L. R. 27 Calc. 351
4 C. W. N 610

6. ——— *Rateable distribution—Assets realized "by sale or otherwise."* The words of s. 295 of the Code of Civil Proce-

7. ——— *"Assets."*

... Bom. 16

8. ——— *"Whenever assets are realized," meaning of—Deposit of 25 per cent. of purchase-money—Assets.* The words "whenever assets are realized" in s. 295 of the Code of Civil Procedure really mean "whenever assets are so realized as to be available for distribution among the decree-holders." The 25 per cent. of the purchase-money deposited at a sale in execution of a decree is not "assets" within the

... there- ... ent to ... *Vira-* ... nguish- ... *hunder* ... com-

SALE IN EXECUTION OF DECREE— *contd.*

14. DISTRIBUTION OF SALE-PROCEEDS— *contd.*

mented upon. HAFEZ MAHOMED ALI KHAN *v.* DAMODAR PRAMANICK I. L. R. 18 Calc. 242

9. —————— *Money paid by debtor under arrest in satisfaction of decree—Assets.* Money paid by a judgment-debtor under arrest, in satisfaction of the decree against him, are not assets realized by sale or otherwise, under

word "realized." PURSHOTAMDASS TRIBHOVANDASS *v.* MAHANANT SURAJBHARTHI HARIBHARTHI I. L. R. 6 Bom. 588

10. —————— *Execution of decree—Attachment of property—Payment into Court of money due under decree—Assets realized by sale or otherwise.* *G* and *C* held decrees against *B*, and took out execution of them and the judgment-debtor's property was attached, but no sale took

that there was a realization from the property of the judgment-debtor GOPAL DAI *v.* CHUNNI LAL I. L. R. 8 All. 67

11. —————— *Distribution of proceeds of execution—Assets realized by sale or otherwise in execution—Moneys realized by Receiver appointed by decree-holder—Equitable execution.* Rents of property under attachment which have been realized by a Receiver appointed at the instance of one decree-holder are "assets realized by sale or otherwise in execution of a decree" within the meaning of s 295 of the Code of Civil Procedure. The appointment of a Receiver by the Court at the instance of a judgment-creditor is a "process of execution." FINK *v.* MAHARAJ BAHADOOR SING . . I. L. R. 26 Calc. 772 4 C. W. N. 27

12. —————— *Realization of proceeds of sale—Sale under agreement sanctioned by Court—Sale not of the right or interest of judgment-debtor in property* *P*, the plaintiff in a suit

were absolutely entitled to the premises 22, Strand Road, and the other properties; in that suit, on the 26th March 1888, a decree was made declaring the valid trusts and charging the premises 22, Strand Road, with the payment of certain specific sums. In 1891 the judgment-debtors brought a suit No. 441 of 1891 to have the premises 22, Strand Road, sold freed from the trusts, to provide for the trusts by setting apart a sufficient sum out of the purchase-money, and to have the balance divided between the judgment-debtors; and, by the decree in that suit, dated the 2nd September 1892, the trustees of the deed were authorized to sell the premises 22, Strand Road, and were directed out of the proceeds of sale to set aside R45,000 to provide for the trusts, next to pay the costs therein directed, and then to apply the balance for the purposes in the plaint mentioned. In pursuance of this authority, the trustees, on the 25th February 1893, entered into an agreement with one *J L* for sale to him of the premises 22, Strand Road, for R1,43,000. On the 8th August 1893 a notice was issued at the instance of *P* calling on the judgment-debtors to show cause why the premises 22, Strand Road, should not be sold in execution under her attachment. On the 29th August 1893 the trustees of the deed of 2nd February 1858 gave notice to *P* of an application to be made in the suits Nos. 369 of 1886 and 441 of 1891 for the removal of her attachment, or in the alternative for an order that the agreement for sale entered into by the trustees with *J L* be carried out;

Road, be thereupon released from the attachment These applications were heard together, and on the 14th September 1893 a consent order was made, by which it was ordered that the trustees be at liberty to carry out the agreement for sale with *J L*; and the sale-proceeds be paid to W, a member of the firm of the attorneys for *P*, who out of such proceeds was to pay R45,000 to the trustees, and make other payments directed by the order, and pay the balance into Court to the credit of suits Nos. 369 of 1886 and 441 of 1891, "the said *P* retaining her lien under her attachment upon the said balance in the same way as the same then sub-

SALE IN EXECUTION OF DECREE— *contd*

14. DISTRIBUTION OF SALE-PROCEEDS—contd.

sale or otherwise in execution of a decree" within the meaning of s 295 of the Code of Civil Procedure. The sale of the property under the order of the 14th September 1893 was not a sale in execution, but a sale in pursuance of a private agreement entered into by the trustees under a liberty reserved to them by the Court, and the fact that the Court sanctioned it made no difference in this respect It did not purport to be a sale of any

under the process of the Court, or a realization in one of the other modes expressly prescribed by the sections of the Code If the money paid into Court had exceeded the amount due to *P* in respect of her lien, the amount of such excess might per-

tachments could operate. *Purshotam Dass* v. *Mahanant Surajbharthi, I L. R 6 Bom. 588,* and *Seubux Bogla v Shib Chunder Sen, I L R. 13 Calc. 225,* referred to and approved. PROSONNOMOYI DASSI *v* SREENAUTH ROY

I. L R. 21 Calc. 809

13. ——— *Right of rival decree-holder to show decree of another is barred.* Where property has been attached in execution of decree, it is competent to a rival decree-holder to show that the attachment should not issue, as the decree under which it issued was barred by lapse of time; and the Court, if satisfied that the decree is so barred, is competent to see that the decree-holder who took out execution does not share in the distribution of the sale-proceeds RADHA GOBIND SHAH *v* OOZEER . . **15 W. R. 219**

14 ——— *Court to adjudicate on conflicting claims* The Court having jurisdiction to adjudicate the conflicting claims of attaching creditors is the Court in which the attached money is deposited. WOOMA MOYEE BURMONYA *v.* RAM BUKSH CHETLANGEE

16 W R. 11

15 ——— *Decree of Small Cause Court—Judge sitting as Small Cause Court*

Judge, who had applied to such Judge acting in that capacity for execution of his decree, was not thereby entitled to share rateably, under s. 295 of Act X of 1877, assets subsequently realized by sale in execution of a decree made by such Judge

SALE IN EXECUTION OF DECREE— *contd.*

14. DISTRIBUTION OF SALE-PROCEEDS—contd.

in the capacity of Judge of such Small Cause Court. HIMALAYA BANK *v.* HURST

I. L. R. 3 All. 710

16. ——— *Decree passed by Subordinate Judge—Decree by same Court in exercise of its Small Cause jurisdiction—Rateable distribution of assets.* Certain moveable property was at first attached in execution of a money

not become the Judge of two Courts, but remains the Judge of a subordinate Court. MALHARI *v.* NARSO KRISHNA **I. L. R. 9 Bom. 174**

17. ——— *Rateable dis-*

Court, in order to share rateably in the assets under s 295 of

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Madhavji v. *Najeralli Abhramji, I. L. R. 4 Bom. 472,* approved MUTTALAGIRI *v.* MUTTAYYAR

I. L. R. 6 Mad 357

18. ——— *Attachment by more than one judgment-creditor of property of judgment-debtor in Court—Priority—Civil Procedure Code (Act X of 1877), s. 272.* In execution of a decree of a Munsif's Court, the plaintiff attached certain money, the proceeds of decrees

Cause Court Judge then proceeded, under s. 272 of the Civil Procedure Code, to enquire whether the plaintiff was entitled to any priority over the second attaching creditor, and having decided that question in the negative, divided the sale-proceeds rateably between them. In a suit brought by the

SALE IN EXECUTION OF DECREE—*contd.*

14. DISTRIBUTION OF SALE-PROCEEDS—contd

plaintiff, under the above circumstances, to recover from the defendant the portion of the sale proceeds so paid to him —*Held*, that s. 295 of the Civil Procedure Code had no application, inasmuch as the plaintiff had not applied to the Small Cause Court Judge to execute her decree, and it had never been transferred to that Court for execution; and that the proviso in s 272 is merely intended to mean that any question of title or priority is to be determined by the Court in which or in whose custody the property is, and not by the Court which made

the question he had tried, but as that order was made prior to the attachment by the defendant, the judgment-debtor had no interest in the money which could be so attached, the effect of that order being to vest the property in the money in the plaintiff, and to take it out of the disposal of the Small Cause Court Judge, and consequently the order for distribution was wrong, and the plaintiff was entitled to the decree she sought. *Quære* Whether an order made by a Court under s 272 was intended by the Legislature to be a final order GOPEE NATH ACHARJEE *v* ACHCHA BIBEE

I. L R. 7 Calc 553 : 9 C. L. R. 395

19. ———— *Decree in Small Cause suit and decree in regular suit in Subordinate Judge's Court* Two decrees were passed against the same defendant in the Court of a District Munsif and on the Small Cause side of a Subordinate Judge's Court in the same district respectively The holder of the decree in the Small Cause suit attached and brought to sale the judgment-debtor's interest in a benefit fund The other decree-holder applied for rateable distribution, his decree having been transferred for execution to the Subordinate Judge's Court directly, and not through the District Court *Held*, that the order for rateable distribution was right KELU *v* VIKPISHA . . . I. L R. 15 Mad. 345

20. ———— *Rateable distribution of assets—Civil Procedure Code, 1877, s 266—Attachment of salary* The salary of a karkun, who was employed in the Second Class

SALE IN EXECUTION OF DECREE—*contd.*

14 DISTRIBUTION OF SALE PROCEEDS—contd.

that the application was not sustainable, inasmuch as the decree of the Surat Court was being executed by itself, and not by the Anklesvar Court, to which the order of attachment was sent as the head of the department or as "the officer whose duty it was to disburse the salary," and not as a Court executing the decree of another Court KRISHNASHANKAR *v*. CHANDRASHANKAR

I. L. R. 5 Bom. 198

21. ———— *Attachment—Rateable distribution of assets—Proceeds of sale under decrees of Small Cause Court.* Certain moveable property was attached in execution of decrees of the Small Cause Court at Ahmedabad After the attachment, but before the sale of the attached property, other creditors of the same judgment-

dinate Judge accordingly attached it by prohibitory orders issued to the Judge of the Small Cause Court. After the sale, the holders of the decrees obtained in the Subordinate Judge's Courts claimed a rateable share in the assets realized by the Small Cause Court, under s 295 of Act X of 1877 *Held*, that they were not entitled to any share in the assets until after satisfaction of the decrees of the Small Cause Court. JETHA MADHAVJI *v* NAJERALLI ABHRAMJI . . . I L. R. 4 Bom. 472

22. ———— *Rateable distribution of assets realized in execution* *R* obtained a decree against *A* and another in the High Court under its original Civil Jurisdiction. In execution of that decree, *A's* property was attached by the Second Class Subordinate Judge of Bijapur, and an order for sale was made. *D* obtained a

in the assets. DATTATRAYA *v*. RAHIMTULLA NURMAHOMED KHOJA . I. L. R. 18 Bom 456

23. ———— *Property at-*

SALE IN EXECUTION OF DECREE— *contd.*

14. DISTRIBUTION OF SALE-PROCEEDS— *contd.*

sale or otherwise in execution of a decree" within the meaning of s. 295 of the Code of Civil Procedure. The sale of the property under the order of the 14th September 1893 was not a sale in execution, but a sale in pursuance of a private agreement entered into by the trustees under a liberty reserved to them by the Court, and the fact that the Court sanctioned it made no difference in this respect. It did not purport to be a sale of any right, title, or interest of the judgment-debtors or of any property belonging to them. To constitute a realization within the meaning of s. 295, there must be either a realization by a sale in execution under the process of the Court, or a realization in one of the other modes expressly prescribed by the sections of the Code. If the money paid into Court had exceeded the amount due to *P* in respect of her lien, the amount of such excess might per-

225, referred to and approved. PROSONNOMOYI DASSI *v.* SREENAUTH ROY

I. L. R. 21 Calc. 809

13. ——————— *Right of rival decree-holder to show decree of another is barred.* Where property has been attached in execution of decree, it is competent to a rival decree-holder to show that the attachment should not issue, as the decree under which it issued was barred by lapse of time; and the Court, if satisfied that the decree is so barred, is competent to see that the decree-holder who took out execution does not share in the distribution of the sale-proceeds. RADHA GOBIND SHAH *v.* OOZEER . . **15 W. R. 219**

14 ——————— *Court to adjudicate on conflicting claims.* The Court having jurisdiction to adjudicate the conflicting claims of attaching creditors is the Court in which the attached money is deposited. WOOMA MOYEE BURMONYA *v.* RAM BUKSH CHETLANGEE

16 W. R. 11

15 ——————— *Decree of Small Cause Court—Judge sitting as Small Cause Court and as Subordinate Judge.* The Judge of a Court of Small Causes sitting in the exercise of his powers

thereby entitled to share rateably, under s. 295 of Act X of 1877, assets subsequently realized by sale in execution of a decree made by such Judge in the capacity of Judge of such Small Cause Court. HIMALAYA BANK *v.* HURST

I. L. R. 3 All. 710

16. ——————— *Decree passed by Subordinate Judge—Decree by same Court in exercise of its Small Cause jurisdiction—Rateable distribution of assets.* Certain moveable property was at first attached in execution of a money decree passed by a Subordinate Judge in his Small Cause jurisdiction, of which a part was afterwards

acquired the jurisdiction of two Courts, he does not become the Judge of two Courts, but remains the Judge of a subordinate Court. MALHARI *v.* NARSO KRISHNA **I. L. R. 9 Bom. 174**

17. ——————— *Rateable distribution of assets—Transfer of application for execution.* Where property attached in execution of a decree of a Munsif's Court is, or becomes, subject to an attachment issued from a Subordinate Judge's Court, the holder of the decree in the Munsif's Court, in order to share rateably in the assets under s. 295 of the Code of Civil Procedure, must apply to the District Court to transfer his application to the Subordinate Court. *Gopeenath Acharjee* v. *Achcha Bibee, I. L. R. 7 Calc. 553,* and *Jetha. Madhavji* v. *Najeralli Abhramji, I. L. R. 4 Bom. 472,* approved. MUTTALAGIRI *v.* MUTTAYYAR

I. L. R. 6 Mad. 357

18. ——————— *Attachment by more than one judgment-creditor of property of judgment-debtor in Court—Priority—Civil Procedure Code (Act X of 1877), s. 272.* In execution of a decree of a Munsif's Court, the plaintiff attached certain money, the proceeds of decrees

duly communicated to the Small Cause Court Judge. Subsequently the defendant, who held another decree against the same judgment-debtor, attached the same sale-proceeds. The Small Cause Court Judge then proceeded, under s. 272 of the Civil Procedure Code, to enquire whether

SALE IN EXECUTION OF DECREE— *contd.*

14. DISTRIBUTION OF SALE-PROCEEDS— *contd*

plaintiff, under the above circumstances, to recover from the defendant the portion of the sale proceeds so paid to him :—*Held*, that s. 295 of the Civil Procedure Code had no application, inasmuch as the plaintiff had not applied to the Small Cause Court Judge to execute her decree, and it had never been transferred to that Court for execution ; and that the proviso in s. 272 is merely intended to mean that any question of title or priority is to be determined by the Court in which or in whose custody the property is, and not by the Court which made the order of attachment. *Held*, also, that, previous to the order by the Munsif directing the payment to be made to the plaintiff, the Small Cause Court Judge would have had jurisdiction to deal with the question he had tried ; but as that order was made prior to the attachment by the defendant, the judgment-debtor had no interest in the money which could be so attached, the effect of that order being to vest the property in the money in the plaintiff, and to take it out of the disposal of the Small Cause Court Judge, and consequently the order for distribution was wrong, and the plaintiff was entitled to the decree she sought *Quære* Whether an order made by a Court under s 272 was intended by the Legislature to be a final order GOPEE NATH ACHARJEE v. ACHCHA BIBEE

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19. ——— *Decree in Small Cause suit and decree in regular suit in Subordinate Judge's Court* Two decrees were passed against the same defendant in the Court of a District Munsif and on the Small Cause side of a Subordinate Judge's Court in the same district respectively The holder of the decree in the Small Cause suit attached and brought to sale the judgment-debtor's interest in a benefit fund The other decree-holder applied for rateable distribution, his decree having been transferred for execution to the Subordinate Judge's Court directly, and not through the District Court *Held*, that the order for rateable distribution was right KELU v. VIKRISHA . . I. L R. 15 Mad. 345

20. ——— *Rateable distribution of assets—Civil Procedure Code, 1877, s. 266—Attachment of salary* The salary of a karkun, who was employed in the Second Class [illegible]

SALE IN EXECUTION OF DECREE— *contd.*

14 DISTRIBUTION OF SALE PROCEEDS— *contd.*

that the application was not sustainable, inasmuch as the decree of the Surat Court was being executed by itself, and not by the Anklesvar Court, to which the order of attachment was sent as the head of the department or as "the officer whose duty it was to disburse the salary," and not as a Court executing the decree of another Court. KRISHNASHANKAR v. CHANDRASHANKAR

I. L. R. 5 Bom. 198

21. [illegible]

of the Small Cause Court at Ahmedabad. After the attachment, but before the sale of the attached property, other creditors of the same judgment-[illegible]

dinate Judge accordingly attached it by prohibitory orders issued to the Judge of the Small Cause Court. After the sale, the holders of the decrees obtained in the Subordinate Judge's Courts claimed a rateable share in the assets realized by the Small Cause Court, under s 295 of Act X of 1877 *Held*, that they were not entitled to any share in the assets until after satisfaction of the decrees of the Small Cause Court JETHA MADHAVJI v NAJERALLI ABHRAMJI . . . I L. R. 4 Bom. 472

22. ——— *Rateable distribution of assets realized in execution* R obtained a decree against A and another in the High Court under its original Civil Jurisdiction. In execution of that decree, A's property was attached by the Second Class Subordinate Judge of Bijapur, and an order for sale was made. D obtained a [illegible]

in the assets DATTATRAYA v. RAHIMTULLA NURMAHOMED KHOJA . I. L. R. 18 Bom 456

23. ——— *Property attached in execution of decrees of Small Cause Court and High Court—Execution-proceedings in Small Cause Court transferred to High Court—Rateable distribution of assets realized in execution.* The plaintiffs obtained a decree in the High Court against the defendant, and in execution attached goods in

SALE IN EXECUTION OF DECREE— *contd.*

14. DISTRIBUTION OF SALE-PROCEEDS— *contd.*

the defendant's shop. These goods, however, were already under attachment in execution of certain decrees obtained in the Small Causes Court against the defendant. On the 4th September 1895, by an order of the High Court made on the application of the plaintiffs, the execution-proceed-

in those suits were lodged in the Prothonotary's office On the 26th September 1895 the decree-

tary's office. The plaintiffs subsequently (under the rules of the Sheriff's office) applied to the Prothonotary for payment to them of the amount realized or so much thereof as should satisfy their decree. The plaintiffs were directed to give notice of their application to the holders of the Small Cause Court decrees. *Held*, that the holders of the Small Cause Court decrees were entitled to share rateably with the plaintiffs in the High Court suit in the proceeds of the property sold in execution by the Sheriff JAYNARAYAN MEGHRAJ *v* ISMAIL KARAMALI . . I. L. R. 20 Bom. 377

24. ——— *Rateable distribution of assets—Preliminaries to right to share in application for execution.* An application for execution must not only have been made before the assets come into the hands of the Court, but must also be on the file and undisposed of, to entitle a decree-holder under s 295 of the Code of Civil Procedure to share rateably in the assets realized by another decree-holder in execution of his decree against the same judgment-debtor. TIRUCHITTAMBALA CHETTI *v* SESHAYYANGAR

I. L. R. 4 Mad. 383

25 ——— *Rateable distribution of assets, preliminaries to right to share in—Prior application for execution requiring amendment.* The circumstance that the petition of one of several decree-holders in applying for execution requires amendment because of the list of property being incomplete, is no ground for declaring such application to be superseded by a later application made before the completion of the necessary amendment, by another co-decree-holder for execution AHMED CHOWDHRY *v.* KHATOON

7 C. L. R. 537

26. ——— *Rateable distribution of assets, preliminaries to right to share in.* Several decree-holders executing various judgments, for the most part of very ancient date, against the estate of one *R*, were in contest in respect of the proceeds of a Government promissory note, which had long been under attachment, but was eventually sold with accumulated interest for R69,000, in accordance with an expression of the High Court's opinion upon appeals presented by two of the decree-holders Upon that opinion being made known, one of the decree-holders, *K K*, made, as it were, a fresh attachment of the note and applied for the sale of it; whereupon it was sold in the Court of the Subordinate Judge, who ordered payment in full to *K K* and two others

K K, who, as soon as it was ascertained that the

decree-holders. SRISH CHUNDER SIRCAR CHOWDHRY *v.* SHIB NARAIN PAL. SHIB NARAIN PAL *v.* KOONJO KAMINEE DEBEE . 22 W. R. 466

27. ——— *Order as to proceeds on application of third party.* An order by a Principal Sudder Ameen made on the application of a third-party, that certain sale-proceeds which he had already directed to be rateably distributed among certain decree-holders should be withheld from one of them, was held to have been made without jurisdiction. MAHARAJAH OF BURDWAN *v.* HEERALALL SEAL . . 11 W. R. 54

s c. *In the matter of the petition of* DHIRAJ MAHTAB CHAND BAHADOOR.

2 B. L R. A. C. 217

28 ——— *Rival decree-holders—Claimants under same decree.* S 270, Act VIII of 1859, applied only to rival decree-holders claiming under different decrees, and not to persons claiming under the same decree. ABID ALI *v.* MUNNOO BYAS . . . . 2 Agra 183

29. ——— *Separate sales in execution of decrees.* Application was made for

I. L. R. 3 All 579

30. ——— *Rateable distribution of sale-proceeds—Same judgment-debtor—Sale in execution of decree—Execution-proceedings.* Where a judgment-creditor has obtained a decree

SALE IN EXECUTION OF DECREE—*contd.*

14. DISTRIBUTION OF SALE-PROCEEDS—*contd.*

against two judgment-debtors, *A* and *B*, and in execution of that decree has attached and caused to be sold joint property belonging to such judgment-debtors, another judgment-creditor holding a decree against *A* alone, who has also applied for execution, is not entitled to claim under the provisions of s. 295 of the Civil Procedure Code to share [illegible]

[illegible] *R. 9 Calc. 920*, it was not intended to lay down that a person who has obtained a decree for money against a single judgment-debtor is entitled to come in and share rateably with a person who has obtained a decree against the same judgment-debtor and other persons DEBOKI NUNDUN SEN *v.* HART **I. L. R. 12 Calc. 294**

31. ——————— *Decree-holders* [illegible] *fide* [illegible] '' or [illegible] st the same judgment-debtor in s 295 of the Code of Civil Procedure signify *bonâ fide* decree-holders [illegible]

such claimant from the distribution of assets *In re* SUNDER DASS **I. L. R. 11 Calc. 42**

32. ——— ——— *Rateable distribution—Creditor with joint decree.* Where property belonging to *A* has been attached under a decree, and other decree-holders than the attach- [illegible]

NATH PODDAR *v* LUCKYNATH DEY **I. L. R. 9 Calc. 920**

33. ——————— — *Decree, execution of, by several judgment-creditors against one and the same judgment-debtor—Rateable distribution* The plaintiff obtained a decree against two persons *P* and *S* for a sum of money and one of the defendants obtained another decree against *P*, and *R*, the latter being the father of *S*, and some other defendants also obtained decrees against all those three persons The plaintiff now brought a suit [illegible]

from judgment-debtor other than *P*. It appeared that the properties of *P* were specified in the execution-proceedings and in the sale proclamation separately and the amount realized by the sale of his properties was separately stated *Held*, that no question of the ascertainment of the shares of the judgment-debtors or of the application of the "principle of marshalling" arose in this case, and that the plaintiff was entitled to ask for a refund of the money paid to the defendants, under s. 296 of the Code of Civil Procedure, out of the assets realized by the sale of the properties of *P*. *Deboki Nundun Sen v. Hart, I. L. R. 12 Calc. 294*, distinguished *Shumbhoo Nath Poddar v Lucky Nath Dey, I. L R 9 Calc 920*, *Nimbaji Tulsiram v. Vadra Venkata, I L. R 16 Bom 683*, referred to That it is only the unsatisfied portion of the decree that ought to be taken into account in a question of rateable distribution, there being no reason why any amount should be set apart in favour of a decree-holder in proportion to any sum covered by his decree which has already been realized SARAT CHANDRA KUNDU *v* DOYAL CHAND SEAL **3 C. W. N 368**

34. ——————— *Rateable distribution of sale-proceeds—Same judgment-debtors—Separate and joint judgment-debtors—Marshalling of assets between decree-holders—Decree of Small Cause Court, transfer of* The plaintiffs in this suit obtained a decree against all three defendants *A*, *B* and *C*. In execution of such decree, they attached two sets of securities. (i) municipal bonds, the joint property of *B* and *C*; and (ii) Government loan notes, the property of *C* alone. [illegible]

against *C* alone These last-mentioned decree-holders now claimed to participate rateably with the plaintiffs in this suit in the realized proceeds of both the above-mentioned securities The plaintiffs in this suit contended that such decree-holders, having decrees only against *C*, were not claiming against "the same judgment-debtors" as themselves within the meaning of s 295 of the Civil Procedure Code *Held*, that, as regards the proceeds of the Government loan notes, the sole property of *C*, the plaintiff's decree and the other two decrees were all decrees [illegible]

SALE IN EXECUTION OF DECREE— *contd.*

14. DISTRIBUTION OF SALE PROCEEDS.—*contd.*

two, the equitable principle of marshalling should be applied, and the plaintiffs required to satisfy themselves as far as possible out of the funds not available to the other decree-holder, before they

Luckynath Dey, I. L. R. 9 Calc. 920, and *Deboki Nundun Sen* v. *Hart, I. L R. 12 Calc. 291*, considered and followed. Another holder of a decree—a Small Cause Court decree passed against all three debtors *A*, *B*, and *C*—had previously to the said

35. ———— and s. 285—*Attachment by Small Cause Court—Transfer of decree to superior Court.* Practice of the Calcutta High Court in favour of the principle of rateable distribution amongst all the attaching creditors, without any such condition as the transfer of the execution-proceedings to the superior Court, adopted and held supported by the cases of *Gopee Nath Acharjee* v. *Achcha Bibee, I. L. R. 7 Calc. 553 ; Bykant Nath Shaha* v *Rajendro Narain Rai, I. L. R. 12 Calc. 333 ;* and *Bhugwan Dass Bogla* v.

ALEXANDER . . . I. L. R. 21 Calc. 200

HAR BHAGAT DASS MARWARI *v.* ANANDARAM MARWARI. 2 C. W. N. 126

36. ———— *Sale proceeds—Competing decree-holders—Purchase by permission of Court.* Where there are competing decree-holders, who have applied for execution of their decrees, s. 294 of the Civil Procedure Code (Act X of 1877) must be taken as subject to the provision of s. 295, so that the decree-holder, who has been permitted under the former section to purchase the property in execution of his own decree, must share the proceeds of the sale rateably with such competing decree-holders, and will not be allowed to set off the purchase-money against the amount due to him on his decree. SHRINIVAS *v.* RADHABAI . . I. L. R. 6 Bom. 570

SALE IN EXECUTION OF DECREE— *contd.*

14. DISTRIBUTION OF SALE-PROCEEDS—*contd*

37. ———— *Rateable distribution—Decree-holder for unascertained mesne profits who has applied for execution, right of—Civil Procedure Code, 1882, s. 294* The holder of

Court and has purchased the property sold, can only be accepted for so much of the judgment-debt as the assets applicable to its discharge may suffice to satisfy. VIRARAGAVA AYYANGAR *v.* VARADA AYYANGAR . I. L. R. 5 Mad. 123

38. ———— *Sale in execution for creditor who has not attached* Where the

MADI . . . . . I. L. R. 7 Calc. 34

s. c MEGH LALL POOREE *v* MOHAMMED DUTT JHA . . . . . 8 C. L. R. 369

39. ———— *Rateable distribution—Civil Procedure Code, 1882, s 266.* One *C* obtained a decree against *L* and *M* for rent due from them, and, in execution thereof, applied for the attachment and sale of two houses, with their compounds

respect of

due), belor

judgment-c

ingly sold

proceeds handed over to *C*. In the meantime, on the 28th February 1879, *D*, a judgment-creditor of *M* under a money-decree, applied for the attachment and sale of the same immoveable property (excepting the houses) of his judgment-debtor which had been previously attached under

40. ———— *Pauper suit—Civil Procedure Code, 1859, s. 309—Prerogative of the Crown.* With a view to recover the amount of Court-fees which *J* would have had to pay had he not been permitted to bring a suit, as a pauper,

SALE IN EXECUTION OF DECREE—*contd.*

14. DISTRIBUTION OF SALE-PROCEEDS—*contd.*

the Government caused certain property belonging to *B*, the defendant in such suit, who had been ordered by the decree in such suit to pay such amount, to be attached. This property was subsequently attached by the holder of a decree against *B*, which declared a lien on the property created by a bond. The property was sold in the execution of this decree. *Held*, that the Government was entitled to be paid first out of the proceeds of such sale the amount of Court-fees *J* would have had to pay had he not been allowed to sue as a pauper, the principle that Government takes precedence of all other creditors not being liable to an exception in the case of lien-holders. The decision in *Ganpat Putaya* v. *Collector of Kanara, I. L. R. 1 Bom. 7*, applied in this case. COLLECTOR OF MORADABAD *v.* MUHAMMAD DAIM KHAN

I. L. R. 2 All. 196

41. ——— (1859, s. 271)—*Property sold subject to mortgage.* The proviso of s. 271 of Act VIII of 1859 was intended to apply to a case where the property is actually sold subject to a mortgage, and where the transaction is such that the purchaser is buying only the equity of redemption; it did not apply to a case where there is merely the right by law in the mortgagee to enforce his mortgage against the purchaser. FAKEER BUX *v.* CHUTTURDHAREE CHOWDHRY

12 B. L. R. 513 note : 14 W. R. 209

FUTEH ALI *alias* NANNA MEAH *v.* GREGORY

6 W. R. Mis. 13

JOY CHUNDER GHOSE *v.* RAM NARAIN PODDAR

21 W. R. 43

See PURMESSUREE DOSSEE *v.* NOBIN CHUNDER TARUN . . . . . 24 W. R. 305

42. ——— *Right of mortgagee who has obtained money-decree to share in surplus proceeds.* Where a mortgagee suing upon his bond obtains a money-decree without any declaration of lien, he is in the same position as if he had not taken any mortgage at all; and in taking out execution his claim to a rateable distribution of surplus sale-proceeds of attached property is founded upon s. 271 of the Civil Procedure Code, 1859. RADHA KANT ROY *v.* SADAFUT MAHOMED KHAN

21 W. R. 86

43. ——— *Right of mortgagee to take residue of sale-proceeds and retain his lien as mortgagee.* Plaintiff in a suit on an instalment-bond on which he had obtained a money-decree, having asked for and obtained the residue of the sale-proceeds after all the judgment-creditors had been fully satisfied, was *held* not to have abandoned his right as mortgagee. BOLAKEE LALL *v.* CHOWDHRY BUNOSHEE SINGH 7 W. R. 309

44. ——— *Execution of decree—Attachment by mortgagee—Surplus proceeds.* Pending a suit against *A* and *N* upon a bill of exchange, *A* deposited with the plaintiff as security for the amount due upon the bill, the title-deeds of property belonging jointly to *N* and himself. The plaintiff subsequently got a decree for the amount due upon the bill. Thereafter one *S*, in execution of a decree, against *A* and *N*, attached certain property of theirs, including the mortgaged property, and caused it to be sold; and the surplus sale-proceeds, after satisfaction of *S's* decree, were paid into Court to the credit of his suit. Intermediately between this attachment and sale, the plaintiff also attached under his decree on the bill of exchange the mortgaged and other property of *A* and *N*, and after the plaintiff's attachment *N* ratified the equitable mortgage made by *A*. The sale under *S's* attachment having taken place, the plaintiff sued *A* and *N* and the purchasers at such sale of the mortgaged property for foreclosure or sale thereof, and obtained a decree declaring that he had a good equitable mortgage of *A's* share in the joint property, and for an account and sale in default of payment; [illegible]

and for sale of certain of the properties, other than the mortgaged property, which he had attached. Under this order the money was paid out to the plaintiff, and the properties were advertised for sale. MACPHERSON, J., having, on an application by *A*, set aside this order and directed that the [illegible]

with [illegible] in- [illegible] him from [illegible] BANK OF [illegible] R. 509

45. ——— *Satisfaction of mortgage-lien out of surplus proceeds.* Where seven different properties belonging to the same mortgagor had been hypothecated to three different persons, and all of them sued upon their bonds and obtained decrees which were followed by simultaneous sales in execution.—*Held*, that, as all the properties were sold at the instance of all the mortgagees for the satisfaction of their decrees, and therefore of their respective mortgage-liens [illegible]

46. ——— *Proviso—Lis pendens—Sale subject to mortgage.* Where two mortgagees, in execution of their several decrees, attached the same property, of which a moiety without further specification was respectively mortgaged to each of them, and subsequent to the attachments the property was sold in execution

SALE IN EXECUTION OF DECREE— *contd*

14. DISTRIBUTION OF SALE-PROCEEDS— *contd*

and that omission or neglect on the part of the

ALI SOHER CHOWDHRY **I. L. R. 10 Calc. 587**

47. ———— *Mortgage—Allowance of set-off of purchase-money against amount of decree—Suit for share of sale-proceeds—Principle of distribution* In execution of a decree against *M*, the plaintiff attached and advertised for sale certain property in mouzah A. At that time there were pending proceedings in execution of two other decrees obtained against *M* by the first and second defendants respectively. These two decrees were obtained on a bond executed by *M*, by which an 8 annas share of mouzah A was hypothecated as collateral security; and in execution of these decrees the defendants brought to sale, and themselves purchased, not an 8 annas share only, but the whole of mouzah A, and were

distribution were allowed, they were entitled to have an allowance made in respect of a mortgage which the plaintiff held in a 2 annas share of mouzah A, which they had paid off subsequently to the transactions now in question :—*Held*, that the fact of the set-off being allowed in exercise of the power given in s. 294 of the Code, instead of actual payment into Court, did not alter the substantial nature of the transaction, so as to render the pur-

reckon the amount so paid as one of the claims in respect of which, with others, a rateable distribution should be made. TAPONIDI HORDANUND BHARATI *v.* MATHURA LALL BHAGAT

I. L. R. 12 Calc. 499

48. ———— *Decree for money—Causes of action—Mortgage-decree—Mortgagee purchasing under his own decree, Execution of decree by.* The cause of action given by the last paragraph but one of s. 295 of the Civil Proce-

share of sale-proceeds under that section, and to recover the same from another to whom such sale-proceeds have been ordered to be paid, if brought before they have been actually paid to such other person, is premature and should be dismissed. Every decree, by virtue of which money is payable is to that extent a "decree for money" within the

decrees for money only under that section. There is nothing in s. 295 which takes away the right from a mortgagee who has obtained a decree upon his mortgage to proceed against the property of his mortgagor other than that subject to his mortgage. Thus the holder of a mortgage-decree which directs that the amount be realized from the mortgaged property and from the mortgagor personally is entitled to claim rateable distribution under that section, and is not in the first instance bound to proceed against his mortgage security and exhaust that. A mortgagee who has obtained a

his mortgagor, but when he sells any portion of the property, the subject of his mortgage, and purchases it himself, he is bound, before he can proceed further against the mortgagor or claim rateable distribution under s 295, to prove that there is still a balance due to him, and that the property sold and purchased by him realized a fair amount,—the mere fact of the property having been sold at auction not being alone sufficient to prove its value,—and this ought to be inquired into most

49. ———— *Mortgage—First and second mortgagees—Sale of mortgaged property in execution of decree of second mortgagee—Suit by first mortgagee for re-sale of property in execution of his decree.* On the 22nd March 1878 the first mortgagee of certain property obtained a decree enforcing his mortgage. On the 25th March 1878 the second mortgagee obtained a decree enforcing his mortgage. Both decrees were made by the same Court. On the 20th June 1878 the property was put up for sale in execution of the second mortgagee's decree. The first mortgagee subsequently brought a suit for a re-sale of the property in satisfaction of his decree. *Held*, that this was the only course open to him, and he could not

SALE IN EXECUTION OF DECREE— *contd.*

14. DISTRIBUTION OF SALE-PROCEEDS— *contd.*

have enforced satisfaction of his decree in accordance with the provisions of s. 295 of the Civil Procedure Code, inasmuch as the provisions of the first and second provisos to that section refer only to sales in execution of simple money-decree whereas the property in question had been sold in execution of a decree ordering its sale, and the provisions of the third proviso relate to subsequent and not prior incumbrances. JAGAT NARAIN RAI *v.* DHUNDHEY RAI . . . **I. L. R. 5 All. 566**

See GUR SAHAI *v.* RAM DIAL . **7 N. W. 91**

50 ——————— *Mortgage—Sale by first mortgagee—Arrears of rent—Lien—Claim by puisne mortgagee on proceeds of sale* Certain land was mortgaged to *A* with possession to secure the repayment of a loan of R2,000 and interest. It was stipulated in the deed that the interest on the debt should be paid out of the profits and the balance paid to the mortgagors By an agreement subsequently made it was arranged that the mortgagors should remain in possession and pay rent to *A*. *A* obtained a decree for R2,000 and arrears of rent and costs, and for the sale of the land in satisfaction of the amount decreed The land was sold for R2,855 in March 1881. In May 1881 *B*, a puisne mortgagee, applied to the Court for payment to him of R500 of this sum, alleging that *A* was entitled only to R2,000 and R280 costs, but not to arrears of rent, in preference to his claim as second mortgagee The claim of *B* was rejected on the 27th May 1881 and the whole amount paid out to *A* In February 1882 *B* (who had filed a suit on the 23rd March 1881) obtained a decree upon his mortgage On the 23rd May 1884 *B* sued to recover R510 paid to *A* on account of rent on the 27th May 1881 The lower Court dismissed the suit on the grounds (i) that *A* was entitled to treat the arrears of rent as interest, and (ii) that the suit was barred by limitation. *Held*, on second appeal, that *B* was entitled to recover the sum claimed SIVARAMA *v* SUBRAMANYA

I L R. 9 Mad. 57

51. ——————— The meaning of

52. ——————— *Execution of decree—Payment out of proceeds before confirmation of sale—Interest on purchase money from date of sale to date of confirmation—Civil Procedure Code, 1882, ss 284, 315* Although there is no express provision in the Code laying down that a decree holder may take out of Court the proceeds of an execution-sale before the date on which the sale is confirmed, yet s. 315 of the Code implies that this may be done. The Court, however, under special circumstances may refuse to pay over to the decree-holder the purchase-money until the sale is confirmed, but in such case it should provide

53 ———

of Civil Procedure The District Judge rejected the application for execution as being too late, and then the application under s 295, because no application for execution was pending *Held*, on appeal, that the petition for execution was wrongly rejected, but that the High Court could not, under s 622 of the Code of Civil Procedure, revise the order rejecting the application under s 295 for rateable distribution The proper remedy was by a suit VENKATARAMAN *v* MAHALINGAYYAN

I. L. R 9 Mad. 508

54 ——— **and s. 276**—*Claim to rateable distribution under s 295—Sale pending attachment.* A claim under s 295 of the Civil Procedure Code is not enforceable as an attachment against which an assignment is tendered void by the provisions of s 276 *Ganga Din* v *Khushali*, *I L R 7 All 702*, followed. DURGA CHURN RAI CHOWDHRY *v* MONMOHINI DASI **I. L. R. 15 Calc 771**

55. ——— **and s. 294**—*Suit for refund of rateable amount* *M* and *C* each obtained a decree against the same judgment-debtor and applied for execution *C*, in execution of his decree, attached certain immoveable property, and, with the permission of the Court, purchased the same under s. 294 of the Code of Civil Procedure

I. L. R. 11 Mad. 356

56 ——— **and ss. 235, 490**—*Application for execution, necessity of, in order to share in distribution under s 295—Attachment before*

SALE IN EXECUTION OF DECREE—*contd.*

14. DISTRIBUTION OF SALE-PROCEEDS—*contd*

judgment, effect of—Decree-holder with an attachment before judgment, omission by, to apply for execution under s. 235, effect of, on right to share in distribution A decree-holder who has attached

he has attached, unless, subsequently, to his decree, he has applied for execution under s 235 *et seq.* of the Civil Procedure Code. S 490 of the Civil Procedure Code does not by implication confer upon a decree-holder who has attached before judgment the right to come in under s 295 and share in the distribution of the property which he has attached. The effect of that section is merely to take away the necessity for a re-attachment of the property. The attachment before judgment enures and becomes an attachment in execution PALLONJI SHAPURJI *v.* JORDAN . I. L. R. 12 Bom. 400

57. ——— *"Decree for money"—"Same judgment-debtor"—Decree for enforcement of lien and against judgment-debtor personally—Decree-holder entitled to proceed against property or person as he may think fit* U held a money-decree against B, P, and R, in execution whereof he caused to be attached and sold certain property belonging to B. D held a decree against B, P, R and S, which, so far as P, B, and S were concerned, was a decree for enforcement of hypothecation by sale of the judgment-debtor's property, but which did not direct the sale of specific property belonging to B An application by D, under s 295 of the Civil Procedure Code, for an order enabling him to share rateably in the proceeds of U's execution was rejected. *Held*, that there being no question of fraud in the case, D was entitled to enforce his decree in the first instance against the property of B, that his decree against B did not lose the character of a decree for money under s. 295 of the Code, because it directed a sale of the property of the other judgment-debtors; and that the fact that there were four judgment-debtors in D's decree and only three in U's would not deprive D of the right to share rateably *Shumbhoo Nath Poddar v Lucky Nath Dey, I L. R 9 Calc. 920*, referred to *Deboki Nundun Sen v Hart, I L. R 12 Calc. 294; Jagut Narain Pal v Dhundhey Rai, I. L. R 5 All. 566*, and *Hart v. Tara Prasanna Mukerji, I. L R 11 Calc 718*, distinguished. DELHI AND LONDON BANK *v* UNCOVENANTED SERVICE BANK, BAREILLY

I. L. R. 10 All. 35

58 ——— *Rateable distribution—Decree for money—Mortgage-decree.* The plaintiff and defendant, respectively, held successive mortgages on the same land. The defendant obtained a decree on his mortgage against the land and in respect of any unrealized balance against the mortgagor, two months' time for redemption being given. The plaintiff then obtained a like decree. The defendant abandoned his claim on the mortgage premises and attached other property of the mortgagor. The plaintiff applied to

The plaintiff then brought to sale the mortgage premises, which did not realize the amount of the debt, and he now sued to recover the sum which would have been payable to him under s. 295. *Held*, that the plaintiff's decree was a "decree for money" within the meaning of s 295, and that he was entitled to recover the sum claimed *Per curiam* The property ought not to have been sold and the money paid to the defendant until the mortgaged property had been sold and had been found insufficient to pay his debt KOMMACHI KATHER *v* PAKKAR . I. L. R. 20 Mad. 107

59. ——— *Rateable distribution—Assets realized in execution* A, B, and C held money-decrees against the same judgment-debtor. A attached by a prohibitory order dated in December funds of the judgment-debtor in the hands of D In January B attached in execution the same funds. In February they were paid into

60. ——— *Decree-holder, purchase by—Satisfaction pro tanto—Mortgagee not trustee for mortgagor in sale-proceeds.* A mortgagee who has obtained a mortgage-decree, and after obtaining permission to bid at the sale held in execution of such decree has become the purchaser, does not stand in a fiduciary position towards his mortgagor *Hart v Tara Prasanna Mukerji, I L R 11 Calc 718*, distinguished. A mortgagee in such a position, therefore, is at liberty to take out further execution for any bal-

61. ——— *Execution—Decree—Rateable distribution of proceeds of decree—Power of Court to enquire into bond fides of the decree-holders while distributing such proceeds—*

SALE IN EXECUTION OF DECREE—*contd.*

14. DISTRIBUTION OF SALE-PROCEEDS—*contd.*

in question, and to decide it in the same manner as all other questions that arise in execution The party aggrieved by such a decision is entitled, under the last clause of the section, to bring a regular suit to compel the successful judgment-debtor in execution to refund *In re Sunderdass, I L R 11 Calc. 42,* followed. CHHAGANLAL *v* FAZARALI

I. L. R 13 Bom. 154

62. ———— ———— *Purchaser of decree against estate of a deceased person by the legal representative of such deceased person—Right of such purchaser to participate in proceeds realized in execution of decree* H K was the holder of a decree in suit No 657 of 1869 for R69,467 against the firm of *H B & Co* and in execution thereof he attached a certain house belonging to the estate of one *H D*, deceased, who had been a partner in that firm *A* (the respondent) was the legal representative of *H D*. On the 9th November 1886 *V* purchased the decree from *H K* for R18,000, which sum she obtained for the purpose as a loan from *C P & Co* As a security for this loan, she gave *C P & Co* a letter, dated the 9th November 1886, whereby she agreed to repay the loan out of the proceeds of the sale of the house which had been attached in execution of the decree which she had

attached house was sold by the Sheriff, and realized R45,000 On the 5th September 1887 an order was made in Chambers that the Sheriff should divide rateably the moneys in his hands in suit No 657 of 1869 between *M* and *V* *M* appealed, and contended that by the transaction between *V* and *H K* the decree in suit No 657 of 1869 had been extinguished as against the estate of *H D*, and that the said transaction amounted, in law and fact, to a purchase, on behalf of the estate of

only liable under the decree held by the appellant *M* as the representative of *H D* So far as she might have had property of her own, not derived from a source having no connexion, directly or indirectly, with the estate indebted, there is no distinction, in principle, between the representative of the indebted estate and a stranger. MUNMOHANDAS JAIKISONDAS *v.* VIZBAI

I. L. R. 13 Bom. 171

63. ———————— *Effect of vesting order in insolvency* A debtor against whom several decrees have been passed filed his petition in the Insolvent Court at Madras, and the usual vesting order was made. One of the decree-holders

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the attachment of other property and for rateable distribution of the proceeds of sale to be held in execution of the attachment already made The District Judge held that the vesting order was a bar to both these applications *Held*, that the order rejecting the application for rateable distribution was wrong, and that the High Court had power to set it aside on revision under s. 622 of the Civil Procedure Code. VIRARAGHAVA *v.* PARASURAMA . . I. L. R. 15 Mad. 372.

64. ———— and s 276—*Attachment before judgment of fund in hands of third party—Decree afterwards obtained—Assignment by judgment-debtor of fund subsequently to the attachment—Creditors*

longing to him (expressed to be R7,818) in the hands of the Railway Company, subject to the attachment levied on the same by *W* This assignment was intended to secure costs incurred by Messrs Wadia and Ghandy as attorneys for the defendant. Notice of this assignment was at once given to the Railway Company. In February 1891 the Bank of Bengal attached the sum of R7,818 in the hands of the Railway Company, in execution of a decree obtained by the Bank against *G* in suit 190 of 1890, and subsequently other creditors of *G* who had obtained judgment against him, applied for execution and obtained attachments on the sum in question. On the 26th May 1891, under a consent order in suit 382 of 1890, the Railway Company paid over to the

SALE IN EXECUTION OF DECREE—*contd.*

14. DISTRIBUTION OF SALE-PROCEEDS—*contd.*

Sheriff of Bombay the sum of R8,084-1-0, which was the amount admitted by the Company to be due to *G*, after making all just deductions. It was contended by Messrs Wadia and Ghandy that, under the above assignment, they were entitled to the fund assigned to them, subject only to the claim of the plaintiff, who had, at the date of assignment, already attached the same fund, and that subsequent attaching creditors had no claim to the said fund. *Held*, that the fund in question must be regarded as "assets realized by sale, or otherwise, in execution of a decree" within the meaning of s 295 of the Civil Procedure Code. *Held*, also, that, under the provision of s. 295, the claims of the subsequent execution-creditors were

ment was not limited merely to such portion of the fund as covered the amount of the decree, but was a valid attachment in the form in which it was made, namely, on the whole fund in the hands of the Railway Company It was argued that the attachment was actually made only on R6,000,

accurate, under the circumstances, and such as with reasonable certainty identifies the property. If it is such, it ought to be held sufficient. SORABJI EDULJI WARDEN *v* GOVIND RAMJI

I. L. R. 16 Bom. 91

65. ———— *Same judgment-debtor—Sale of lands under attachment—Disposal of amount realized—Rateable distribution.* A father and son having mortgaged certain villages, the mortgagee obtained against both mortgagors a decree for the amount due, which was transmitted for execution to a District Court. The villages were subsequently, by order of the District Court, attached, and plaintiff, as receiver representing the mortgagee, then obtained an order that the villages under attachment should be sold free from

defendant, who had obtained a separate decree against the son alone (the father having meanwhile died) in the same District Court, applied for, and was granted, a rateable distribution of the moneys realized by the sale of the villages attached and sold as aforesaid, towards satisfaction of his decree. On plaintiff bringing a suit for the recovery of the amount so obtained by defendant from the District

in plaintiff's suit there had been a co-defendant against whom the decree might have been separately executed; and (ii) that the order for sale of the villages under attachment was illegal and invalid in so far as it gave plaintiff the same rights against the proceeds of sale as he had by virtue of the mortgage against the property to be sold GRANT *v* SUBRAMANIAM . . . I. L. R. 22 Mad. 241

66 ———— *Proceeds of sale how applicable—Priority of holder of unregistered mortgage to holder of money-decree—Transfer of Property Act (IV of 1882), s 97.* The plaintiff held a mortgage of certain land belonging to the first defendant The mortgage was not registered. The second defendant *M* was a mortgagee of the same land under a mortgage which was subsequent in date, but was duly registered. *M* obtained a decree upon this latter mortgage, and applied in execution for sale, of the land. The plaintiff intervened, but his claim was rejected on the

obtained a money-decree against the mortgagor (defendant No. 1). A balance of R103-8-11 was paid into Court, and subsequently returned to defendant No. 1 (the mortgagor) The plaintiff now sued for payment of his mortgage-debt out

The upon o him had a cause of action only against the mortgagor (de-

The plaintiff's earlier mortgage was postponed to that of *M*, because it was not registered, but the plaintiff had the right of a second mortgagee over the balance in virtue of his mortgage. The proceeds of the sale, after satisfying the first incum-

I. L. R. 16 Bom. 684

67. ———— *Civil Procedure Code, s. 295—Execution of decree—Rateable distri-*

SALE IN EXECUTION OF DECREE— *contd.*

14. DISTRIBUTION OF SALE-PROCEEDS— *contd.*

bution of assets—Hindu law—Joint Hindu family— [illegible]

debtor's interest in a portion of the joint family property. Subsequently to the attachment, but before sale, the judgment-debtor died. Upon the rights and interests of the judgment-debtor in attached property being brought to sale, certain persons who held decrees against the same judgment-debtor or his representatives, but had not attached any of the joint family property in his life time, applied under s 295 of the Code of Civil Procedure to be allowed to share rateably in the assets realized by the sale. Their applications were granted, but on appeal, in a suit by the decree-holder who had attached in the lifetime of the judgment-debtor it was *held* that the attachment enured only for the benefit of the decree-holder who had made it, and that the non-attaching decree-holders were not entitled by virtue of s 295 of the Code to share in the assets realized by sale under such attachment *Suraj Bansi Koer v. Sheo Proshad Singh, L. R. 6 I. A 88*, *Deendyal Lal v Jugdeep Narain Singh, L R 4 I A 247*; *Maniklal Venilal v. Lalha, I L R 4 Bom 429*, *Gangadin v. Kushali, I L R 7 All 702*; and *Gurlingapa v. Nandaph, I L R 21 Bom 797*, referred to. *Sorabji Edulji Warden v Govind Ramji, I L R 16 Bom. 91*, distinguished. BITHAL DAS v NAND KISHORE (1900) . . I L. R. 23 All 106

68. ——— *Mortgage—Priority, relinquishment of—Civil Procedure Code (Act X of 1877), s 295—Suit for refund of money so dis*[illegible]

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Act. The scheme of s 295, Civil Procedure Code, is rather to enable the Judge as a matter of administration to distribute the price according to what seem at the time to be the rights of the parties, and does not import a conclusive adjudication on those rights, which may be re-adjusted subsequently by a suit A suit for refund of money paid to the defendant under an order of Court made [illegible]

bond of November 1883, only, and not on the bond of May 1883, and obtained a decree on the bond of November. *P* also brought a suit on his bond of June 1883, and obtained a decree *Held*, that the mere suing on the bond of November did not amount to relinquishment by *S* of his rights under the bond of 4th May 1883 There was no necessity for *S* to sue on the bond of May in order to obtain a sale for the whole of their debt. SHANKAR SARUP v LALA PHUL CHAND (1901)

I L R 23 All. 313
s.c L R. 28 I. A. 203
5 C. W. N. 649

69. ——— *Civil Procedure Code (XIV of 1882), s 295—Rateable distribution under several decrees—Decrees must be against same judgment-debtor—Decree against judgment-debtor—Subsequent decrees against his legal representative and his* [illegible]

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tative,

perty of the deceased judgment-debtor Bhau Babaji was then attached and sold in execution. Meantime the applicant, Gobind Abaji, had obtained a decree against " Bhau Babaji, deceased, by his son Kashinath, and against the estate of Bhau Babaji, deceased," and he applied under s 295 of the Civil Procedure Code (XIV of 1882) to share rateably in the proceeds of the sale held in execution of the other decree *Held*, that the application should be refused Under s. 295 the money-decrees in respect of which rateable distribution is given must be against the same judgment-debtor. In this case one decree was against Bhau Babaji and the other against his son Kashinath. [illegible]

against his legal representative. The fact that the second decree was also " against the deceased estate " did not make Bhau Babaji a judgment-debtor under the decree in a suit commenced after his death The practice hitherto prevailing in the mofussil of making a dead man " by his heir " a party to a suit is erroneous, and should be discontinued GOVIND ABAJI JAKHADI v. MORONIRAJ VINAYAK JAKHADI (1901)

I. L. R. 25 Bom. 494

70. ——— *Civil Procedure Code (Act XIV of 1882), ss. 285, 295—Execution of decree—Rateable division of proceeds of execution-sale—Property attached in execution of decrees of several Courts—Attachment before judgment—Court of superior grade—Appeal—Revisional jurisdiction.* When property has been sold in execution of decrees in a Munsiff's Court, and, prior to the realisation of assets by sale, a decree-holder in the Subordinate Judge's Court, who attached the same property before judgment, applies to the

SALE IN EXECUTION OF DECREE—*contd.*

14. DISTRIBUTION OF SALE-PROCEEDS—*contd.*

Code is the Court of the Subordinate Judge, and not that of the Munsiff. *Semble* When the Munsiff has ordered a rateable distribution of the sale-proceeds amongst the decree-holders in his Court, the Subordinate Judge has jurisdiction to set aside that order and to direct that the decree-holders in the Munsiff's Court should refund the sums drawn by them in excess of what was legitimately due to them. BHUGWAN CHUNDER KRITIRATNA *v.* CHUNDRA MALA GUPTA (1902) **I. L. R. 29 Calc. 773**

71. ———— *Civil Procedure Code (Act XIV of 1882), s 295—Rateable distribution of proceeds of execution-sale "Prior to the realisation"—"Same judgment-debtor"* The properties of a judgment-debtor were brought to sale, at the instance of one judgment-creditor, in two parcels After the proceeds of sale of the first parcel had been paid into Court, and before the proceeds of sale of the second parcel had been so paid in, the petitioner (also an execution-creditor) applied under s 295 of the Code of Civil Procedure for a rateable distribution. *Held*, that he was entitled to participate in a rateable distribution in

one of the judgment-creditors above referred to was against a father, whilst the decree of the other judgment-creditor was against the father and his son, but the properties from which the assets had been realised by sale were the ancestral properties of the family of which the father and son were undivided members. *Held*, that the decrees were "against the same judgment-debtor," for the purposes of s 295 RAMANATHAN CHETTIAR *v.* SUBRAMANIA SASTRIAL (1902) **I. L. R. 26 Mad. 179**

72 ———— *Chambers—Civil Procedure Code (Act XIV of 1882), ss 295, 310A—Sale in execution—Judgment-debtor, deposit by—Rateable distribution* S 295 of the Civil

Hari Sundari Dasya v Shashi Bala Dasya, 1 C W N. 195, and *Bihari Lall Paul v Gopal Lal Seal, 1 C. W N 695*, followed. ROSHUN LALL *v.* RAM LALL MULLICK (1903) **I. L R. 30 Calc. 262**
s c. 7 C W. N. 341

73. ———— *Rateable distribution—Civil Procedure Code (Act XIV of 1882),*

s 295—Proportionate distribution of sale-proceeds—Decrees against the same judgment-debtor—Suit for refund of assets distributed. *B* obtained a decree

Calc 294, over ruled GONESH DAS BAGRIA *v.* SHIVA LAKSHMAN BHAKAT (F.B 1903) **I. L R 30 Calc. 583**

s c. RAM DAYAL BAGRIA *v.* SHIVA LAKSHMAN BHAKAT . . . **7 C. W. N. 414**

74 ———— *Civil Procedure Code, ss 276, 295—Application for rateable share in proceeds of sale, not equivalent to an attachment* *Held*, that an application, under s. 295 of the Code of Civil Procedure, for a rateable share in the proceeds of the sale of property attached by a creditor other than the applicant, is not equivalent to an attachment, and will be no bar to the judgment-debtor privately selling the property attached for the benefit of the attaching creditor *Garga Din v. Khushali, I L R 7 All. 702*, and *Durga Churn Rai Chowdhry v Monmohini Dasi, I. L. R. 15 Calc. 771*, followed *Sorabji Edulji Warden v Gobind Ramji, I. L. R. 16 Bom 91*, dissented from MANOHAR DAS *v* RAM AUTER PANDE (1903) **I. L. R. 25 All. 431**

75. ———— *Civil Procedure*

and (iii) that the order passed by the executing

SALE IN EXECUTION OF DECREE— *contd.*

14. DISTRIBUTION OF SALE PROCEEDS— *contd.*

Court was appealable as an order under s. 244 of the Code of Civil Procedure *Badri Narain* v. *Jai Kishen-Das, I. L R 16 All. 483*, and *Amar Chandra Banerjee* v. *Guru Prosunno Mukerjee, I. L. R. 27 Calc. 488*, referred to. TAMEESHAR PRASAD v. THAKUR PRASAD (1903) **I. L. R. 25 All. 443**

76. —— —— *Decree attached by two persons—Sale by one attaching creditor—Deposit to set aside sale—Title to deposit* Defendant No. 1 obtained two decrees against defendant No. 2; plaintiffs also obtained a decree

tached that decree and were substituted in place of defendant No 2 on the 18th November 1904

Code, both plaintiffs and defendant No 1 were entitled to the money deposited. UPENDRA NATH SAHU v. HARI DAS MUKHERJEE (1908) **12 C. W N 800**

15 WRONGFUL SALES

1 **Wrongful attachment in execution**—*Attachment under warrant issued by Court.* A party is not liable to damages in respect of an attachment made under a warrant issued by a Court RAJ BULLUB GOPE v ISSAN CHUNDER HAJRAH . **7 W R 355**

2 —— -- **Wrongful attachment**—*Liability of decree holder and purchaser to refund to*

against the decree-holder and the purchaser for recovery of the elephant or its value, on the ground that the elephant was his property, and not the property of the judgment-debtor —*Held*, that the decree-holder, as well as the purchaser, was liable to make good the loss caused by such sale. KANAI PRASAD BOSE v HIRACHAND MANU **5 B. L. R. Ap. 71: 14 W. R. 120**

See SUBJAN BIBEE v SARIUTULLA **3 B L. R. A. C. 413: 12 W R 329**

RAYNOR v SUNGHEER SINGH **5 N W. 211**

3. ——— **Goods wrongly sold in execution.**—*Suit by owner* A person whose goods

SALE IN EXECUTION OF DECREE— *contd.*

15 WRONGFUL SALES—*contd.*

chaser or of any other person, and sue for them of their value without reference to anything which has taken place in the execution-proceedings SHIBOO NARAIN SINGH v. MUDDEN ALLY. NATABAR NANDI v KALI DASS PALI **I. L. R. 7 Calc. 608: 9 C. L. R. 8**

4. ——— **Property of co-sharers wrongly seized and sold**—*Suit to recover shares.* Where, under colour of buying *A's* rights and interests sold in execution, the purchaser usurps the shares of *A's* partners, they need not sue to reverse the sale, but merely to recover their shares, nor are they bound to sue to establish their right as part owners of the land within the time allowed for actions to set aside sales in execution ATHUROONISSA v RUGHOONATH BANERJEE **W. R. 1864, 322**

GUNGA NARAIN BEHUTTA v COLLECTOR OF MIDNAPORE . . . **6 W. R. 47**

5. ——— *Co-sharer, suit by—Suit for damages for sale against decree-holder.* The defendant, in execution of a decree against *A*, seized certain moveable property, which was claimed under s 246, Act VIII of 1859, by *B B* was, on investigation, found to be part owner of the property *B's* claim was rejected and the sale took place, the property, being made over to the purchaser, and the proceeds handed to the defendant in satisfaction of his decree. The sale proclamation declared that the sale extended only to the right, title, and interest of the debtor *A*, but made no mention of *B's* claim In a suit by *B* for damages against the defendant occasioned by the loss of the property of which he was a joint owner. —*Held*, that the defendant was not liable TAMIZUDDIN MULLA v NYANUTOLLA SIRKAR **5 B L. R. Ap. 73 note: 11 W. R. 528**

6. ——— **Sale of property of person not party to execution-proceedings**—*Joint decree executed against separate property—Decree against karnavan on tarwad debt before partition—Execution against one of the sharers after partition.* The karnavan of a Malabar tarwad borrowed money for purposes which rendered the debt binding on the tarwad. The creditor obtained a decree

7. ——— **Decree against karnavan of tarwad on tarwad debt before partition**—*Execution against one of the sharers after partition—Joint decree executed against separate property* In a suit for declaration that certain

SALE IN EXECUTION OF DECREE—*contd.*

15. WRONGFUL SALES—*concld*

land was not liable to be attached in execution of a decree obtained in 1880, it appeared that the decree was passed against the judgment-debtor as karnavan of a Malabar tarwad, and that it was for a debt incurred for purposes binding on the tarwad. In 1882 a partition deed had been come to between the members of the tarwad under which the property in suit had been allotted to the plaintiff. *Held*, that the state of things when the debt was contracted must be looked to, and at that time the karnavan was competent to bind all the members of the tarwad. Any subsequent arrangement in the family could not affect their obligation to the creditor who was not a party to it. The plaintiff's property therefore was liable notwithstanding the partition. KISHNAN NAMBIAR *v.* KRISHNAN NAIR **I. L. R. 18 Mad. 452 note**

16. INVALID SALES

(*a*) DEATH OF DECREE-HOLDER BEFORE SALE

1. ——— Effect of decree-holder's

decree-holder was dead when such sale took place, and such sale was in consequence invalid. This application was disposed of by the Court executing the decree in the presence of the judgment-debtor and the purchaser. The Court held that the fact of such sale having taken place after the decree-holder's death was no ground for setting it aside, and disallowed such application and made an order

and STRAIGHT, *J*, that the death of the decree-holder prior to such sale did not render it void. The provisions of ss. 365 and 366 of Act X of 1877 could not be adapted to execution-proceedings As such sale had been published and conducted according to law, it had properly been confirmed. DULARY *v* MOHAN SINGH **I. L. R. 3 All. 759**

(*b*) DEATH OF JUDGMENT-DEBTOR BEFORE SALE.

2. ——— Effect of judgment-debtor's death on validity of sale—*Sale to mortgagee—Civil Procedure Code, 1882, ss. 234, 368.* The first mortgagee of certain immoveable property obtained a decree for the sale of the property, caused

SALE IN EXECUTION OF DECREE—*contd.*

16. INVALID SALES—*contd.*

(*b*) DEATH OF JUDGMENT-DEBTOR BEFORE SALE—*contd.*

the property to be attached, and then ceased to

then applied for sale and the property was put up for sale and purchased by him. After the order for this sale was made, and before it took place,

man Narhar, I L. R 3 Bom 221, referred to. *Per* STRAIGHT, *J*, that there was no legal obligation on the first mortgagee to resort to the procedure of s 234 of the Civil Procedure Code, since the sale to the second mortgagee had passed to him the rights and interests of the judgment-debtor, and the legal representatives of the judgment-debtor had none of his property in their hands, and there is no provision in the Code of Civil Procedure which required the first mortgagee to make the second mortgagee a party to the proceedings in execution of the former's decree and the latter could not have successfully objected to the sale in execution of that decree, and therefore that sale was not voided by the death of the judgment-debtor antecedent to its taking place. STOWELL *v.* AJUDHIA NATH . . **I. L. R. 6 All. 255**

3. ——— Death of judgment-debtor after attachment, but before sale in execution—*Subsequent sale without legal representative of judgment-debtor being made a party—Effect of such omission on validity of sale—Civil Procedure Code, ss. 234, 311.* S 234 of the Civil Procedure Code applies only to cases where, after the death of the judgment-debtor, the decree-holder seeks to bring to sale property which was of the judgment-debtor in his lifetime, and which was not at the time of his death under attachment, at the suit of the decree-holder. It does not apply to cases where the judgment-debtor dies after attachment, but before sale. An attachment would abate on

SALE IN EXECUTION OF DECREE—*contd.*

16 INVALID SALES—*contd.*

(b) DEATH OF JUDGMENT-DEBTOR BEFORE SALE—*contd*

lifetime. Property under attachment must be considered as in the custody of the law. There is no provision in the Civil Procedure Code, requiring notice to be given personally to a judgment-debtor or his legal representative of a sale of property under attachment. If the legal representative is damnified by the sale, his remedy is by application under s. 311 of the Code So *held* by the Full Bench (MAHMOOD, J, dissenting) Where, subsequently to the attachment of immoveable property in execution of a simple money-decree, the judgment-debtor died, and the property was then sold without making the legal representatives of the judgment-debtor parties to the sale-proceedings —*Held*, by the Full Bench (MAHMOOD, J, dissenting), that the sale was regular and valid notwithstanding such omission. *Ramasami Ayyangar* v *Bhagirathiammal, I L R 6 Mad 80*, dissented from. *Held* by MAHMOOD, J, that on the principal of *audi alteram partem*, and because the rules provided by the Civil Procedure Code for suits should, under s. 647, be applied to execution-proceedings those

stantial injury within the meaning of s 311, and that, as in the present case no such substantial injury was either alleged or proved, the sale was valid SHEO PRASAD v HIRA LAL.

I. L R 12 All. 440

4. ———— **Sale without legal representative of judgment-debtor being made a party**—*Effect of such omission on validity of sale—Civil Procedure Code, 1882, ss 311 and 316—Right of redemption—Absence of substantial injury.* *T* obtained a decree against one *S*, and in execution attached certain land which *S* had previously mortgaged to *K* On the 11th June 1877 a warrant for sale was issued followed by the usual proclamation *S* died on the 27th September 1877, and a few days afterwards, *viz*, on the 3rd October 1877, the sale took place without any notice being given to *D* who was the heir and legal representative of *S*, who, however, came to know of it shortly after *T*, the decree-holder, purchased the land at the sale, and in 1883 sold it to *A*, who redeemed the mortgage from *K* and took possession In 1889 *D*, as heir and legal representative of *S*, brought this suit claiming to redeem the mortgage She made *K* (original mortgagee) and *A* (the purchaser) parties to the suit She contended that the sale in execution was bad, having taken place after the

SALE IN EXECUTION OF DECREE—*contd.*

16. INVALID SALES—*contd.*

(b) DEATH OF JUDGMENT-DEBTOR BEFORE SALE—*contd.*

Code of Civil Procedure. *Per* RANADE, J.—The omission to join the name of the representative of the deceased judgment-debtor as a party to the record was a material irregularity and a serious defect in the title of the auction-purchaser But this irregularity did not vitiate the sale under the special circumstances of the present case, *viz*, that the plaintiff had taken no step to set aside the sale, although she came to know of the sale within a few days after it took place; that there was no fraud or *mala fides* on the part of the judgment-creditor; that the sale had not resulted in any substantial injury to the plaintiff; and that the auction-purchaser and his assignee had been in adverse possession for more than twelve years ABA BIN KHESAJI v DHONDU BAI I. L. R. 19 Bom. 276

5. ———— **Omission to bring in representatives of deceased judgment-debtor**—*Civil Procedure Code, 1882, s 311—Irregularity—Absence of a guardian "ad litem" for minor—Adult judgment-debtor described as minor* In a

ceedings were taken in execution, but upon pay-

no one appointed guardian *ad litem* either for *J* or *K* Upon a fresh application for sale in which the parties were described as in the decree, the sale was held An application under s. 311 of the Civil Procedure Code (1882) was then made on behalf of *J* and *K* to set aside the sale *Held*, that the omission to bring in the representatives of the deceased judgment-debtor did not vitiate the sale. *Sheo Prasad* v *Hira Lal, I L. R 12 All 440*, *Aba* v. *Dhondu Bai, I L R 19 Bom 276*, referred to. *Krishnayya* v *Unnessa Begum, I L R 15 Mad*

I. L. R. 23 Calc. 686

6. ———— **Death of judgment-debtor after proclamation and before sale**—*Non-joinder of legal representatives—Application to set aside sale—Civil Procedure Code, 1882, ss. 234, 311.* An order for the sale of a debt of R70,000

SALE IN EXECUTION OF DECREE—*contd.*

16 INVALID SALES—*contd.*

(*b*) DEATH OF JUDGMENT-DEBTOR BEFORE SALE —*contd.*

(previously attached) owing by *H* and *W* to the judgment-debtor was made in execution in two decrees, and on 4th May 1895 a sale proclamation for 20th idem was issued On the 11th May the judgment-debtor died leaving a will, of which *W* was one of the executors. *W* brought these circumstances to the notice of the Court stating that the executors would proceed to apply for probate and asking for an adjournment of the sale The adjournment was refused and the sale proceeded, and the decree-holders, who had previously agreed with *H* and *W* to sell the debt to them for the amount of the purchase-money, purchased the debt for R30,000, the estate of the judgment-debtor being unrepresented. The Administrator-General, to whom the administration of the estate of the judgment-debtor was afterwards transferred, applied to be brought on to the record and to have the sale set aside *Held*, that the sale was vitiated [illegible] *All. 440*, dissented from GROVES *v* ADMINISTRATOR-GENERAL OF MADRAS

I. L. R. 22 Mad. 119

7. ——— **Death of judgment-debtor after decree, but before execution**—*Legal representatives not made parties to proceedings—Sale in execution without notice to legal representatives under s 248 of Civil Procedure Code—Notice given to wrong persons—Title of purchaser—Right of redemption—Limitation—Civil Procedure Code (1877), ss. 234, 248, and 311* On the 28th March 1877 *N* mortgaged certain property to the defendant. On the 27th June 1877 one *H* obtained a money-decree against *N*, but before it could be executed, *N* died leaving all his property to his [illegible] were his daughters, the plaintiffs The plaintiffs, however, were not made parties to the execution-proceedings, nor were notices served on them under s 248 of the Civil Procedure Code (Act X of 1877). The execution proceedings were continued, and the mortgaged property was sold on the 9th June 1880, and was bought by the defendant (the mortgagee) subject to his mortgage The sale was confirmed and a certificate of sale was duly issued to the defendant, who got formal possession on the 11th October 1880, he being already in possession as mortgagee In 1889 the plaintiffs sued the defendant to redeem the mortgage It was contended that the defendant, having purchased at a Court-sale, was entitled to the property free from the claim of the plaintiffs The case first came before FARRAN, *C.J*, and PARSONS, *J*, who differed in opinions, FARRAN, *C.J.*, holding that the sale-proceedings were not absolutely null and void by reason of the want of notice of execution to the representatives, but they were valid until set aside by a suit brought for that purpose, which suit had never been brought, and that the plaintiffs had therefore lost their right to redeem, and PARSONS, *J.*, being of opinion that the sale was null and void, and therefore that the plaintiffs were entitled to succeed. The case was then referred to three other Judges of the Court *Held* by CANDY and JARDINE, *JJ*, that even assuming that the execution-proceedings and sale had conveyed an absolute title to the purchaser, the present suit, which was brought within twelve years of the sale, did in effect challenge the sale, and that the plaintiffs were therefore entitled to redeem *Held*, by RANADE, *J*, that in respect of the plaintiffs who were not parties, the sale-proceedings were invalid and null, and without jurisdiction, that the auction-purchaser acquired no rights under his certificate of sale as against these legal representatives, and that as against them he could only claim title by adverse possession not falling short of twelve years As the present suit was admittedly brought within that period, it was maintainable ERAVA *v.* SIDRAMAPPA PASARE . I. L. R. 21 Bom. 424

[illegible] judgment-creditor as a party thereto, nor under s 311 of the Code of Civil Procedure and art. 12 (*a*) of the Limitation Act, 1877, after one year from the date thereof. An executive Court does not lose jurisdiction to sell because it serves notice on a person who does not represent the deceased judgment-debtor, and afterwards erroneously decides that who does. Such decision is valid unless set aside in due course of law MALKARJUN BIN SHIDRAMAPPA PASARE *v* NARHARI BIN SHIDAPPA

L. R. 27 I. A. 216

(*c*) FRAUD.

8. ——— **Application of ss. 256, 257, Civil Procedure Code, 1859 (1882, ss. 311, 312)**—*Application to set aside sale.* Ss. 256 and 257, Act VIII of 1859, did not apply to a suit in which fraud is imputed vitiating the sale *in toto.* UMBIKA CHURN CHUCKERBUTTY *v* DWARKA NATH GHOSE . . . 8 W. R. 506

VIRSINGAPPA BIN BASLINGAPPA *v.* SADASHIVAPPA APPA GOLKHANDI . . 7 Bom. A. C. 74

9 ——— **Application to set aside sale**—*Irregularity—Failure to prove fraud—Civi*

SALE IN EXECUTION OF DECREE—*contd*

16. INVALID SALE—*contd.*

(c) FRAUD—*contd.*

Procedure Code, 1859, s 256. Where the facts connected with an execution-sale fell far short of establishing fraud, and merely amounted to irregularity resulting in detriment to the judgment-debtor, his remedy was *held* to lie in an application under s. 256 of Act VIII of 1859 to set aside the sale. GOBIND SINGH *v* MUNNO RAM DOSS

19 W. R. 414

10. ———————— *Civil Procedure Code, 1859, ss 256, 257—Suit to set aside sale after failure of application.* A plaintiff was not debarred by reason of the failure of an application under ss 256 and 257, Act VIII of 1859, from suing to set aside a sale on the allegation of fraud in connection with the irregularities first complained of, such fraud forming a distinct cause of action NUND LALL DOSS *v.* DELAWUR ALI

11 W. R. 244

(*Contra*) GOBIND SINGH *v* MUNNO RAM DOSS

19 W. R 414

11. ———— Suit to set aside sale—*Sufficiency of proof—Irregularity, proof of want of.* In a suit to set aside an execution-sale on the ground of fraud, it is not sufficient for a Court to

14 W. R 325

12. ———————— *Civil Procedure Code, 1882, s. 311—Ground for setting aside sale or otherwise—Effect of fraud to which auction-purchaser is no party* A judgment-debtor cannot have a Court-sale set aside on the ground of fraud in the absence of proof that the auction-purchaser was a party to the fraud, and that the fraud came to the judgment-debtor's knowledge subsequent to the confirmation of the sale ABBUBAKER SAHEB *v* MOHIDIN SAHEB . I L. R. 20 Mad 10

13. ———————— *Rights of bonâ fide auction-purchasers.* When no fraud has been

no party to the fraud, and there would be no ground for setting aside the sale MAHOMED KUZULBASH KHAN *v* MAHOMED SHAH

12 W. R 48

14. ———————— *Suit for money secured by the mortgage of immoveable property situate partly in the family domains of the Maharajah of Benares—Fraudulent representation by decree-holder—Sale of decree enforcing hypothecation of immoveable property* A suit was instituted in the Court of the Subordinate Judge of Benares for money secured by the mortgage of immoveable property situate within the limits of the district of Benares, and of immoveable property situate within the limits of the family domains of the Maharajah of Benares. The Subordinate Judge had not jurisdiction to proceed with this suit in so far as it related to the latter property, and he was authorized to proceed with it, under the provisions s. 13 of Act VIII of 1859, by the High Court in concurrence with the Board of Revenue. He accordingly proceeded with the suit, and on the 18th November 1874 gave the plaintiffs a decree for the recovery of the money claimed by the sale

Subordinate Judge at Kondh, within whose jurisdiction such property was situate: and such property was sold in the execution of this decree on the 29th August and the 4th September 1877. Subsequently the defendants in the present suit, who held decrees for money against *H*, one of the plaintiffs in the suit abovementioned, applied to the Subordinate Judge of Benares for the attachment and sale of *H's* interest in the decree abovementioned, falsely representing that the sales in execution of that decree of the 29th August and 4th September 1877 had been set aside Such interest was accordingly put up for sale on the 29th May 1878 at Benares by the Subordinate Judge of Benares, and was purchased by the plaintiffs in the present suit, who were induced to purchase by such false representation The plaintiffs in the present suit claimed the avoidance of the sale of the 29th May 1878 and the refund of the purchase-money, on the ground that they were induced to purchase by such false representation, and on the ground that the sale of the interest of *H* in the decree of the 18th November 1874, being of the nature of immoveable property situate within the limits of the family domains of the Maharajah of Benares, could not legally be sold at Benares by the Benares Court *Held* that such false representation must be held to constitute in law such fraud as vitiated the sale of the 29th May 1878 Also that the Benares Court acted *ultra vires* in selling at Benares an interest in immoveable property situate within the family domains of the Maharajah of Benares RAGHU NATH DOSS *v.* KAKKAN MAL . . I. L R 3 All. 568

15. ———————— *Communication made to judgment-debtor by intending mortgagee and*

SALE IN EXECUTION OF DECREE—*contd.*

16. INVALID SALES—*contd.*

(c) Fraud—*contd.*

the mortgage-lien:—*Held*, that the facts, even if proved, would not constitute fraud entitling the judgment-debtor to have the sale set aside. Rojoni Kant Bagchi *v.* Hossein Uddin Ahmed **4 C. W. N. 538**

16. ——— *Gift in fraud of creditors—Subsequent sale by creditors in execution of subject-matter of gift—Purchase at execution-sale for inadequate price by means of fraud—Suit by donee to set aside sale for fraud—Rescission when granted.* In June 1875 A ...

first defendant by means of false representation became the purchaser at an inadequate price. In July 1879 *A* applied to have the sale set aside on the ground of the fraud of the first defendant, but his application was rejected In 1884, the plaintiffs by their next friend sued to set aside the sale, contending that at the date of *B's* decree the property was theirs by virtue of the deed of gift of June 1875, and further that the sale was void by reason of the defendant's fraud. *Held*, rejecting the plaintiffs' claim, that the plaintiffs could not be allowed to set up their deed of gift as against the proceedings in execution under which the defendant acquired his title as purchaser. That gift was made to them by *A* when he was in pecuniary ...

gave them the property as tenants-in-common The plaintiffs were therefore only owners of their respective shares, and were not entitled to have the sale set aside *in toto* This, however, was what they sued for in their plaint. *A's* wife could not now join in rescinding the sale, as she must have known in 1879 of the fraud, her husband having immediately after the sale endeavoured to set aside the sale on that ground A transaction cannot generally be rescinded unless the party seeking it is able to rescind it *in toto*, except where the transaction is severable. Hormusji *v.* Cowasji **I. L. R. 13 Bom. 297**

17. ——— *Code of Civil Procedure (Act XIV of 1882), ss. 244, 311, 312, 588—Allegation of fraud in application for setting aside sale.* No second appeal lies from an order setting aside a sale under s. 312 of the Code of Civil Procedure, although an allegation of fraud is made in the application for setting aside the sale, when no attempt is made to substantiate the allegation. *Rojoni Kant Bagchi* v. *Hossain Uddin Ahmed, 4 C. W. N. 538*, discussed and explained. *Nava Kumar Roy* v. *Golam Chunder Dey, I L R 18 Calc 422 ; Abhoya Dossi* v. *Pudmo Luchun Mondol, I. L. R. 22 Calc. 802*, and *Daivanayagam Pillai* v *Rangasami Aiyar, I. L. R 19 Mad. 29*, followed. Umakanta Roy *v.* Dino Nath Sanyal (1900) **I. L. R. 28 Calc. 4; s.c. 5 C. W. N. 124**

18. ——— *Execution-sale, application to set aside—Fraud—Irregularity—Code of Civil Procedure (Act XIV of 1882), ss. 244, 294 and 311—Purchase by the decree-holder benami at a price less than that at which the decree-holder was permitted to bid—Limitation Act (XV of 1877), Sch II, Art. 178.* The purchase of property at an execution sale by the decree-holder, in the name of another person, at a price less than that at which the decree-holder obtained permission to bid for the said property, constitutes fraud which would vitiate the sale. *Mahomed Gazee Choudhry* v. *Ram Lall Sen, I. L. R 10 Calc. 757*, referred to. Art. 178, Sch II, of the Limitation Act, would govern such a case. Srimati Sarat Kumari Debi *v.* Nimai Churn Dey Sircar 1900. **5 C W. N. 265**

19. ——— *Application to set aside sale on the ground of fraud—Previous suit with similar object dismissed—Procedure—Estoppel.* S. 144 (c) of the Civil Procedure Code governs a case in which a person seeks to set aside an auction-sale on the ground of fraud and on the ground that the decree holder himself held a mortgage on the property brought to sale. This plea had been urged successfully by the appellant in a regular suit brought by the present respondent, but the former now pleaded that the remedy should be by suit and not by execution-proceedings *Per* Aikman, *J.*—The appellant cannot be allowed to go behind the issue decided in the course of the previous litigation Gaya Prasad Misr *v.* Randhir Singh (1906) **I L R. 28 All. 681**

20 ——— *Application to set aside sale—Limitation —Fraud—Onus of proof—What to prove exactly—Limitation Act (XV of 1877), s 18.* When a suit or application is, on the face of it, barred by limitation, it is for the plaintiff or applicant to satisfy the Court of circumstances which would prevent the statute from having its ...

I. L. R. 36 Calc. 654.

SALE IN EXECUTION OF DECREE—*contd.*

16. INVALID SALES—*contd.*

(*d*) Execution-proceedings struck off.

21. ——— **Effect on validity of sale**—*Beng Reg. XX of 1795—Title of purchaser.* Re-

lands under the decree were made, and then the decree-holder sold the lands to a third party upon whose application the decree was executed by the sale of the lands of the judgment-debtor under it by order of the Court, and without any further recourse to the Revenue Board. Previous to such sale, the proceedings had been taken off the file, and the number of villages, owing to some inaccuracy, was differently stated in the later order, and the total sum was increased by adding the interest which had accrued due between the two orders. *Held*, that the purchaser at the sale acquired a good title; for it would be contrary to general principles, and a senseless addition to all the vexations of delay in the course of procedure, to hold that when for any reason, satisfactory or not, the execution of a final decree in a suit fails or is set aside and the proceedings as regards that execution are taken off the file, the whole suit is discontinued thereby, and the further proceedings for the same purpose were to be considered as taken in a new suit Nor was it true in any material sense that either the properties to be sold or the sums to be recovered were different, and the prin-

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Marsh. 592 : 2 Ind Jur O S 1
9 Moo. I A. 324
5 W. R. P. C. 7

(*e*) Decrees afterwards reversed

22 ——— *Title of purchaser.* If a sale takes place in execution of a decree in force and valid at the time of sale, the property in the thing sold passes to the purchaser *Per* Norman, *J.*—If the decree or judgment be afterwards reversed, the reversal does not affect the validity of the sale or the title of the purchaser Chunder Kant Surmah *v.* Bissesur Surmah Chuckerbutty . . **7 W. R. 312**

Fyazooddeen Bhooya *v.* Shumsunnissa Beebee . **12 W. R. 508**

Beharee Lall *v.* Rajah Ram **6 N. W. 291**

SALE IN EXECUTION OF DECREE—*contd*

16. INVALID SALES—*contd.*

(*e*) Decrees afterwards reversed—*contd*

23. ——— *Reversal of por-*

24. ——— *Sale made after order for postponement* *Held*, that an auction-sale which was made *bonâ fide* under the authority of *an order which at the time of the sale was not* in force, but had been superseded by a subsequent order postponing the sale, was made without jurisdiction and was null and void Foujdar Khan *v* Bainee Doobey . . **3 Agra 398**

25. ——— *Sale pending appeal—Decree reversed on appeal—Right of judg-*

storation of his property, and not merely to the proceeds of the sale Sadasivayyar *v* Muttu Sabapathi Chetti . . **I. L. R. 5 Mad. 106**

See Lati Kooer *v* Sobadra Kooer
I. L. R 3 Calc. 720 : 2 C. L. R. 75

Nagindas Devchand *v* Natha Pitambar,
10 Bom 297

26. ——— *Reversal of decree on appeal before confirmation of sale—Purchaser, right of* Plaintiff's title to certain land in dispute was derived from the purchaser at a Court's sale, under a decree which was reversed on appeal subsequently to the sale before it had been confirmed *Held*, that the Court which had made the

its decree had been reversed, and the purchaser

A purchaser is bound to satisfy himself as to the jurisdiction of a Court to order a sale, and this obligation continues until the sale is completed.

27. ——— *Sale in execution pending appeal from decree—Application for*

SALE IN EXECUTION OF DECREE— *contd.*

16. INVALID SALES—*contd.*

(e) DECREES AFTERWARDS REVERSED—*contd.*

confirmation of sale after reversal of decree—Court not competent to grant confirmation—Civil Procedure Code, s 312 Where a sale in execution of a decree has taken place pending an appeal, and the decree has subsequently been reversed, the Court executing the decree cannot, after such reversal, grant confirmation of the sale. *Basappa bin Malappa Ali v Dundaya bin Shivlingaya, I. L. R. 2 Bom. 540,* referred to. MUL CHAND *v* MUKTA PRASAD . . . I. L. R. 10 All. 83

28. ———— *Remedy of parties aggrieved—Suit for reversal of sale.* When a property is sold in execution of a decree which had been in force at the time of sale, but which was eventually set aside on appeal, the remedy of the party aggrieved is by a suit for the reversal of the sale, and not by a suit for the recovery of damages for the loss sustained ANNUNDO CHUNDER BANERJEE *v* SHUBHUL CHUNDRA DEBEA 2 Hay 624

29. ———— *Right to recover land.* A sale in execution of a decree, made while that decree is under review, cannot stand if the decree is subsequently reversed. The party dispossessed under the decree is entitled to recover the land with mesne profits. BHOOLLOO *v* RAMNARAIN MOOKERJEE . . W. R. 1864, 129

30. ———— *Suit to recover possession—Return of purchase-money* A had sued R and others for possession of two mouzahs with mesne profits and obtained a joint decree against them in the absence of R In execution A was about to put up the rights and interest of R in

...

Court decided that R had been in possession of mouzah J, and was liable for the mesne profits. R then brought a suit for possession of a share of the mouzah which had been sold in execution. *Held*, that the plaintiff could not in justice seek to recover this property from the defendants without offering to pay them the debt which he owed them, and which formed part of the consideration-money COWREE BOYJO NATH PERSHAD *v* JODHA SINGH 10 W. R. 416

31. ———— *Suit for possession against auction-purchaser by setting aside sale*

...

SALE IN EXECUTION OF DECREE— *contd.*

16. INVALID SALES—*contd.*

(e) DECREES AFTERWARDS REVERSED—*contd*

...

claimed *Jan Ali* v. *Jan Ali Chowdhry, 1 B. L. R. A. C. 56 : 10 W. R. 154,* followed. MURARI SINGH *v.* PRYAG SINGH . . I. L. R 11 Calc. 362

32. ———— *Ex parte decree the validity of which is impeached—Notice to purchasers* In a suit by S in his own right as well as on behalf of his minor brother, to cancel an execution-sale held in execution of an *ex parte* decree, to cancel the said decree and two bonds entered into by members of their family during the plaintiffs' minority, and to recover possession of a share in the ancestral property which had been sold, it was found that the advances of money for which the bonds were executed were made without proper inquiries as to the necessity for the loan, and that the minors were not properly represented in the suit in which the *ex parte* decree was obtained.

...

20 W. R. 120

Where no such notice has been given, the sale would continue valid RAM JEWUN LALL *v.* SHAM LALL MISSER . . . . 20 W. R. 123

33. ———— *Effect of reversal of decree upon sale in execution—Sale to bonâ fide purchaser, not a party to the decree, distinguished from sale to decree-holder.* A sale having duly taken place in execution of a decree in force at the time cannot afterwards be set aside as against a *bonâ fide* purchaser, not a party to the decree, on the ground that, on further proceedings, the decree has been, subsequently to the sale, reversed by an Appellate Court. A suit was brought by a judgment-debtor to set aside sale of his property in

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same decree, who were no parties to it. *Held*, that, as against the latter purchasers, whose position was different from that of the decree-holding

SALE IN EXECUTION OF DECREE—*contd.*

16. INVALID SALES—*contd.*

(e) DECREES AFTERWARDS REVERSED—*concld.*

purchasers, the suit must be dismissed ZAIN-UL-ABDIN KHAN *v.* MUHAMMAD ASGHAR ALI KHAN
I. L. R. 10 All. 166
L. R. 15 I. A. 12

34. ———— *Civil Procedure Code, 1882, ss. 108, 244, and 314—Sale in execution of an ex parte decree and purchase by the decree-holder—Confirmation of the sale—Subsequent setting aside of the ex parte decree—Application by a subsequent purchaser in execution of another decree to set aside the sale on the ground that the ex parte decree had been set aside.* Certain immoveable properties were sold in execution of an *ex parte* decree and were purchased by the decree-holder himself. After the confirmation of the sale, the decree was set aside under s. 108 of the Civil Procedure Code at the instance of some of the defendants in the original suit On an application under s 244 of the Civil Procedure Code having been made by a prior purchaser of the said properties in execution of another decree, to set aside the sale held in exe-

Code; and that the *ex parte* decree having been set aside, the sale could not stand, inasmuch as the decree-holder himself was the purchaser *Doyamoyi Dasi* v *Sarat Chunder Mozoomdar, I L. R. 25 Calc 175, Beni Persad Koeri* v. *Lakhi Rai, 3 C. W. N. 6, Durga Charan Mandal* v. *Kali Prasanno Sarkar, I L. R 26 Calc 727; Nawab Zainul-abdin Khan* v. *Mahammed Asghar Ali, L. R 15 I A. 12: I. L R 10 All 166;* and *Mina Kumari Bibee* v *Jagat Sattani Bibee, I L. R 10 Calc. 220,* referred to. SET UMEDMAL *v* SRINATH ROY . . . I. L. R. 27 Calc. 810
4 C. W. N. 692

35. ———— *Purchase by decree-holder—Effect of reversal of decree upon sale in execution—Civil Procedure Code (Act XIV of*

decree passed by the first Court, the sale having

SALE IN EXECUTION OF DECREE—*contd.*

16. INVALID SALES—*contd.*

(f) DECREE FOUND TO HAVE BEEN SATISFIED.

36. ———— *Purchase by one of several judgment-debtors—Full Bench ruling.* Where a decree was purchased by one of the judgment-debtors and afterwards executed and property of the other judgment-debtor sold in execution of the decree, and it was eventually held by a Full Bench in the case that the purchase of the

37. ————*Order for sale and sale in execution under a decree previously satisfied* An order for sale and a sale under such order are *ultra vires* and nullities if the decree which is ordered to be executed has been satisfied by payment into Court of the decretal money before the order is made CHUNNI *v.* LALA RAM I. L. R. 16 All. 5

38. ———— *Sale in execution of decree already satisfied—Bonâ fide purchaser at*

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ground that the decree had already been satisfied out of the Court at the time the sale was held. *Rewa Mahton* v. *Ram Kishen, I. L. R. 14 Calc 18; L. R 13 I. A. 106,* and *Mothura Mohun Ghose* v. *Akhoy Kumar Mitter, I L R 15 Calc. 557,* followed YELLAPPA *v.* RAMCHANDRA I. L. R. 21 Bom. 463

39. ————

trial. MUKHODA DASSI *v.* GOPAL CHUNDER DUTTA
I. L R. 26 Calc. 734

MUKHODA DASI *v.* HEM CHUNDER BHATTACHARJEE . . . . . 3 C. W. N. 766

See ZAINULABDIN KHAN *v.* MUHAMMAD ASHGAR ALI KHAN.
I. L. R. 10 All. 166 · L. R. 15 I. A. 12

40. ———— *Civil Procedure Code, 1877, s 246—Execution of cross-decrees—Power of Court executing decree—Bonâ fide purchaser—Presumption of validity of order for sale.*

SALE IN EXECUTION OF DECREE—*contd.*

16. INVALID SALES—*contd*

(*f*) DECREE FOUND TO HAVE BEEN SATISFIED—*contd.*

whether the decree, under which execution has issued, has been satisfied or not. These are questions to be determined by the Court issuing execution Where property, sold in execution of a

sale. REWA MAHTON *v* RAM KISHEN SINGH I. L R 14 Calc. 18 L. R. 13 I A. 106

41. ———— *Title of auction-purchaser—Purchaser whether bound to enquire into the validity of the order under which the sale takes place.* Where under a decree upon a mortgage the sale of certain property is ordered, and such property is sold at auction in pursuance of such order, and the sale is confirmed, the auction-purchaser takes a good title, even though the decree was one which the Court ought not to have made The purchaser at a sale under a decree is under no obligation to look behind the decree to see whether the decree has been rightly made. *Matadin Kasodhan* v. *Kazim Husain, I. L R. 13 All 432,* distinguished. *Rewa Mahton* v *Ram Kishen Singh, I L R 14 Calc 18,* and *Mukhoda Dassi* v *Gopal Chunder Dutta, I L R 26 Calc 734,* referred to. KAUNSILLA *v.* CHANDAR SEN I. L. R. 22 All. 377

42. ———— *Suit to set aside sale—Fraud—Auction-purchaser acting bond fide—Fraudulent execution of a decree after adjustment—Execution of decree adjusted, but of which satisfac-*

SALE IN EXECUTION OF DECREE—*contd.*

16 INVALID SALES—*concld.*

(*f*) DECREE FOUND TO HAVE BEEN SATISFIED—*contd.*

of *Rewa Mahton* v. *Ram Kishen Singh, L R. 13 I A 106 : I L. R 14 Calc. 18,* that the sale could not be set aside Such a sale could only be set aside if it were shown that the Court had no jurisdiction to execute the decree; but as the decree

commented on. *Held,* further, that the execution-proceedings could not be held to be void, as, although instituted by a person who had no authority to institute them, they were instituted in the name of the decree-holder, and neither the Court nor the auction-purchaser was bound to see that the application was made *bond fide* on his behalf. MOTHURA MOHAN GHOSE MONDUL *v.* AKHOY KUMAR MITTER . I. L. R. 15 Calc. 557

(*g*) DECREES AGAINST WRONG PERSONS.

43. ———— *Right to have sale set aside where decree was against wrong person as representatives—Subsequent claim by proper representative—Estoppel—Quiescence* One *S* died in-

26th July 1880 the house of *S*, then in the possession of *B*, was sold in execution, and the first defendant, *R*, purchased it. On 6th September 1880 the sale was confirmed, and on 26th November 1880 *R* was put into possession. On the 10th of December 1880 one *S* presented a petition on behalf, as he alleged, of the plaintiff *T*, the widow of *S*, to set aside the sale He did not produce any authority from her, and his application was rejected on the 14th June 1881 On the 31st October 1878 *T* adopted the plaintiff *B* under an authority, as she alleged, of her deceased husband *S*. In 1881 *T* filed the present suit on behalf of her adopted son, *B*, to set aside the sale and to recover the house. *Held*, that the plaintiff was entitled to have the sale set aside and to recover possession of the house. The estate was vested in *T* as legal representative of her deceased husband. Had *T*

SALE IN EXECUTION OF DECREE— *contd.*

16. INVALID SALES—*contd.*

(*h*) DECREE WITHOUT POWER OF SALE.

44. ———————— *Sale under decree giving no power of sale—Partition of tarwad—Tarwad debt—Construction of decree—Decree explained by judgment.* In 1870 the managers of the plaintiff's

referred to was allotted to the present plaintiff's branch. In 1887 the kanomdar in execution of the above decree, brought the land to sale, and it was purchased by defendant I. *Held,* that the sale was not binding on the plaintiff SANKARA *v* KELU

I. L. R. 14 Mad. 29

(*i*) DECREE AMENDED AFTER EXECUTION

45. ———————— *Civil Procedure Code (Act XIV of 1882), s 206—Amendment of*

having been overruled. After the sale, the decree was amended and brought into conformity with the judgment In a suit brought by other members of the tarwad against the karnavan, the decree-holder and the execution-purchaser, it was found

I. L. R. 14 Mad. 150

See CHATHAPPAN *v.* PYDEL.

I. L. R. 15 Mad. 403

(*j*) WANT OF SALEABLE INTEREST.

46. ———————— **Civil Procedure Code, 1877, s. 313**—*Purchaser knowing judgment-debtor has no interest.* A person who purchases immoveable property at a sale in execution of a decree, knowing that the judgment-debtor has no saleable interest therein, is not entitled to the benefit of provisions of s 313 of Act X of 1877, which were designed for the protection of persons who innocently and ignorantly purchased valueless property MAHABIR PRASAD *v.* DHUMAN DAS

I. L. R. 3 All 527

47. ———————— **Civil Procedure Code, 1882, s. 313**—*Setting aside sale—"Saleable interest."* The fact that property sold in execution of a decree is subject to a mortgage upon which a decree has been obtained, which fact is not disclosed prior to the proclamation of sale, is not sufficient to enable an auction-purchaser to set aside the sale on the ground that the judgment-debtor had "no saleable interest" in the property within the meaning of s. 313 of the Civil Procedure Code. *Naharmul Marwari v. Sadut Ali, 8 C. L. R. 468,* distinguished PROTAP CHUNDER CHUCKERBUTTY *v.* PANIOTY

I. L. R. 9 Calc. 506: 12 C. L. R. 488

48. ———————— *Application to set aside sale—"Saleable interest."* A misrepresentation or concealment in the sale notification which induces a purchaser to buy a property for much more than it is really worth, although that misrepresentation or concealment may be fraudulent, is no ground for setting aside a sale under s 313 of the Civil Procedure Code The meaning of s. 313 is, that when a purchaser under an execution sale buys a property which turns out to have no existence at all, or to be of no saleable value whatever, the Court may then set aside the sale under s 313 DURGA SUNDARI DEVI *v* GOVINDA CHUNDRA ADDY **I. L. R. 10 Calc. 368**

49. ———————— *Decree against insolvent—Official Assignee—Purchaser at execution-sale—Setting aside sale* Where in execution of a decree passed against a person who had pre-

s c. DENOBUNDHOO PAL *v* SHUSHI MOHUN PAL CHOWDHRY . . . . **12 C. L. R. 60**

s c RAM SOONDUR DEY *v* SHOSHI MOHUN PAL CHOWDHRY . . . . **11 C. L. R. 389**

50 ———————— *Property covered by mortgage—Saleable interest* In execution of a

SALE IN EXECUTION OF DECREE—*contd.*

16. INVALID SALES—*contd.*

(*j*) Want of Saleable Interest—*contd.*

circumstances, no such saleable interest in the judgment-debtor at the time of the sale on the 21st February 1880 as would prevent the operation of s. 313 of the Civil Procedure Code, inasmuch as under that sale the purchaser would be unable to get the particular property purchased by him, and that the sale must be set aside NAHARMUL MARWARI *v.* SADUT ALI . . 8 C. L. R. 468

51. ———— *Sale under attachment during subsistence of prior attachment—Saleable interest* In execution of a decree obtained on the 15th August 1876 the property of the judgment-debtor was attached on the 17th August 1877. The sale of the attached property was postponed, pending a suit instituted under the direction of the Court by a claimant to the attached property This suit having been dismissed on the

been obtained by another party against the judgment-debtor, and in execution of this decree the same property was attached on the 13th September 1878, and under this attachment a sale took place on the 15th November following On the 16th December, as fixed, the property was again sold under the first attachment. The auction-purchasers at that sale, on the 6th January 1879, applied, under s 313 of the Civil Procedure Code, to set aside the sale, on the ground that the judgment-debtor had no saleable interest *Held* (revers-

244, and *Kartick Chunder Singh* v *Gogaram, 2 W. R Mis 48*, which the Court felt bound to follow while it doubted their correctness,—that the sale must be set aside CHUKTA PANDA *v* GOBURDHONE DASS . . . 6 C L. R. 85

where the judgment debtor has no saleable interest in a portion only of the property. *In the matter of the petition of* RAM COOMAR DEY RAM COOMAR DEY *v* SHUSHEE BHOOSHUN GHOSE

I. L. R. 9 Calc. 626

53. ———— *Judgment-debtor—Representative—Sale of immoveable property—Setting aside sale* In the event of the death of the

SALE IN EXECUTION OF DECREE—*contd*

16. INVALID SALES—*contd.*

(*j*) Want of Saleable Interest—*concld.*

provision for the appearance of the representative. BALA KADAR *v.* GULAM MOHIDIN

I. L. R. 7 Bom. 424

54. ———— *Civil Procedure Code, ss. 213, 220—Transfer of execution of decree to Collector—Jurisdiction of Civil Courts to entertain application under s 313—Rules prescribed by Local Government under s 320—Notification No 671 of 1880, dated the 30th August. Held*, that an application under s. 313 of the Civil Procedure Code by the purchaser at a sale in execution of a decree which had been transferred for execution to the Collector in accordance with the rules prescribed by the Local Government was entertainable by the Civil Courts, and the Collector had no jurisdiction under the Code or under Notification No. 671 of 1880 to entertain it *Madhu Prasad* v. *Hansa Kuar, I L R 5 All 314*, referred to. NATHU MAL *v.* LACHMI NARAIN . I. L. R. 9 All. 43

See KESHABDEO *v.* RADHE PRASAD.

I. L. R. 11 All. 94

55. ———— *Civil Procedure Code, s 313—Setting aside sale in execution of decree—Incumbrance.* The fact that property sold in

(*l*) Sale contrary to Law

56. ———— *Sale in contra-*

contrary to the provisions of s. 53 of the Transfer

MAYAN PATHUTI *v* PAKURAN

I. L R. 22 Mad 347

See MARTAND BALKRISHNA BHAT *v* DHONDO DAMODAR KULKARNI I L R 22 Bom 624

and ERUSAPPA MUDALIAR *v.* COMMERCIAL AND LAND MORTGAGE BANK I. L. R. 23 Mad. 377

SALE IN EXECUTION OF DECREE—*contd.*

16. INVALID SALES—*contd*

(*k*) SALE CONTRARY TO LAW—*concld*

57. ——————— *Sale contrary to provisions of Transfer of Property Act (IV of 1882), s 99—Mortgage of annuity—Sale of attached property at instance of mortgagee—Right of son not party to suit to redeem his share—Rights of Hindu debtor's son after attachment and sale* In 1848 an annuity had been settled on plaintiff's ancestor and his heirs in consideration of his withdrawal from a suit for partition then pending. In 1878 plaintiff's father and others then enjoying the annuity executed a bond for money due by them, mortgaging their rights under the said annuity Instalments due under the bond having fallen into arrears, a suit was brought in 1889 in respect of them, and a decree obtained, which contained a provision that the right to the annuity should be liable to be proceeded against for the amount so due Plaintiff was born in 1891 In 1893 an application was made for the issue of a proclamation of sale, and a sale ensued and a certificate was given to the purchaser, who was the decree-holder Plaintiff having instituted this suit to set aside the said sale or to have it declared that it did not affect his right under the said annuity:—*Held*, that, inasmuch as the decree was, on its true construction, not a decree for sale, the case was one of attached pro-

property is permissible under that section are not satisfied unless there is a decree for sale; and in the absence of such decree, the sale is prohibited; that although a sale in contravention of the section is not absolutely void for all purposes, it is at least void against all persons who were not parties to the suit in which the decree for money was obtained; that the rights of a Hindu debtor's son may be concluded by a proper mortgage decree

and that plaintiff was entitled to a decree for the redemption of his share MUTHURAMAN CHETTI *v* ETTAPPASAMI . . I. L R 22 Mad 372

(*l*) WANT OF JURISDICTION

58 ——— Effect on validity of sale—*Property attached in execution of decrees of Munsif and District Judge—Sale of property under order of Munsif—Civil Procedure Code, 1882, s 285.* Where certain immoveable property, which had been attached in execution of two decrees, one made by a Munsif and the other by the District Court to which such Munsif was subordinate, was sold under the order of the Munsif:—*Held*, following *Badri Prasad* v *Saran Lal, I. L. R. 4 All. 359*, that the sale was bad, by reason of the Munsif's want of jurisdiction to order it AGHORE NATH *v* SHAMA SUNDARI . . I. L. R. 5 All 615

59 ——————— *Civil Procedure Code, 1877, s 285—Attachment of property in execution of decree of two Courts—Postponement of sale by Court of higher grade—Sale of property under of Court of lower grade* When several decrees of different Courts are out against a judgment-debtor, and his immoveable property has been attached in

of determining claims made to the property, of ordering the sale thereof and receiving the sale-proceeds, and of providing for their distribution under s 295 *Held*, therefore, where the immoveable property of a judgment-debtor was attached in execution of several decrees, one a Munsif's decree and the rest a Subordinate Judge's decrees, and the Subordinate Judge postponed the sale of such property, but the Munsif refused to do so, and such property was sold in execution of the Munsif's decree, that the sale was void as having been made in pursuance of the order of a Court which had no jurisdiction to direct it. *In the matter of the petition of* BADRI PRASAD BADRI PRASAD *v.* SARAN LAL . . I L R. 4 All. 359

60 ——————— *Civil Procedure Code, 1882, s. 285—Attachment of the same property*

61 ——————— *Civil Procedure Code (Act XIV of 1882), ss. 285 and 295—Decree, transfer of—Rateable distribution* S 295 of the

2 C. W. N. 126

62. ——————— *Civil Procedure Code, 1877 (1882, s 285)—Attachment and sale in*

SALE IN EXECUTION OF DECREE— *contd.*

16. INVALID SALES—*contd.*

(*l*) WANT OF JURISDICTION—*contd*

decrees were held by the same person, and the judgment-debtor was the same person. Such property was sold in execution of both decrees On the application of the judgment-debtor, who brought into Court the amount due on the decree made by

Munsif made an order confirming such sale. *Per* SPA
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Code
made by the Munsif, and the Munsif was not pre-

competent to confirm such sale; but, inasmuch as

CHUNNI LAL v. DEBI PRASAD

I. L. R. 3 All 356

63 ——— *Civil Procedure Code, 1882, s 285—Immoveable property—Attachment by superior Court—Sale by inferior Court—Title of purchaser* The provisions of s 285 of the Code of Civil Procedure, 1882, apply to immoveable property. Where a house, while under an attach-

of the provisions of s 285 of the Code of Civil Procedure, 1882. MUTTUKARUPPAN CHETTI v MUTTURAMALINGA CHETTI . I. L R. 7 Mad. 47

64 ——— *Jurisdiction of Munsif*
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District Judge under s. 18 of Act VI of 1871 in

tion of *A's* decree took place first, and *A* became the purchaser. *A* then objected in the Court of the Additional Munsif that the property could not again be sold; but his objection was overruled, and two days subsequently the property was again put up for sale in execution of *C's* decree, and he became the purchaser *A* brought various suits against the tenants for arrears of rent in which *C* intervened. *Held*, that the jurisdictions of the Munsifs were confined to the particular limits assigned to them, and that, as the property was situate within the limits assigned to the Second Munsif, the Additional Munsif had no jurisdiction to attach
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COONDOO

65 ——— *Civil Procedure Code, 1882, ss. 285, 295—Jurisdiction—Sale by inferior Court pending an unknown attachment by a superior Court.* At an execution-sale held by an inferior Court, at the instance of the decree-holder (the Court itself, the decree-holder, and the auction-purchaser being unaware of any objection to the exercise of a jurisdiction which the Court would ordinarily be competent to exercise), *A* purchased certain property, and this sale was confirmed. It

I. L R 12 Calc. 333

66 ——— *Sale under two different decrees of different Courts of different grades—Civil Procedure Code, 1882, s 285* The first mortgagee of certain immoveable property obtain-

SALE IN EXECUTION OF DECREE—*contd.*

16. INVALID SALES—*contd.*

(l) WANT OF JURISDICTION—*contd.*

the sale took place without his legal representatives being made parties to the execution-proceedings. The Courts which executed these decrees were of two different grades, the Court which executed the first mortgagee's decree being of the lower grade In a suit by the first mortgagee against the second mortgagee for possession of the property :—*Held*, that the sale to the first mortgagee was not invalid, with reference to the provisions of s 285 of the Civil Procedure Code, because it had not been ordered and held by the Court of the higher grade, inasmuch as, when such sale was ordered by the Court of the lower grade, the property was not under attachment in execution of the decree of the

Badri Prasad v *Saran Lal, I L. R 4 All. 359*, distinguished. *Per* OLDFIELD, J., that there was nothing in the provisions of s. 285 or 295 of the Civil Procedure Code to support the contention that the first mortgagee, after allowing the property to be sold, was debarred from enforcing execution of his decree against it, and was only entitled to look to the assets realized at the sale for the satisfaction of his decree STOWELL v AJUDHIA NATH

I L R. 6 All. 255

67. ——— *Sale under decree by two Courts, first a Revenue Court, and then a Civil Court—N.-W P Rent Act (XII of 1881), ss. 170, 171, 172—Civil Procedure Code, 1882, s 285—Effect of section in conflict between Civil and Revenue Courts. Held*, that the procedure prescribed by s 285 of the Code of Civil Procedure, although

I. L. R. 16 All 496, Aulia Bibi v. *Abu Jafar, I. L R. 21 All 405* and *Madho Prakash Singh* v. *Murli Manohar I. L R 5 All 406* referred to. RAGHUBAR DAYAL v BANKE LAL

I L R 22 All 182

68. ——— *Attachment of immoveable property in execution of decrees of two Courts of same grade—Sale by one Court pending prior attachment by other Court—Validity of sale—*

August 1887 applied in that Court for execution, and on the 5th September 1887 attached the share of *A* in a certain jumma. The share was subsequently sold in execution of the plaintiff's decree on the 20th October 1887 and purchased by the plaintiff himself. *Y*, having obtained another decree against *A* in the Court of the First Munsif of Bagirhat on the 6th May 1875, sold his decree in the month of January or February 1887 to the defendant, who on the 10th February 1887 com-

was attached at the defendant's instance on the

that the right, title, and interest of *A* passed to him under the sale of the 20th October 1887. *Held*, that, though the property had been first attached in the Court of the First Munsif, that Court was not a Court of a higher grade than that of the Second Munsif within the meaning of s 285 of the Code of Civil Procedure, and that the sale to the plaintiff was valid, and that he was entitled to the decree he prayed for *Bykant Nath Shaha* v,

69 ——— *Civil Procedure Code, 1882, ss. 285 and 295—Concurrent decrees—Distribution of assets among several decree-holders—Sale in execution by inferior Court of property while under an attachment issued by superior Court.* On the 9th October 1891 *A* obtained a decree against *B* in the Court of the First Class Subordinate Judge of Surat. On the 13th October 1891 *C* also obtain-

tion. *B's* property was consequently attached on the 18th October 1891 On the 7th July 1892 an

respect to which the proclamation of sale had been already issued by the Second Class Subordinate Judge) was attached on the 14th August 1892. Three days later, however, *viz.*, on the 17th August

SALE IN EXECUTION OF DECREE— *contd.*

16.—INVALID SALES—*contd.*

(*l*) WANT OF JURISDICTION—*contd.*

s. 285 of the Civil Procedure Code (Act XIV of 1882), having been made while the attachment levied by the First Class Subordinate Judge was pending, and on the Second Class Subordinate Judge's refusal to do so, *A* applied to the High Court under its extraordinary jurisdiction *Held*, that the sale was good NARANJI MORARJI *v* HARIDAS NAVALRAM . I. L R. 18 Bom. 458

70. ———— *Civil Procedure Code, 1882, s 285—Money attached in execution in two Courts—" Court of highest grade "—Munsif's Court—Small Cause Court.* In the North-Western Provinces the Court of a Munsif must, for the purposes of s. 285 of the Code of Civil Procedure, be regarded as of a higher grade than a Court of Small Causes So *held* by EDGE, *C J*, TYRRELL, BURKITT and AIKMAN, *JJ.* (KNOX, *J*, *dissentiente*) *Per* KNOX, *J*—The respective functions of a Munsif's Court and of a Court of Small Causes in the North-Western Provinces are such that the Courts do not admit of the comparison implied by the term " grade " being instituted between them for the purposes of s 285 of the Code of Civil Procedure. BALLU RAM *v* RAGHUBAR DIAL

I L R. 16 All 11

71 ———— *Attachment and proclamation of sale in execution of decree of Small Cause Court—Subsequent application for execution of decree of first class Surbordinate Judge—Civil Procedure Code, 1882, s 285—Sale by inferior*

... Code (Act XIV of 1882) has the same

... ordinate Judge TURMUKLAL HARKISANRAI *v* KALYANDAS KHUSHAL . I. L. R. 19 Bom. 127

SALE IN EXECUTION OF DECREE— *contd.*

16. INVALID SALES—*contd.*

(*l*) WANT OF JURISDICTION—*contd.*

72 ...

Subsequent application for confirmation to other ...

private sale on or before the 6th June 1893, the day fixed for the sale She obtained a certificate of leave under s. 305 Another decree was obtained against *V* in the Court of the First Class Subordinate Judge at Belgaum by one *R*, and he attached in execution (darkhast 351 of 1892) the same lands which were already attached by the Saundatti ...

the 28th June 1893 *A* applied to the First Class Subordinate Judge in Belgaum, under s 305 of the Civil Procedure Code, for confirmation of the sale, and that the purchase-money paid by him should be distributed as follows, *viz.*, R518-14-2 in satisfaction of the decree of the Belgaum Court, R128-7-10 in satisfaction of the decree of the Saundatti Court, and the balance, R1,352-10-0, to be paid to *V*. The Court of Belgaum granted the application, and directed that the above sum of R128-7-10 should be paid into the Court of Saundatti On the 17th July 1893 *A* applied to the Court at Saundatti to confirm the sale already confirmed by the Belgaum Court, and he brought into Court the said sum of R128-7-10 On the 19th June 1893, while the above proceedings were going on, a third decree-holder (the opponent) had ...

objection and refused confirmation of the sale. The applicant then applied to the High Court under ...

rejected, inasmuch as the sale had already been ...

73 ———— *Attachment of same property by different Courts—Sale by both*

SALE IN EXECUTION OF DECREE— *contd.*

16. INVALID SALES—*contd*

(*l*) WANT OF JURISDICTION—*contd*

Courts—Titles of the respective purchasers at such sales—Civil Procedure Code (Act XIV of 1882), s. 285. *A* and *B* obtained decrees against *C* *A's* decree was obtained in the Court of the Subordinate Judge at Surat *B's* decree was obtained in the Small Cause Court at Surat In execution of their respective decrees, both *A* and *B* obtained orders of attachment on the same day of a certain debt due to *C* by the Municipality of Surat Notice of the attachment was given by the Subordinate Judge to the Small Cause Court, under s 285 of the Civil Procedure Code (Act XIV of 1882) On the 16th November 1893 the Subordinate Judge issued an order for sale of the attached debt, and on the 18th December the Small Cause Court issued a similar order. Both Courts sold the debt on the 6th January 1894, the Small Cause Court selling first in point of time At the sale by the Subordinate Judge the plaintiff bought the debt and the defendant was the purchaser at the sale by the Small Cause Court The defendant, after his purchase, sued the Municipality for the debt, making the plaintiff a party defendant, and he obtained a decree against the Municipality The plaintiff also sued the Municipality, making the defendant a party, and he also obtained a decree which was confirmed by the District Court Against this decree the defendant appealed to the High Court *Held* that the plaintiff had the better title The defendant had bought at the sale held by the Small Cause Court The sale by that Court after it had received notice of the attachment proceedings in the Court of the Subordinate Judge was in direct contravention of the provisions of s. 285 of the Civil Procedure Code (Act XIV of 1882) The Small Cause Court had full notice of the proceedings in the Subordinate Judge's Court, and there was no reason to suppose that the defendant himself had not similar knowledge The defendant did not set up the plea that he was a *bond fide* purchaser without notice *Per* FARRAN, *C.J.*—The sale by the Small Cause Court was an act done in the irregular exercise of admitted jurisdiction But when property is attached by more Courts than one, although each has jurisdiction to sell, that jurisdiction should be exercised by the Court of the highest grade (s 285) If by a mistake of law, or in ignorance of an earlier attachment in a Court of higher grade, a Court of lower grade proceeds to sale, it is not deprived of jurisdiction to do so by s 285 The jurisdiction of a Court cannot depend upon its knowledge of facts. If an attachment in a higher Court deprives a Court of lower grade of jurisdiction to sell, the sale must be, I apprehend, invalid, whether the Court of lower grade knows of it or not If the sale is held to be in such cases only irregular, the purchaser will take an indefeasible or defeasible title according to whether he knows or does not know of the irregularity If he buys *bond fide* and without notice, his title would be perfect, and he will not be affected by the irregularity of the proceedings in the sale. *Rewa Mahton* v. *Ram Kishen, L R 13 I. A 111* If he purchases with notice, he runs the risk of his purchase being set aside ABDUL KARIM *v* THAKORDAS TRIBHOBAN DAS

I L R 22 Bom. 88

74 ———— *Civil Procedure Code (Act XIV of 1882), ss 15, 285—Sale in execution by inferior Court of property already under an attachment by a superior Court—Jurisdiction of Munsif—Preferential right of purchasers in execution-sale—Concurrent decrees, execution of* *A* obtained a decree against *B* in the Court of the Munsif of Jamui, and in execution thereof attached *B's* property on the 16th March 1891 ; the property was sold on the 20th April 1891 and purchased by *C*, who obtained possession of it on the 3rd of August 1891, and then sold his interest to the plaintiff At the same time the defendant *R* had a decree for costs against *B* and his heirs in the Court of the Subordinate Judge of Monghyr, and in execution thereof attached the same property on the 4th February 1891, and sold it on the 24th August 1891, *i e*, about four months after the sale of the property by the Munsif The plaintiff sued for possession on the ground that, having purchased the property of *B* before the second sale by the Subordinate Judge, she was entitled to the property The defendant contended that the sale by the Munsif of the property under attachment by a Court of a higher grade was absolutely void, and the Munsif had no jurisdiction to sell the property under s 285 of the Civil Procedure Code *Held*, that the sale by the Munsif was not without jurisdiction, and that it conveyed to the plaintiff a valid title to the property S 285 of the Civil Procedure Code is merely a section for procedure to prevent different claims arising out of the attachment and sale of the same property by different Courts. *Bykant Nath Shaha* v *Rajendra Narain Rai, I. L. R 12 Calc 333, Dwarka Nath Das* v *Banku Behari Bose, I L R 19 Calc. 651*, and *Patel Naranji Morarji* v *Haridas Navalram, I L R 18 Bom 458*, referred to RAM NARAIN SINGH *v.* MINA KOERY

I. L R. 25 Calc. 46

75 ———— *Civil Procedure Code, 1882, s 285—Attachment of same property by different Courts—Sale by both Courts—Titles of the respective purchasers* Where property not in the custody of any Court has been attached in execution of decrees of more Courts than one, s. 285 of the Code of Civil Procedure does not take away the jurisdiction of the inferior Court, and any proceed-

76. ———— *Mortgage-decree for sale of properties in different districts and jurisdictions—Civil Procedure Code (Act XIV of 1882),*

SALE IN EXECUTION OF DECREE— *contd.*

16. INVALID SALES—*contd.*

(*l*) WANT OF JURISDICTION—*contd.*

ss. 19, 223 (c), Sch IV, Form 128 A decree obtained in a suit, brought under the provisions of s. 19 of the Code of Civil Procedure, in the Court of the Subordinate Judge of Rajshahye on a mortgage of certain properties situated in the districts and jurisdictions of Rajshahye and Nyadumka, directed that the properties mentioned in the mortgage should be sold, and the proceeds applied in payment of the mortgage-debt, and the properties were sold by the Court of Rajshahye *Held*, that the authority given by s. 19 of the Code included an authority to make the orders for the sale of the properties, and that the Rajshahye Court was within its jurisdiction in directing and carrying out the sale *Quære* Whether, where a sale takes place under a money-decree of property partly within the local limits of the Court whose decree is being executed and partly without that Court's jurisdiction, the sale of the property without the jurisdiction would be valid and binding in consequence of the provisions of ss. 19 and 223 of the Code of Civil Procedure MASEYK v. STEEL & Co
I L R 14 Calc 661

77 ...

decree purchased the mortgaged property with leave of the Court. Before the order of sale was passed, the mortgaged property had been transferred by an order of Government to the jurisdiction of another Court *Held*, by the Full Bench, that the sale must be set aside as being without jurisdiction *Kamini Soondari Chowdhrani* v. *Kali Prosonno Ghose, L R 12 I A 215 I L R 12 Calc. 225*, followed. PREM CHAND DEY v. MOKHODA DEBI . . I L R. 17 Calc 699

See DAKHINA CHURN CHATTOPADHYA v BILASH CHUNDER ROY I. L. R 18 Calc. 526

78. ———————— *Bengal, N.-W P and Assam Civil Courts Act (XII of 1887), s 13, cl. 3—Civil Procedure Code, 1882, s 25—Transfer of civil case* A suit on a mortgage-bond, praying for the decree for sale, was transferred under s. 25 of the Civil Procedure Code from the Court of the Second Subordinate Judge to that of the Third Subordinate Judge in the district for trial in that Court The suit was decreed, and an order for sale was ...

1887) dealt with matters of this description, and the Court which passed the decree and the order for sale had jurisdiction to hold the sale. *Prem Chand Day* v. *Mokhoda Debi, I. L. R 17 Calc. 699*, distinguished *Gopi Mohan Roy* v. *Doybaki Nundun Sen, I. L. R 19 Calc. 3*, and *Tincowrie Debya* v. *Shiv Chandra Pal Chowdhury, I. L. R. 21 Calc 639*, referred to. JAGERNATH SAHAI v. DIP RANI KOER . . I. L. R. 22 Calc 871

TINCOURI DEBYA v. SHIB CHANDRA PAL CHOWDHURY . . . I L R. 21 Calc. 639

79. ———————— *Decree set aside as made without jurisdiction.* When, on a re-hearing, a Deputy Collector set aside his former judgment as passed without jurisdiction, it was *held* that his proceedings under that judgment were of themselves null and void, and that it did not require any order in words to set aside the sale which they involved. ONUNGO MOONJUREE DOSSIA v PUNCHANAN BOSE . . 12 W. R. 72

80. ———————— *Decree after-* ...

... CHOWDHRY v BRAJA NATH KUNDU
6 B L R. Ap 90

81 ———————— *Sale by Sheriff* ...

82 ———————— *Sale of ancestral land by order of the Court—Act X of 1877 (Civil Procedure Code), ss 311, 320—Rules prescribed by Local Government under s 320—Invalidity of sale.* A Subordinate Judge made an order for the sale in exec... pert... of t... No...

SALE IN EXECUTION OF DECREE— *contd.*

16. INVALID SALES—*contd.*

(*l*) WANT OF JURISDICTION—*contd.*

execution of such decree should have been transferred to the Collector; and such property was sold accordingly. *Held*, that the order for the sale of such property having been made without jurisdiction, the sale was void and should be set aside. SUKHDEO RAI *v* SHEO GHULAM

I. L. R. 4 All. 382

83. ———— *Fieri facias, writ of—Sheriff, jurisdiction of* Inasmuch as since the establishment of the High Court, or at all events since 1865, a writ of *fieri facias* could not run beyond the High Court's original jurisdiction, a sale in execution of a decree by the mofussil Court of property in the mofussil will pass a good title to the purchaser, notwithstanding that, at the time of such sale, the Sheriff was in possession of the property under a writ of *fieri facias* issued subsequently to 1865 *Monomothonath Dey* v *Greender Chunder Ghose, 24 W. R 366*, cited. GRISH CHUNDER DAS *v*. BROJO JIBUN BOSE . . 8 C L. R 4

84. ———— *Sale set aside as being without jurisdiction—Title of purchaser—Certificate of sale* In 1862 a suit was filed on the Equity Side of the Supreme Court for partition of the property of a Hindu family, and an injunction was issued prohibiting V, a party to the suit, from interfering with the property. In 1863 a decree was passed for the administration of the property [illegible]

second defendant), who was no party to the suit, mortgaged the house at Chingleput to the first defendant, who remained in possession from that [illegible]

SADAGOPA EDINTARA MAHA DESIKA SWAMIAR *v* JAMUNA BHAI AMMAL . I. L. R 5 Mad 54

This decision was afterwards reversed on review so far as it decided that the High Court prior to 1865 had no power to execute a decree in a partition suit between Hindu inhabitants of Madras by selling immoveable property situated in Chingleput district JAMUNA BHAI AMMAL *v* SADAGOPA EDINTARA MAHA DESIKA SWAMIAR

I L. R. 7 Mad 56

85. ———— *Suit to recover* [illegible]

SALE IN EXECUTION OF DECREE— *contd.*

16. INVALID SALES—*contd.*

(*l*) WANT OF JURISDICTION—*concld.*

86. ———— *Sale of property for purpose of realising Court-fees erroneously supposed to be due to Government—Ultra vires—Want of jurisdiction.* An order for sale and a sale under such order are *ultra vires* and nullities when in fact there was no jurisdiction in the Court to make the order *Ram Lall Moitra* v. *Bama Sundari Dabia, I. L. R. 12 Calc 307*, referred to BALWANT RAO *v* MUHAMMAD HUSAIN . I. L. R 15 All. 324

87. ———— *Sale in execution* [illegible]

to sell conferred on the Court by s 284 GOPI CHAND BOTHRA *v* KASIMUNISSA KHATUN (1907).

I. L. R. 34 Calc. 836

(*m*) DECREES BARRED BY LIMITATION

88. ———— Suit to recover purchased [illegible]

[illegible] ation at the time of execution, will not lie TARADUTT LALL *v* RUTTUN SINGH . 5 N W 242

See ZUMEER SIRDAR *v* ASSEEMOODDEEN SIRDAR

23 W. R. 257

89 ———— Objection to validity of sale—*Civil Procedure Code, s 230—Decree, execution of, after twelve years* After a sale of land in execution of a decree and before its confirmation, the judgment debtor cannot object to the validity of the sale on the ground that the execution of the decree is barred by the provisions of s 230 of the Code of Civil Procedure, 1877 GANGATHARA PANDITHAR *v* RATHABAI AMMAL

I. L. R. 6 Mad. 237

90 ———— "Subsisting decree," meaning of—*Sale certificate, effect of—Act XIV of 1882, ss 241, 316—Costs* The words "subsisting decree," in the proviso to s 316 of the Code of Civil Procedure, refer to a decree which is unreversed and in full force, and not merely to a decree the execution of which is not barred by limitation. Where a decree under which a sale takes place [illegible]

execution of the decree is barred by limitation. SARODA CHURN CHUCKERBUTTY *v* MAHOMED ISUF MEAH . . . I. L. R. 11 Calc. 376

91. ———— Effect on validity of sale—*Execution of decree barred at time of sale—Purchase*

SALE IN EXECUTION OF DECREE— *contd.*

16 INVALID SALES—*contd.*

(*m*) DECREES BARRED BY LIMITATION—*contd*

of decree-holder. *G A* obtained a decree against *M.* Afterwards *L N*, who had obtained a decree against *G A*, attached the decree which he (*G A*) had obtained against *M*, and upon sale in execution, became himself the purchaser of that decree It afterwards appeared that the decree held by *L N* against *G A* was barred by limitation. *Held*, that the execution of *L N's* decree against *G A*, being barred by lapse of time at the time of sale, the sale was invalid. GOLAM ASGAR *v* LAKHIMANI DEBI 5 B L. R. 68 : 13 W. R. 273

92. ———— **Separate suit for declaration that decree was barred by limitation at time of sale**—*Right of suit.* *A* sued for possession of certain lands to which he alleged he was entitled as wussee (executor) under a wusseeutnamah (will), and which *B* had fraudulently, during the minority of himself and his brother, caused to be put up for sale under a decree the execution of which was barred by lapse of time *B* had become the purchaser at such sale *Held*, that a suit would not lie for the purpose of having it determined the the execution of *B's* decree was barred NOJABUT ALI CHOWDHRY *v* MOHA BUSSEEROOLAH CHOWDHRY . . 11 B L. R 42 : 20 W. R. 5

93. ———— **Suit to recover property sold**—*Sale set aside, execution of decree being found to be barred by limitation—Suit to recover the pro-* [illegible]

[illegible]

ground that execution was barred by limitation. Certain properties of the judgment-debtor were attached and sold in execution of this decree, the judgment-creditor himself becoming the purchaser In due course the sale was confirmed, and a certificate granted to the purchaser Subsequently to this, the order granting execution came up before the High Court on appeal, and that Court decided that execution was barred. The person who had [illegible]

[illegible]

94 ———— **Right to deposit by judgment-debtor** [illegible]

[illegible]

appeal, neither the depositor nor the judgment-debtor can afterwards claim to have such deposit refunded or restored to him, notwithstanding that the decree-holder has omitted to draw it out of [illegible]

[illegible]

Semble When money or immoveable property is deposited in Court in such a case as the above, the Court, upon confirmation of the order for a sale, holds the deposit in trust for the decree-holder, and is at liberty to realize it and pay the proceeds over to him to the extent of his decree. SHEO GHOLAM SAHOO *v.* RAHUT HOSSEIN . I. L. R 4 Calc. 6

s c SHEO GHOLAM SAHU *v.* KHUB LALL 2 C. L. R. 206

95. — — **Order setting aside sale after confirmation**—*Certificate and confirmation of sale—Execution barred at time of sale—Position of auction-purchaser—Civil Procedure Code (Act X of 1877), s. 316—Act XII of 1879—Limitation Act (XV of 1877), Sch II, Art. 165.* A person purchased certain property at a sale in execution of a decree in November 1878; his purchase was confirmed, and he obtained a certificate of sale on the 23rd May 1879, from which date he remained in possession. The judgment-debtor applied to have the sale set aside for irregularity, but his application was dismissed both at the hearing and on appeal. [illegible]

[illegible]

missed, but was allowed on appeal It did not appear that the auction-purchaser was a party to the proceedings, or that he was cognizant of the application. Two years from the date of the sale and one and-a-half years from its confirmation, the judgment-debtor, on a summary application, obtained an order setting aside the sale and putting the auction-purchaser out of possession *Held*, that the order was erroneous, the Subordinate Judge having no power, after the sale had been confirmed, to set aside the sale by a summary order. The words "subsisting decree," in s 316 of Act X of 1877, as amended by Act XII of 1879, mean a decree und [illegible]

[illegible]

SINGH . I. L. R. 7 Calc. [illegible]

(*n*) SALE PENDING APPEAL.

96. ———— **Sale of property released from attachment pending appeal from decree declaring property liable**—*Civil Procedure Code, 1877, ss 28, 283, and 545* S. 283 of th Code of Civil Procedure, 1877, does not constitute an exception to the Procedure laid down by s. 545. When property has been released from

SALE IN EXECUTION OF DECREE— *contd*

16. INVALID SALES—*concld.*

(*n*) SALE PENDING APPEAL—*concld.*

attachment under s. 280 and subsequently declared liable to attachment by a decree against which an appeal is pending, a sale of such property before the final result of the appeal is not illegal by virtue of the provisions of s. 283. FATHULA *v.* MUNIYAPPA

I. L. R. 6 Mad. 98

97. ——— Decree setting aside sale—Second sale pending appeal to which decree-holder not made party—*Confirmation of first sale in appeal—Purchasers of the same property in execution of decree, priority between—Laches*

On appeal to the High Court the first sale was upheld, and an order passed confirming the sale. In a suit by the decree-holder purchaser at the second sale :—*Held*, that the effect of plaintiff's not being made a party to the appeal is practically the same as if he had not been a party to the suit *Held*, also, that the plaintiff was not a party to the subse-

said to have proceedings *in Ali Chow-* *154*, referred

FAZUL AMAM KHAN . I L R. 23 Calc. 857

17 SETTING ASIDE SALE

(*a*) GENERAL CASES

1. ——— Right of judgment-debtor to set aside sale on deposit of the amount of debt—*Civil Procedure Code, 1882, s 301 A (a)*—

2. ——— Setting aside sale by deposit of the debt due to the decree-holder at whose instance the property is sold—

sale have applied under s 295, Civil Procedure

SALE IN EXECUTION OF DECREE— *contd*

17. SETTING ASIDE SALE—*contd*

(*a*) GENERAL CASES—*contd*

Code, for rateable distribution, the person whose property has been sold is competent to have the sale set aside under s. 310A by depositing only the amount of the decree, for the satisfaction of which the sale was proclaimed and took place HARI SUNDARI DASYA *v.* SHASHI BALA DASYA

1 C W. N. 195

S. 295 does not apply to a deposit made under s. 310A by the judgment-debtor. BIHARI LAL PAL *v.* GOPAL LAL SEAL . 1 C. W. N. 695

3. ——— Sale under mortgage-decree—*Sale in execution of a money-decree, effect of, before the sale in execution of mortgage-decree confirmed—Code of Civil Procedure, 1882, ss. 310A, 311, and 312—Effect of sale not being set aside either under s 310A or 311 of the Code.* A certain property was sold on the 16th August 1895 in execution of a mortgage-decree, dated the 9th December

similar application was made by *R* On the 28th March 1896 both these applications came on for hearing before the Subordinate Judge, who passed no order, and on the same date *R* presented a

the Subordinate Judge allowed the petition and ordered the sale to be set aside upon the aforesaid terms *Held*, that, inasmuch as under s 312 of the Code of Civil Procedure *A* was entitled to have an order confirming the sale of the 16th August 1895, unless the sale were set aside under s 310A or s 311 of the Code of Civil Procedure, and as the sale was not set aside under either of those sections, the Court below had no jurisdiction to set aside the sale upon payment by the applicant of the mortgage-money with interest and costs *Birj Mohun Thakur* v *Uma Nath Chowdhry, I L R 20 Calc. 8*, referred to KHETTER NATH BISWAS *v* FAIZUDDIN ALI I L. R. 24 Calc. 682

4 ——— Amount payable incorrectly calculated by an officer of the Court—*Civil Procedure Code (Act XIV of 1882), s 310A—Civil Procedure Code Amendment Act (V of 1894)* The judgment-debtor within thirty days from the date of sale deposited in Court, under s 310A of the Code of Civil Procedure, the amount calculated in the office of the Munsif as payable under the section. The Munsif set aside the sale. On appeal to the High Court by the auction-purchaser on the ground that the amount deposited by the judgment-debtor was not in compliance with

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(a) General Cases—*contd.*

s. 310A, and that before the sale could be set aside it was necessary for the judgment-debtor to pay, in addition to what he deposited, a sum equal to 5 per cent of the purchase-money :—*Held*, that, when the amount payable by the judgment-debtor under s 310A of the Code of Civil Procedure has been calculated by an officer of the Court and has been deposited, an order setting aside the sale must be made by the Court as a matter of right; the Munsif therefore was justified in setting aside the sale *Ugrah Lall v. Radha Pershad Singh, I. L. R. 18 Calc. 255*, referred to. Makbool Ahmed Chowdhry v Bazle Saban Chowdhry

I. L R 25 Calc. 609

See Abdool Lalif Moonshi v. Jadub Chandra Mitter . . I. L. R 25 Calc. 216

5 ——— *Civil Procedure Code, 1882, s. 310A—Civil Procedure Code Amendment Act (V of 1894)—Power of a Court to set aside a sale if the deposit provided for in s. 310A be not paid within thirty days.* *Held* (by the Full Bench) —Where the judgment-debtor has not within thirty days from the date of sale deposited in Court a sum equal to 5 per cent. of the purchase-money and the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder, but has deposited in Court within the prescribed period a sum calculated by some officer of the Court as the sum to be deposited in respect of such 5 per cent. and of the sum specified in such proclamation of sale, and there is nothing to show that there was any mistake of the Court by which the judgment-debtor was induced to deposit

... be set ... ibhan ... shed ... Lal Mandal . I. L. R. 26 Calc. 449

3 C. W. N. 283

immoveable property has taken place under a

ity to deposit a sum equal to 5 per cent. on the purchase-money, for payment to the purchaser, even where the land has been purchased by the decree-holder Tirumal Rao v. Dastagiri Miyah . I. L. R. 22 Mad. 286

7. ——— **Actual receipt of sale proceeds by decree-holder necessary to set aside a sale**—*Civil Procedure Code, 1882, s. 310A as amended by Act V of 1894.* The words in cl. (b) of s 310A of the Code of Civil Procedure as amended by Act V of 1894—"less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder"—contemplate an actual receipt of the amount by the decree-holder. A mere payment of the sale-proceeds into Court does not satisfy the requirements of the section. A proclamation of sale ordered that for the recovery of R843-9-9 certain immove-

ment of the sale-proceeds into Court was not a sufficient compliance with the requirements of s. 310A of the Code of Civil Procedure, and as it had not been shown that the sale-proceeds had been received by the decree-holder, the sale could not be set aside. Trimbak Narayan v. Ramchandra Narsingrao . . I. L. R. 23 Bom. 723

8. ——— **Property sold in lots**—*Civil Procedure Code (Act XIV of 1882), s. 310A—Deposit—Deposit sufficient to cause sale of one lot.* When at a sale in execution of a decree the properties attached were sold separately in nine lots, and the judgment-debtor prayed to have the sale of one of the properties set aside under s 310A, Civil Procedure Code, by tendering the balance (together with the percentage required under the law) due under the decree after deducting the amounts bid by the decree-holder for some of the properties and the amounts deposited by the other purchasers —*Held*, that s 310A did not apply to this case, and that there was no deposit within the terms of that section Kripa Nath Pal v Ram Lakshmi Dasya

1 C W. N. 703

9. ——— **Application to set aside a**

zur-i-peshgi money, attachment of—Bengal Tenancy Act (VIII of 1885), ss 162, 163—Sale of the defaulting tenure—Sale of zur-i-peshgi claim whether valid *A* advanced some money to *B* upon a zur-i-peshgi of certain property and sub-let the same property to *B*, on a certain rent reserved; subsequently *A*

SALE OF EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(a) GENERAL CASES—*contd.*

s. 312 unless it was found that there was fraud. *Held*, that, if the application of the judgment-debtor be regarded as one under s 311 of the Code of Civil Procedure, it would be necessary to come to some conclusion or other upon the question of fraud, and unless it is found that the fraud came to the knowledge of the judgment-debtor within thirty days before the date of his application, the sale could not be set aside under s 312 of the Code

10. ——— Ground for setting aside sale—*Civil Procedure Code, 1859, ss. 256, 257—Suit to cancel order setting aside sale—Act XXIII*

appeal by the auction-purchaser, who was no party to the execution-proceedings —*Held*, that such order passed by the Munsif was not a proceeding under s 11 of Act XXIII of 1861, but an order passed *ultra vires* under s 257 of Act VIII of 1859, and that a suit would lie for its cancelment—the finality of an order under ss 256 and 257 of Act VIII of 1859 depending on its compliance with the terms of those sections SUKHAI *v* DARYAI

I. L. R. 1 All. 374

11. — *Civil Procedure*

its confirmation A sale having been confirmed before the expiry of sixty days .—*Held*, that the sale was not rendered inoperative, and that its effect

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd*

(a) GENERAL CASES—*contd.*

was not postponed by reason of the provision in Form No. 149 HAJI *v* ATHARAMAN MUSSA *v.* ATHARAMAN . I. L. R. 7 Mad. 512

12. ——— *Order confirming sale after order setting it aside* A sale in execution of a decree was set aside by a subsequent decree of 9th March 1861, but was afterwards allowed to stand by an order of 7th May 1862 As no suit

CHOONEE SHAHOO . . 7 W. R. 118

13. ——— *Objection for irregularity disallowed—Sale set aside on other grounds* On application by the judgment-debtor to the Principal Sudder Ameen to set aside the sale by auction of a house in execution of a decree, on

chaser of the house —*Held*, that the order of the Judge must be set aside as illegal, and the original order, confirming the sale, allowed to stand. KOSHTI *v* NARAYAN DHULAPPA

3 Bom. A. C. 110

14. ——— *Security by man-*

her to give security for the proceeds of the sale

other creditors under another decree against the said debtor, and possession was given to them

SINGH DOOGUR . . 10 B. L. R. 214
17 W. R. 289: 14 Moo. I. A. 529

15 ——— *Second sale before confirmation—Separate suit—Effect of sale before confirmation* The plaintiff and the defendants *C* and *D* were the co-owners of a portion of a shikmi talukh in the 10 annas share of a zamindari

SALE IN EXECUTION OF DECREE— *contd.*

17. SETTING ASIDE SALE—*contd.*

(*a*) GENERAL CASES—*contd.*

belonging to the defendant *A*. *A*, having succeeded in enhancing the rent of the tenure, obtained a decree for arrears of rent at the enhanced rate, which she proceeded to execute in 1880 In 1881 she obtained another decree for arrears of rent of a subsequent period, in execution of which the tenure was put up to auction and sold for Rs 15,000 on 20th July 1881, *A* herself being the purchaser. Before this sale was confirmed, the tenure was, on 20th September 1881, again put up for sale in execution of the first decree, and was purchased by *A* for Rs 10 The plaintiff and *C* and *D* applied to have both sales set aside on the ground of irregularity. The application as regarded the sale of 20th September 1881 was rejected on 30th December 1881, and this order was confirmed by the High Court on 14th August 1882 and (on review) 21st March 1883 Meanwhile the sale of the 20th July 1881 was set aside by the order of the Subordinate Judge on 19th June 1882. In a suit against *A*, *B* (the agent of *A*), *C*, and *D*, brought on the 20th March 1884, in which the plaintiff prayed that the sale of 20th September 1881 "be declared ineffectual and be set aside, and that the plaintiff do recover possession of the property:"—*Held*, that the suit being

property as against the plaintiff and *C* and *D*, so that there was nothing left to pass under the second sale In the interval between the sale and the confirmation of sale there is not merely a contract for sale, but an inchoate transfer of title which only requires confirmation to protect it; a sale actually takes place which, if not made absolute, must be set aside *Saroda Prosad Mullick* v *Luchmeeput Singh Doogur, 14 Moo I A 529 10 B L R 211* cited. PRANGOUR MAZOOMDAR *v* HIMANTA KUMARI DEBYA . . **I. L. R. 12 Calc. 597**

18. ———— *Civil Procedure Code, ss 311, 312—Objection to sale—Legal disability—Limitation Act (XV of 1877), s 7—Order con-*

for confirmation is passed, if the precipitate action of the Court has led to the confirmation of a sale before the time allowed for filing objections to the sale has expired, whether or not that Court could entertain such objections after confirming the sale, the High Court on appeal is bound to interfere and to see that objections which by law the appellant is empowered to make are heard and determined

rejected on the ground that the Court had already

have entertained and dealt with it before proceeding to confirm the sale or grant a sale certificate. The order disallowing the application and the order confirming the sale were set aside, and the case

17 ———— **Applicant**—*Civil Procedure Code (Act XIV of 1882), s 310A—"Whose immoveable property has been sold," in s 310A, meaning of —Sale in execution of rent-decree—Simple mortgagee,*

Rakhal Chunder Bose v. *Dwarka Nath Misser, I L R. 13 Calc. 346*, distinguished. NITYA NANDA PATRA *v.* HIRA LAL KARMAKAR (1900) **5 C. W. N. 63**

(1900)

19. ———— *Civil Procedure Code (Act XIV of 1882), ss. 278, 283, 310A.* A

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(a) GENERAL CASES—*contd*

person who purchased property before it was at-

I. L. R. 25 Bom. 104

21. ——— **Application of Civil Procedure Code, ss 310A, 311** Ss 310A and 311 of the Code of Civil Procedure apply to sales of mortgaged property in execution of mortgage-decrees *Kedar Nath Raut v. Kali Churn Ram, I L. R 25 Calc 703*, commented on *Tirumal Rao v Syed Dastaghiri Miyah, I L R. 22 Mad 286*, *Raja Ram Singhji v Chunni Lal, I L R 19 All 205*, and *Krishnaji v Mahadev Vinayak, I L R 25 Bom 104*, approved MALLIKARJUNADU SETTI *v* LINGAMURTI PANTULU (F B 1902)

I L. R. 25 Mad. 244

22. ——— **Beneficial owner**—*Suit for possession—Benamidar—Beneficial owner—Party—*

I. L. R. 29 Calc. 682
s.c 6 C. W. N. 706

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(a) GENERAL CASES—*contd.*

ment thereunder governing such proceedings. SHEO PRASAD *v* MUHAMMAD MOHSIN KHAN (1902)

I. L. R. 25 All. 167

24. ——— **"Decree-holder"**—*"Decree-*

Civil Procedure Code, includes any decree-holder

Chattrapat Singh v Jadukul Prosad Mukerjee, I L R 20 Calc 673, referred to *A* obtained a decree on the Original Side of the High Court against *B*, and transferred it to the District Judge at Moorshedabad for execution, who again transferred it to the Subordinate Judge, when the execution-proceedings were registered and a date was fixed for the sale of *B's* immoveable property attached by *A* in execution of his decree Before the date fixed for sale, *C*, who had also obtained a

was not entitled to come in and share in the rate-

25 ——— **Deposit by Co sharer**—*Deposit in Court—Civil Procedure Code (Act XIV of 1882), s 310A* A person claiming under the

450, *Paresh Nath Singha v. Nabogopal Chattopadhya, I L R 29 Calc. 1*, referred to, *Srinivasa Ayyangar v Ayyathorai Pillai, I. L. R. 21 Mad. 416*, distinguished. ABDUL RAHAMAN *v.* MATIYAR RAHAMAN (1902) . I. L. R. 30 Calc. 425

SALE IN EXECUTION OF DECREE— *contd.*

17. SETTING ASIDE SALE—*contd*

(a) GENERAL CASES—*contd*

26. ———— **Fraud**—*Sale in execution of decree fraudulently obtained—Fraud—Innocent purchaser—Purchase for valuable consideration—Inadequacy of price—Suit to set aside sale* An *ex parte* decree was fraudulently obtained by the first defendant against the plaintiff, and in execution certain land of the plaintiffs, worth R 2,000, was sold by auction, and was purchased by the second defendant for R400 The plaintiff sued to set aside the sale and to recover possession of the land The facts found by the lower Courts were (i) that the decree was obtained by fraud, (ii) and that the property was sold at a considerable undervalue The purchaser had no knowledge of the fraud: *Held*, dismissing the suit, that the plaintiff was not entitled, as against the purchaser (defendant 2), to have the sale set aside When property is sold in execution of a decree fraudulently obtained, mere inadequacy of price, apart from participation in or knowledge of the fraud, is not in itself a circumstance sufficient to justify the setting aside of the sale. *Abdool Hye* v. *Nawab Raj, 9 W. R 196*, commented on. CHITAMBAR SHRINIVASBHAT *v.* KRISHNAPPA (1902) . I. L. R. 26 Bom. 543

27. ———— **Gift**—*Civil Procedure Code*

tion was thereupon made by a person, who claimed

ERODE MANIKKOTH KRISHNAN NAIR *v.* PUTHIEDETH CHEMBAKKOSERI KRISHNAN NAIR (1902)

I. L. R. 26 Mad. 365

28. ———— **"Immovable property"**—*Civil Procedure Code, s. 311—Mortgage-decree whether immoveable property* Having regard to the definition of "immovable property," in the General Clauses Act, a decree upon a mortgage is incapable of being described or regarded as immoveable property; and, when a mortgage of certain immoveable property is sold in execution of a decree, an application under s. 311, Civil Procedure Code, to set aside the sale is incompetent. *Gous Mahomed* v. *Khawas Ali Khan, I. L. R. 23 Calc. 450*, relied upon. BAIJ NATH LOHEA *v.* BINOYENDRA NATH PALIT (1901) . 6 C. W. N. 5

29. ——

Code (Act X

set aside on

of sale"—

1877), s ... *Appellate Court, order of—Second appeal—Exclusion of time during which a second appeal was pending.* Certain property was sold in execution of a decree against the

debtor preferred a second appeal to the High Court on the 15th August 1900, which appeal was dismissed on the 5th September following. On the

25th May and the 2nd August might be excluded, the time between the 15th August and the 5th September, spent in prosecuting the second appeal, could not be excluded. CHOWDHRY KESRI SAHAY *v.* GIANI ROY (1902) . I. L. R. 29 Calc. 626: s.c. 6 C. W. N. 776

30. ———— **Private sale by judgment-debtor prior to Court sale**—*Civil Procedure Code (Act XIV of 1882), s. 310A and s. 244—Property privately sold by judgment-debtor prior to Court sale—Application by judgment-debtor to set aside a Court sale—Application rejected—Application to High Court under s. 622—Practice.* In execution of a decree passed against a judgment-debtor, his property was sold by auction. Prior, however, to the execution-sale, he effected a private sale to another person, and out of the proceeds he paid off the judgment-creditor, who duly certified that the decree was satisfied Subsequently the

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd*

(*a*) General Cases—*contd.*

decree-holder, and, even assuming him to be a representative of the judgment-debtor, that section did not apply to a question between a party to the suit and his representative. S. 244, therefore, did not apply to the order complained of, which was consequently not appealable, for an order under [illegible]

I. L. R 25 Bom. 631

31. ———— **Recovery of money**—*Indian Contract Act (IX of 1872), s. 69—Transfer of Property Act (IV of 1882), s. 108 (g)—Non-agricultural lands, tenant and under-tenant of—Civil Procedure* [illegible]

Quære: Whether the under-tenant has any status to pay in the money under s 310A, Civil Procedure Code. Bepin Behari Sarnokar *v* Kalidas Chatterjee (1901) . 6 C. W. N. 336

32. ———— **Suit in which applicant was not a party**—*Civil Procedure Code (Act XIV of 1882), s 310A—Application by second mortgagee* [illegible]

[illegible]

under that section Mallikarjunayy [illegible] *v.* Linga Murti Pantulu (1902) I. L. R. 25 Mad. [illegible]

33. ———— **Sale by Collector**—*Application to Court by judgment-debtor to set aside sale—Refusal by the Court—Appeal—Collector's power—Rules 16 and 17 of the Local Rules and Orders made under enactments applying to Bombay—Civil Procedure Code (Act XIV of 1882), ss.* [illegible] *and 244.* *Held*, that s. 310A of the Code applies even if the execution-proceedings be referred to the Collector, who has no power to set aside a sale [illegible]

its provisions are complied with, the order refusing to set aside the sale reversed. [illegible] *v* [illegible]lal (1906) . . I. L. R. 21 Bom. [illegible]

(*b*) Irregularity.

34. ———— **Objections to sale for irregularity**—*Duty of Court Procedure.* [illegible] a judgment-debtor objects to the sale of attached property, it is the duty of the Court executing the decree to try the validity of the [illegible]. Gunesh Lall Tewaree *v* [illegible] 24 W. R. 66

35. ———— **Application to set aside sale**—*Civil Procedure Code, 1859, s.* [illegible]*—Procedure* The issue which arises [illegible] a petition is preferred under Act VIII of 1859, s. [illegible], is a judicial proceeding and ought to be carried out with regularity, the Court fixing a day for the hearing of the matter of the petition and giving reasonable notice to all parties,—*i.e.*, such as would afford to each party fair and reasonable opportunity of bringing the necessary evidence on or before that day *In the matter of the petition of* Brojo Mohun Thakoor. Brojo Mohun Thakoor *v* Ameenooddeen . . 20 W. R. 424

36 ———— *Discretion of Judge—Presentation of application.* A Judge has discretion to receive an application to set aside a sale in execution of a decree when made to him after the lapse of thirty days, but before the confirmation of the sale. Pottison *v.* Dunn 18 W. R. 11

In the matter of Ukhoy Lall Bose 18 W. R. 11 note

(*Contra*) Raj Coomar Singh *alias* Nanhoo Lall *v.* Lalljee Sahoo . 18 W. R. [illegible]

where the Court, however, *held* that the applicant was bound to show some valid excuse for not making the application in proper time.

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(b) IRREGULARITY—*contd.*

As to what the term "applicant" included, there were under Act VIII of 1859 diverse rulings, some holding that it was not confined to the parties to the suit, but included any person who had sustained substantial injury by reason of any material irregularity in publishing or conducting the sale. KRISHNARAV VENKATESH *v.* VASUDEV ANANT 11 Bom 15

and others that judgment-debtors and not third parties were meant. LUCHMEEPUT SINGH DOOGUR *v.* MOOKTAKASHEE DEBIA 9 W. R. 388

s.c. upheld on review MOOKTA KESHEE DEBIA *v* LUCHMEEPUT SINGH DOOGUR 10 W. R. 137

JOGE NARAIN SINGH *v* BHUGBANO 2 W. R. Mis. 13

PURSHOTTAM VITHAL *v.* PURSHOTTAM ISWAR I. L R. 8 Bom. 532

LUCHMEEPUT SINGH *v.* ADOYTO CHURN MULLICK . . . . . 24 W. R. 452

HARADHONE SHAMUNTO *v.* GOLUCK CHUNDER SHAMUNTO . 25 W. R. 79

MAINA KOER *v.* LUCHMUN BHUGGUT 1 C. L. R. 250

MAN KUAR *v.* TARA SINGH I. L. R. 7 All. 583

37. ———— By whom application may be made—*Objection to sale by third person—Civil Procedure Code, 1882, s. 311. Held*, that persons other than the decree-holders or the persons whose property was sold in execution of decree were

38. ———— *Code of Civil Procedure (Act X of 1877), s. 311.* The words "any person whose immoveable property has been sold" in s. 311 of the Code of Civil Procedure do not include a person who has purchased the same property at a prior execution-sale, such prior sale not having been confirmed. *In the matter of the petition of* BHAGABUTI CHURN BHUTTACHARJEE CHOWDHRY. BHAGABUTI CHURN BHUTTACHARJEE CHOWDHRY *v.* BISHESHWAR SEN I. L. R. 8 Calc. 367

s c. BHAGABATI CHARAN BHUTTACHARJEE *v.* KALI KUMAR CHUTTAH . 10 C. L. R. 441

39. ———— *Civil Procedure Code, 1885, s 311—"Any person whose immoveable property has been sold," interpretation of.* The words, "any person whose immoveable property has been sold," in s. 311, are sufficiently wide to include a person who is neither the decree-holder nor the judgment-debtor, nor the auction-purchaser; but who alleges that the property sold in execution is his ABDUL HUQ MOZOOMDAR *v.* MOHINI MOHUN SHAHA . . I. L. R. 14 Calc. 240

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(b) IRREGULARITY—*contd.*

40. ———— *Civil Procedure Code, ss. 311, 295—Person entitled to apply to set aside sale—"Decree-holders," entitled to rateable distribution* Where one decree-holder had attached certain land and another decree-holder against the

apply, under s. 311 of the Code, to set aside the sale on the ground of material irregularity. LAKSHMI *v.* KUTTUNNI . . . I. L. R. 10 Mad. 57

ATHAPPA CHETTI *v.* RAMA KRISHNA NAYAKHAR I. L R. 21 Mad. 51

41. ———— *Civil Procedure Code, s. 311—Objection to sale by wife of judgment-debtor.* A person who claims to be a purchaser from a judgment-debtor prior to an attachment is not entitled to come in under s. 311 of the Civil Procedure Code and object to the sale of the judgment-debtor's property. *Abdul Huq Mozoomdar v. Mohini Mohun Shaha, I. L R. 14 Calc. 240*, overruled. Rule that a person applying to set aside a

Anant, 11 Bom H. C. 15, approved. ASMUTUNNISSA BEGUM *v.* ASHRUFF ALI I. L. R. 15 Calc. 488

42. ———— *Person claiming by title paramount to, or independently of, judgment-debtor—Civil Procedure Code, s. 311. Held*, by MAHMC
paramoun
debtor is
Asmutunn
Calc. 488,
v Mohin.
followed. SHEO PRASAD *v.* HIRA LAL I. L. R. 12 All. 440

43. ———— *Civil Procedure Code, s. 311—Application to set aside execution-sale—Remedy of one claiming adversely to the judgment-debtor.* A person alleging himself to be the undivided brother and, as such, the legal representative of a deceased judgment-debtor applied to have set aside a sale of certain property alleged by him to be joint family property, which had taken place in execution of the decree *Held*, that the proper remedy of the applicant was a regular suit, and not a proceeding under Civil Procedure Code, s 311. SUBBARAYADU *v.* PEDDA SUBBARAZU . . I. L. R. 16 Mad. 476

44. ———— *Civil Procedure Code, ss. 311, 295—"Decree-holder."* The term "decree-holder" in s. 311 of the Code of Civil Procedure is not limited to the decree-holder who instituted the execution-proceedings, but may include a decree-holder who is entitled to come in and

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd*

(b) Irregularity—*contd.*

share in the proceeds under s. 295 of the Code. *Lakshmi* v. *Kuttunni*, *I. L R 10 Mad 57*, approved. Ajudhia Prasad v Nand Lal Singh

I. L. R. 15 All. 318

45. ——— *Civil Procedure Code, s. 311—Application to set aside sale in exe-*

decree-holder until long after limitation had expired —*Held*, that the application must be dismissed *Karamat Khan* v. *Mir Ali Ahmed*, *All. Weekly Notes (1891) 121*, referred to. Ali Gauhar Khan v Bansidhar . . I. L R. 15 All. 407

46 ——— *Civil Procedure Code (Act XIV of 1882), ss. 311, 312, 313, 622—Application by auction-purchaser to set aside sale on ground of his having been deceived as to extent of estate sold—Remedy of auction-purchaser—Superintendence of High Court.* A purchaser at a Court-sale, alleging that he had been misled by a misrepresentation as to the extent of the estate which he had believed to be put up for sale, obtained, on his petition before confirmation, a summary order setting aside the sale *Held*, that the High Court had rightly cancelled this order, exercising its authority under s 622 of the Code of Civil Procedure, that the purchaser, though he would have his remedy, on his taking the appropriate one, if he had been

Mohun Thakur v. Rai Uma Nath Chowdhry

I L R 20 Calc 8
L R. 19 I A. 154

47. ——— *Civil Procedure*

sale *Asmutunnissa Begum* v *Ashruff Ali*, *I L R 15 Calc. 488*, followed Abdul Gani v. Dunne

I. L R 20 Calc 418

48. ——— *Civil Procedure Code, ss 295, 311—Rateable distribution of sale-proceeds—"Decree-holder."* A person who is not entitled to come in under s 295 of the Civil Procedure Code and share in the distribution of the sale-proceeds is not included within the term "decree-holder" in s 311, nor is he entitled to apply under that section to set aside the sale. *Deboki Nundon Sen* v. *Hart*, *I L. R 12 Calc. 294*, and *Lakshmi* v *Kuttunni*, *I. L R. 10 Mad 57*, referred to. Chattrapat Singh v Jadukul Prosad Mukerjee . I. L R. 20 Calc. 673

49. ——— *Civil Procedure Code, 1882, s. 311—Application to set aside a sale of a tenure by a purchaser from the judgment-debtor prior to attachment* A person who claims to be a purchaser of a tenure prior to attachment from a judgment-debtor whose interest in the tenure has been sold in execution of a decree for its own arrears of rent is entitled to apply, under s. 311 of the Code of Civil Procedure, to set aside the sale. *Asmutunnissa Begum* v. *Ashruff Ali*, *I L. R. 15 Calc 488*, distinguished Abhoya Dassi v. Pudmo Lochun Mondol I. L. R. 22 Calc. 802

50 ——— *Civil Procedure Code, s 311—"Decree-holder"—Attaching creditor*

appear at the commencement of that section The term "decree-holder" in s. 311 means the decree-holder who brings the property to sale and not any decree-holder *Asmutunnissa Begum* v. *Ashruff Ali*, *I L R 15 Calc 488*, referred to *Lakshmi* v *Kuttunni*, *I L R 10 Mad 57*, *Ajudhia Prasad* v *Nand Lal Singh*, *I L. R 15 All 318*, and *Sorabji Edalji* v *Gobind Ranji*, *I L R 16 Bom 91*, dissented from *Chatrapat Singh* v. *Jadukul Prosad Mukherjee*, *I L R 20 Calc. 673*; *Clark* v. *Alexander*, *I L R 21 Calc. 200*, and *Har Bhojal Das Marwari* v. *Ananda Ram Marwari*, *2 C W N. 126*, distinguished Matungini Dassi v Monmothanath Bose . . 4 C W. N. 542

51. ——— *Civil Procedure Code, 1882 (as amended by Act V of 1894), s. 310A—Judgment-debtor under decree on mortgage passed under Transfer of Property Act, s 88—Effect of former application by other judgment-debtor under s 311 of the Civil Procedure Code* The judgment

present application under s 310A was not barred by reason of the proviso to that section Ashrup Ali Chowdhry v Net Lal Sahu

I. L R 23 Calc 682

52. ——— *Code of Civil Procedure, 1882, ss. 310A and 311—Meaning of*

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) Irregularity—*contd.*

the words "he shall not be entitled to make an application under this section" in the proviso of s. 310A—Civil Procedure Code Amendment Act (V of 1894). The words "he shall not be entitled to make an application under this section" in the proviso of s 310A do not mean merely "he shall not be able to present an application" under the section, but the word "make" means "carry on" or "prosecute." In a case where, after an application under s. 310A of the Code of Civil Procedure, another application was made under s. 311 of the Code, the applicant was not entitled to have the benefit of the former section RAJENDRA NATH HALDAR *v.* NILRATAN MITTER.

I. L. R 23 Calc. 958

53. ———— *Civil Procedure Code (Act XIV of 1882), s 310A—Right of a mortgagee to the benefit of s 310A* A mortgagee

decree-holder. The application having been refused by the Courts of first instance and first appeal,

I. L. R. 21 Mad. 416

54. ———— *Civil Procedure Code (Act XIV of 1882), s 310A—Sale in execution of mortgage-decree—Application by mortgagor under s. 310A, Civil Procedure Code—Transfer of Property Act (IV of 1882), s. 104, rules framed*

mortgaged property under the said Act would not be *ultra vires* KEDAR NATH RAUT *v* KALI CHURN RAM . . I. L. R 25 Calc. 703
2 C. W. N. 353

See DAKSHINA MOHUN ROY *v.* BASUMATI DEBI
4 C. W. N. 474

where this case is explained and where it was held that s. 104 of Transfer of Property Act is an

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) Irregularity—*contd*

55. ———— *Civil Procedure Code (Act XIV of 1882), s 310A—Right to apply under the section—Person who has contracted to purchase land.* A person who has contracted to purchase land, or an interest in land, does not by such contract become the owner in equity of such land or such interest (s. 54 of the Transfer of Property Act, IV of 1882) He has a personal right against his vendor or the assignee with notice of his vendor to compel the latter by a suit for specific

the land, and was therefore not entitled to apply to set aside the sale under s 310A of the Civil Procedure Code. MAHADEO CHINTAMAN WADEKAR *v.* VASUDEV J. KIRTIKAR I. L. R 23 Bom. 181

56. ———— *Civil Procedure Code, 1882, s. 310A—Civil Procedure Code Amendment Act (V of 1894)—Execution-sale—"Person whose immoveable property has been sold"—Prior private purchaser of property sold in execution.* A person who has purchased property which is afterwards sold in execution of a decree obtained against his vendor is not entitled under s. 310A of the Civil Procedure Code to have the execution-sale set aside. RAMCHANDRA DHONDO *v* RAKHMABAI
I. L. R. 23 Bom 450

57. ———— *Civil Procedure Code, 1882, s. 310A—Right of benamidar to apply to set aside sale.* A benamidar of a person whose immoveable property is sold has a right to apply to have the sale set aside under s. 310A of the Code of Civil Procedure. BASI PODDAR *v.* RAM KRISHNA PODDAR . . . 1 C. W. N. 135

58. ———— *Civil Procedure Code (Act XIV of 1882), s. 310A—Application to set aside sale by purchaser from judgment-debtor after auction-sale* A purchaser at a private sale from the judgment-debtor after sale in execution has no *locus standi* to make an application under s. 310A of the Civil Procedure Code. HAZARI RAM *v.* BADRI RAM . . 1 C. W. N. 279

59. ———— *Civil Procedure Code, 1882, s. 311—Application by person not party to decree.* Land having been sold in execution of decree, one claiming that it had been held by the judgment-debtor benami for him applied that the sale be cancelled under s. 311. He was not a party to the decree, and on that ground his petition was dismissed. *Held*, that the fact of the

SALE IN EXECUTION OF DECREE— *contd*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd*

petitioner being a stranger to the decree did not preclude him from obtaining the relief sought under s. 311. TIMMANA BANTA *v* MAHABALA BHATTA . . . I. L. R. 19 Mad. 167

60. ———— *Civil Procedure Code, 1882, s 311—Application to set aside sale in execution—Plea to jurisdiction of Court to sell—*

Court executing the decree, as, for example, a plea that the property sold, or part of it, was ancestral and ought to have been sold in accordance with the provisions of s 320 of the Code. SHIRIN BEGAM *v.* AGHA ALI KHAN I. L. R. 18 All. 141

61. ———— *Application to*

62. ———— *Civil Procedure Code, s 311—Person whose property has been sold —Mortgagee—Transfer of Property Act (IV of 1882), ss 86, 87* The mortgagees of a certain tenure obtained, on 11th September 1884, under s. 86 of the Transfer of Property Act, a decree for foreclosure, which declared that, on failure to pay the amount found due, the mortgagor's right of redemption should be barred on 11th March 1885, this time was subsequently extended on the application of the mortgagor to 30th April 1885 On the 6th April 1885, in execution of a decree for arrears of rent obtained by the superior holder of the tenure against the mortgagor, the tenure was sold free from incumbrances The mortgagees applied under s 311 of the Civil Procedure Code to have the sale set aside for material irregularity *Held*, that, under s 86 of the Transfer of Property Act, the mortgagees had such an interest in the property as brought them within the words of s 311, "person whose property has been sold," and entitled them to make the application RAKHAL CHUNDER BOSE *v.* DWARKA NATH MISSER

I L R. 13 Calc. 346

63. ———— **Right to have sale set aside as against bonâ fide purchaser—**

SALE IN EXECUTION OF DECREE— *contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

brought to set aside such a sale, it is for the Court to determine whether it will be in accordance with the principal of justice, equity, and good conscience that the sale ought to be set aside or not ABDUL HYE *v* NAWAB RAJ . B. L. R. Sup. Vol. 911
9 W. R. 196

64. ———— **Evidence of irregularity—**

2 N. W. 142

65. ———— **Finding as to irregularity—** *Civil Procedure Code, 1859, s 256—Material injury* On an application to set aside a sale of

finding that there has been an irregularity in publishing or conducting the sale PARBUTTY *v.* GIRDAREE LAL . . . 6 W. R. Mis. 125

66. ———— **Objections to sale being made absolute—***Civil Procedure Code, 1859, ss 256, 257* Objections by the judgment-debtor to sale in execution of decree being made absolute

VIRSINGAPPA BIN BASLINGAPPA *v* SADASHIVAPPA APPA GOLKHANDI . . 7 Bom. A. C. 74

67. ———— **Ground for setting aside sale—***Allegation of having no interest to sell—Sale by representative of debtor.* An allegation by a representative that he took nothing from the judgment-debtor, and that therefore the sale conveyed

68. ———— *Civil Procedure Code, 1882, ss 311 and 224—Omission to transmit*

SALE IN EXECUTION OF DECREE— *contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

69. ——— **Insanity of judgment-debtor intervening before sale**—*Necessity to prove substantial injury—Civil Procedure Code, s. 311.* A suit was brought by *V* to have it declared that the sale of his property in execution of a decree was void owing to the fact that subsequent to decree and prior to sale he had been declared insane under Act XXXV of 1858 The second defendant was the auction-purchaser. *Held*, by BEST, *J.*, that objection could be taken under s. 311, Civil Procedure Code, on the above ground before the sale had been confirmed and certificate granted *Held*, by SUBRAMANYA AYYAR, *J.*, that these facts only amounted to a material irregularity within s 311, Civil Procedure Code, and that the plaintiff must prove substantial injury. NARAYANA KOTHAN *v* KALIANASUNDARAM PILLAI **I. L. R. 19 Mad. 219**

70. ——— **Omission to make attachment.** It was doubted at one time whether a *sale could be set aside* by reason of an omission to attach the property. JOWHUROOZ ZUMMA KHAN *v.* BANEE MADHAB NUNDUN . **11 W. R. 226**

71. ——— **Sale without attachment** *Civil Procedure Code, 1859, s. 201—Irregularity.* No sale in execution of a decree can take place, either of moveable or immoveable property under the provisions of Act VIII of 1859, without previous attachment, and a sale without prior attachment is illegal. The words "attachment and sale" in s 201 must be taken together, and not distributively. LUCHMEEPUT *v.* LEKRAJ ROY **8 W. R. 415**

72. ——— *Sale of property without attachment—Decree for money—Invalidity of sale—Civil Procedure Code, Ch. XIX and s. 254.* A regularly perfected attachment is an essential preliminary to sales in execution of simple decrees for money; and where there has been no such attachment, any sale that may have taken place is not simply voidable, but *de facto* void. MAHADEO DUBEY *v.* BHOLA NATH DICHIT **I. L. R. 5 All. 86**

73. ——— *Effect on sale*

MAHAMED MUZAFFAR HOSSEIN **I. L. R. 18 Calc. 188**

74. ——— *Omission to attach property second time—Sale without attachment.* Property already under attachment at the suit of the creditor to enforce part of a debt accrued due in a mortgage transaction at an earlier period was sold in satisfaction of his decree for instalments subsequently due by the same debtor. A second attachment would have been a mere formality, and was not material to the validity of the sale. DOSIBAI *v.* ISHVARDAS JAGJIVANDAS **I. L. R. 15 Bom. 222** **L. R. 18 I. A. 22**

75. ——— *Attachment before judgment—Termination of attachment—Sale in execution—Material irregularity in publishing or conducting sale without attachment—Waiver—Civil Procedure Code, ss 311, 483.* The plaintiff instituted a suit against defendants for recovery of money, and previous to judgment, that is, on the 8th of January 1885, applied for, and on the 11th obtained, an order for attachment of several houses and premises belonging to defendant, and such attachment was made. The suit was dismissed,

postponement of sale, but his applications were refused, and the sale took place on the date fixed. The judgment-debtor then objected to the confirmation of the sale, urging that the property sold was never attached in execution of the decree, and the

86, that a regularly perfected attachment is an essential preliminary to sales in execution of decrees for money; and where there has been no such

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

step which a Court in executing a simple money-decree has to take to assert its authority to bring property to compulsory sale RAM CHAND *v* PITAM MAL . . . I. L. R. 10 All. 506

76. —————— *Omission to attach property—Decree on mortgage* The omission to cause an attachment to be made in execution of a decree for the realization of a mortgage-debt does not affect the validity of a sale of the mortgaged property in execution of such decree TINCOURI DEBYA *v* SHIB CHANDRA PAL CHOWDHRY I. L. R. 21 Calc. 639

MUNIAPPA NAIK *v.* SUBRAMANIA AYYAN I. L. R. 18 Mad. 437

77. —————— *Sale in execution held in pursuance of an attachment made under a wrong section of Civil Procedure Code—Civil Procedure Code, ss. 268 and 274—Irregularity in attachment. Held,* that a sale of the mortgagee's rights under a mortgage duly held and confirmed was effectual to pass the mortgagee's rights to the

SHEO CHARAN LAL *v.* SHEO SEWAK LAL I. L. R. 18 All. 469

78 —————— *Sale without previous attachment—Material irregularity Held,*

DHYAN *v.* DHOLANATH

MOOKTA KESHEE DEBEE *v.* KUNUCK MONEE DEBEE . . . . 7 W. R. 267

See MOOKTA KESHEE DEBIA *v.* LUCHMEEPUT SINGH DOOGUR . . . 10 W. R. 137

SALE IN EXECUTION OF DECREE—*contd.*

17 SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

Upholding on review LUCHMEEPUT SINGH *v.* MOOKTAKASHEE DEBIA . 9 W. R. 388

80. —————— *Process issued simultaneously and not successively* In the case of moveable property, process of attachment and sale may be issued successively or simultaneously; but in regard to immoveable property, process of attachment and sale should be issued successively; but if issued simultaneously, and the attachment has been made *bonâ fide*, and the sale proclamation issued as required by law, with an interval of thirty days between it and the sale, such irregularity is not a sufficient ground for setting aside the sale, as no material injury could accrue to the debtor thereby. HURO SOONDUREE DEBIA *v.* BROJO GOBIND SHAHA . . . 4 W. R. Mis. 12

81. —————— *Irregularity in attachment—Civil Procedure Code, 1859, ss 235,*

9 W. R. 388

s c upheld on review MOOKTA KESHEE DEBIA *v.* LUCHMEEPUT SINGH DOOGUR . 10 W. R. 137

82. —————— *Irregularity in attachment—Attachment of debt—Civil Procedure Code, 1877, ss 268, 278, and 287—Proclamation of sale* A decree-holder, by a prohibitory order issued under s 268 of the Civil Procedure Code, attached a debt due to his judgment-debtor. The person served with the order applied, under s 278, to have the attachment removed *Held,* that the application could not be entertained under s 278, that section having no application to the case; but that, before issuing a proclamation of sale, in execution of a decree, of the debt so attached, it is the duty of the Court, under s 287 of the Code, to ascertain all that the Court considers it material for the intending purchaser to know in order to judge of the nature and value of the property proclaimed for sale If the property of which sale is sought is a debt, and the Court receives notice from the alleged debtor that no debt exists, the Court should satisfy itself as to the existence, or otherwise

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) Irregularity—*contd.*

83. ——————— *Irregularity in issue of notification of sale and attachment—Misconduct of decree-holder* Before a sale is confirmed, a party objecting to the irregularity of the sale proceedings, on the ground that the notification of sale and attachment has not been properly issued, should be allowed proof of non-service or of insufficient service. The misconduct of a decree-holder may be a good cause of action, but cannot be a ground for setting aside a sale This can only be done summarily if irregularity in the sale-proceedings resulting in material injury to the debtor be proved. Rethbunjun Singh *v.* Mitturjeet Singh . . . **4 W. R. Mis 9**

84. ——————— *Irregularity in service of prohibitory order—Act VIII of 1859, ss. 236 and 243—Purchase of property by decree-holder—Practice of English Courts* In execution of a decree, the defendant caused a decree of the plaintiff awarding him R925 to be attached, and under s 236, Act VIII of 1859, caused the prohibitory order to be fixed in a conspicuous part of the Court-house, and copies thereof to be delivered to

obtained upon notice to the judgment-debtor. Practice of English Courts regarding sale in execution of decrees discussed Bandhu Roy *v* Hanuman Singh

3 B. L. R. A. C. 320 : 14 W. R. 408 note

85. ——————— *Irregularity in applying for execution of decree—Act VIII of 1859, s 257.* *G* and *M* obtained a money-decree against *K* in the Court of the Principal Sudder Ameen on the 12th December 1864 This decree

Court of first instance, and, no appeal being preferred, the decree became final. The decree-holders had in the meantime taken proceedings to execute the decree, dated the 5th May 1866, and

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) Irregularity—*contd.*

dated the 14th January 1867 passed. On the last application a sale of certain immoveable property belonging to *K* was ordered and took place on the 15th February 1871. *K* objected to the confirmation of the sale on the ground of the irregularity in the application, but his objections were disallowed and the sale was confirmed. He brought a suit to recover possession of the property from the auction-purchaser on the ground that the sale was a nullity *Held per* Stuart, *C.J.*, and Pearson, Turner, and Spankie, *JJ.*, that the

suit was not maintainable Ghazi *v* Kadir Baksh . . . **I. L. R. 1 All. 212**

86. ——————— *Irregularity in attachment—Confirmation of sale—Objection that property is not liable to attachment—Civil Procedure Code, 1882, ss. 278, 311, 312. Held*, that an

Code, and was consequently no ground for setting

remedy as therein provided Hub Lal *v* Kanhia Lal . . . **I. L. R. 7 All. 365**

87. ——————— *Sale of property other than that hypothecated* A decree-holder is not precluded from taking any of his judgment-debtor's property in execution of his decree merely because he had a lien on particular properties. A

88. ——————— *Sale of property of third person—Right of suit—Civil Procedure Code, 1859, s 252.* A sale in execution of decree transfers to the purchaser nothing more than the rights and interests of the judgment-debtor at the time of attachment and sale; and s. 252 of Act VIII of 1859 did not prohibit an enquiry into the extent of those rights, or declare the owner of the property attached in execution of a decree passed against a third party, incompetent to assert

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

entitled to sue for its restorations or for damages SHAM SUNDER DASS *v.* RAHEEM BUKSH

6 N. W. 252

MOHANUND HOLDAR *v.* AKIAL MEHALDAR

9 W. R. 118

89. ———— *Sale of portion of tenure under decree for rent—Sale of other por-*

nary creditors having no lien on the tenure, and

90 ———— *Sale of whole estate where a portion would suffice* A Subordinate Judge, on the application of a judgment-creditor, ordered the attachment and sale of an indigo concern consisting of several factories, and fixed the 9th March for the sale. Shortly before the date so fixed, he issued a direction to the District Judge's nazir that the sale should be effected in portions to be

satisfy the claims of a creditor when the sale of a portion would suffice, the irregularity committed by the District Judge caused material injury to the judgment-debtors ABDOOL HYE *v* MACRAE

23 W. R. 1

Confirmed on review, MORGAN *v* ABDOOL HYE

23 W. R. 393

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

91. ———— *Material irregularity in publishing or conducting sale in execution—Objection that property sold was not legally saleable—Civil Procedure Code, 1882, ss 244, 311,*

antecedent to the order of sale *Olpherts* v *Mahabir Pershad, L R 10 I A 25,* referred to RAMCHHAIBAR MISR *v* BECHU BHAGAT

I. L. R. 7 All. 641

92 ———— *Decree for sale of mortgaged property and for costs—Attachment and sale of other property for whole amount of decree—Suit to set aside execution sale—Civil Procedure Code, 1882, ss 311, 312—Finality of order in execution-proceedings* In execution of a

and sale under the decree In the meantime, on the 15th June 1882, the houses had been put up for sale and purchased for R500, and the sale had been confirmed on the 16th August 1882 The judgment-debtors brought a suit against the purchaser to set aside the sale, on the ground that the houses were not saleable under the decree *Held* that the decree, in regard to costs, was a decree made personal against the judgment-debtor, and conferred a right upon the decree-holder to take out execution for the recovery of those costs, not only against the property mortgaged in the bond, but also against the person and other property of the judgment-debtor *Per* OLDFIELD, *J* (MAHMOOD *J* doubting), that the attachment and sale in execution of the decree were valid, inasmuch as they were made in respect of the costs

cation of the 6th September 1882 was one between

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

the judgment-debtors on the one hand and the decree-holder on the other, and subsequent not only to the sale, but to the confirmation of the sale, and inasmuch as the Court was not then called upon to decide anything in relation to the nature of the decree as to costs, the order, then passed, could not be used against the purchaser. Also *per* MAHMOOD, *J.*, that it was doubtful whether the attachment having been made for the whole amount of the

ground alone, was prohibited by the last part of s. 312. RAGHUBAR DYAL *v* ILAHI BUKSH

I. L. R. 7 All. 450

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duly apprized of the sale of his dwelling house — *Held*, that the irregularity had caused material injury to the judgment-debtor, and that the sale must be set aside JOYNARAIN GIRI *v.* GOLUCK CHUNDER MYTEE . . 25 W. R. 183

94. ——————— *Omission to give notice of execution—Civil Procedure Code, 1877, s 248.* An omission to give notice to the party against whom execution is proceeding, as provided by s. 248 of the Civil Procedure Code, invalidates a sale in execution of the decree. *In the matter of the petition of* RAMESSURI DASSEE. RAMESSURI DASSEE *v* DOORGADAS CHATTERJEE

I. L. R. 6 Calc. 103 : 7 C. L. R. 85

(*Contra*) MUFASA *v.* MAHOMED AKBAR GAZEE

2 W. R. 74

95 ——————— *Omission to give notice of application for execution* The omission to give the notice required by s. 248 of Act X of 1877 to the judgment-debtor, on application for execution of the decree, affects the regularity of the sale which subsequently takes place in execution of the decree and the validity of the entire execution-proceedings *Ramessuri Dassee* v. *Doorgadass Chatterjee, I L. R 6 Calc. 103*, followed. *Held*, therefore, where execution of a decree was applied for against the legal representative of a deceased judgment-debtor, and the notice required by s. 248 of Act X of 1877 was not given to such legal representative, and certain immoveable property belonging to the deceased judgment-debtor was sold, that

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

such sale had been properly set aside by the Court executing the decree by reason of such omission. *Quære*. Whether such omission was an irregularity in "publishing or conducting" the sale within the meaning of s. 311 of that Act. IMAM-UN-NISSA BIBI *v.* LIAKAT HUSAIN . I. L. R. 3 All. 424

96. ——————— *Omission to re-issue process after proceedings have been struck off.* After the striking off of an execution case, the omission to re-issue the processes required by law on the admission of a third party as decree-holder is not a material irregularity in the case. BISHEN DYAL SINGH *v.* KHUDEEMUN . . W. R. 1864, 359

97. ——————— *Irregularity in notice of sale—Death of decree-holder.* The issue

CHUNDER AOOCH *v.* BAMUN DOSS MOOKERJEE

22 W. R. 481

98. ——————— *Irregularity in notice of sale—Proclamation of notice of liens.*

the absence of proof that the value of the property has been thereby deteriorated, it is not such an irregularity as will vitiate the sale. GOVIND HARI VALEKAR *v.* BANK OF INDIA. BANK OF INDIA *v.* RAGHO NARAYAN . 4 Bom. A. C. 164

99 ——————— Irregularity in giving particulars of sale—*Omission to mention numbers, etc, of notes—Sale and production of notes—Civil Procedure Code, 1859, ss. 201, 238, 248, 249* The omission in a sale proclamation to mention particulars as to the numbers, value, etc, of Government promissory notes under attachment for sale is not such an irregularity as will vitiate the sale, though the lower Court would have exercised a sound discretion, under s. 249 of the Code, if it had called for such particulars. The sale of such notes through a broker is permissive under s. 248 and not obligatory The production of the notes in Court

100. ——————— *Proclamation of sale not in prescribed form and without necessary particulars—Right of holders of other decrees to object—Civil Procedure Code, 1882, ss. 311, 314.* A zamindar mortgaged his estate to a bank and the mortgagee obtained a decree in the High Court

SALE IN EXECUTION OF DECREE— *contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

in execution of which it was ordered that the zamindari should be sold village by village. Other persons
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the property and the revenue assessed on it, or the amount of income derived from it, and no mention was made of the order of the High Court *Held, that the sale should not be confirmed.* ATHAPPA CHETTI *v.* RAMAKRISHNA NAYAKAN
I. L. R. 21 Mad. 51

See LAKSHMI *v.* KUTTUNNI I. L. R. 10 Mad. 57

101. ——————— *Sale of property otherwise than as advertised—Proof of damage—*

irregularity Where therefore such damage had not been distinctly proved —*Held,* that the sale could not be set aside on the ground of the irregularity complained of. ROY NANDIPAT MAHATA *v* URQUHART
4 B. L. R. A. C. 181 : 13 W. R. 209

reversing URQUHART *v* NUNDEEPUT MAHAPUTTUR
12 W. R. 492

102. ——— **Sale of property in separate lots instead of in one lot as advertised in proclamation of sale** *A* attached a decree

I. L. R. 21 Mad. 41

proclamation of the intended sale, in accordance with *s* 287 *of Act X of 1877, was taken, for the first*

SALE IN EXECUTION OF DECREE— *contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

mation had been made.—*Held,* that the objection was taken too late, although, if properly taken in

damage, without having been proved to be the effect of the non-statement of the revenue, the applicant had not (as required by s 311) proved to the satisfaction of the Court that he had sustained *substantial damage by reason of such irregularity.* MACNAGHTEN *v* MAHABIR PERSHAD SINGH
I. L. R. 9 Calc. 656

S. C. OLPHERTS *v* MAHABIR PERSHAD SINGH
11 C. L. R. 494
L. R. 10 I. A. 25

reversing decision of High Court in MAHABIR PERSHAD SINGH *v* OLPHERTS 9 C. L. R. 134

104. ——— **Error in proclamation of sale as to incumbrance to which property was liable**—*Civil Procedure Code, 1882, ss. 311, 312* In a sale of immoveable property in execution of a decree, the proclamation of sale notified that the decree-holder held two charges on the property aggregating about R1,000 There was in fact one charge only, amounting to about R800.

fairness of the auction and affected the price, and that the sale must therefore be set aside, on the ground of material irregularity in publishing and conducting it KANJI MAL *v* SAHO
I. L. R. 8 All. 118

105 ——————— *Civil Procedure Code, 1882, ss 287, 311—" Material irregularity " in publishing or conducting a sale—Omission to state amount of Government tax payable—Right of person complaining to prove substantial loss* In

irregularity being committed, the judgment-debtor whose lands have been sold is *primâ facie* entitled to be given an opportunity for proving that he has sustained substantial loss by reason of it. MADARSAH MARACAYAR *v.* PALANIAPPA CHETTI
I. L. R. 23 Mad. 628

106. ——————— *Error in over-statement of balance due on decree. A* sale in

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(b) IRREGULARITY—*contd*

107. ——————— *Omission to give notice of amount of decree—Civil Procedure Code, 1859, s. 252* A Judge is not required by law to give notice at the time of the sale of the amount of the decree to be sold, and his omission to do so did not constitute an irregularity in the sale entitling the plaintiff to claim damages under s. 252, Act VIII of 1859 KASSEE NATH ROY CHOWDHRY *v* HULLODHUR ROY . . . . **2 W. R. 60**

108. ——————— *Omission to state amount of decree—Civil Procedure Code, 1882, s 311* The mere fact that the amount of rent payable in respect of a tenure brought to sale in execution of a decree is not stated in the sale-proclamation

COONDOO ISHANESWARY DASEE *v.* GOPAL DAS DUTT . . . . **I. L. R 7 Calc. 723**

109. ———— **Omission of material part of notification of sale.** The sale-notification, referred to in circular order of the 18th August 1873, should contain a special notice that the property will be sold on the day named, or so soon thereafter as its turn may come in the list of properties advertised to be sold. Without this special notification buyers would be summoned for one day, whereas the property might not be sold on that day or for several days after, and that would

110. ———— **Irregularity in affixing notification of sale** The affixing, in the Principal Sudder Ameen's Court, of a notification of

provision for the service of the notification of sale on the judgment-debtor in person, or in the village in which he lives. ROMESH CHUNDER BANERJEE *v.* JADUB CHUNDER CHATTERJEE

6 W. R. Civ. Ref. 14

111. ———— **Irregularity in publication of sale** Where the sudder cutchery of the zamindar was beyond the jurisdiction of the District Court, the publication of the notice of sale at one of the inferior cutcheries was *held* to be legal and sufficient HUBEEBOOL HOSSEIN *v* ALLENDER. HUBEEBOOL HOSSEIN *v* LAND MORTGAGE BANK

14 W. R. 44

112. ——————— *Irregularity in publication of sale.* The affixing of a notice of sale in a not very conspicuous part of the land, when the judgment-debtor resides in a different district, is not sufficient to satisfy the requirements of justice. GOBIND CHUNDER MOOKERJEE *v.* RAM KOMUL CHATTERJEE . . . . **25 W. R. 364**

113. ——————— *Irregularity in publication of sale—Beng. Reg. XLV of 1793, s 12—Delay.* A suit was brought in 1852 to set aside an execution-sale made in 1841 on the ground of irregularity in not complying with the provisions of Bengal Regulation XLV, s. 12, of 1893, for the due publication of the sale A summary suit under Bengal Regulation VII of 1825, s 5, had been

1793 The Sudder Court held that there had been an irregularity in the publication of the notice of

114. ——————— *Irregularity in publication of sale—Execution-sale of groups of property under one decree—Irregularity and damage, their necessary relation—Code of Civil Procedure (Act XIV of 1882), ss 289 and 311.* The words "on the spot where the property is attached" in s. 289 of the Civil Procedure Code refer to each

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(b) IRREGULARITY—*contd.*

in the publication of the sale *Held*, also, that, where there is no evidence to connect the two elements of irregularity and injury under s. 311, it must appear, before a Court can set aside an execution sale, that the injury complained of is the reasonable and natural consequence of the irregularity and attributable to it alone TRIPURA SUNDARI *v* DURGA CHURN PAL . I. L. R. 11 Calc. 74

115. ——— ——— *Irregularity in publication of sale —Material irregularity—Civil Procedure Code (Act X of 1877), ss 274, 289, 311.* Under ss. 289 and 274 of the Civil Procedure Code, it is necessary that a copy of the sale-proclamation should be affixed to some conspicuous place on the property attached, and the omission to do so is a material irregularity within the meaning of s. 311 of the Code of Civil Procedure KALYTARA CHOWDHRAIN *v.* RAM COOMAR GOOPTA

I. L. R. 7 Calc. 466 : 9 C. L. R. 114

116. ——— *Irregularities in publication of sale—Material irregularities—Civil Procedure Code (Act X of 1877), ss 287, 289* Upon an application to set aside a sale in execution of a decree, on the ground of material irregularities in [illegible]

as required by s 287 of the Act had been filed, and that the sale took place on, and not after, the thirtieth day from the publication of the notice, but it also appeared that the applicant had himself been present at the sale and had purchased the property, and it was not shown that any substantial injury had resulted from the irregularities *Held*, that there was no ground for setting aside the sale BANDY ALI *v* MADHUB CHUNDER NAG

I. L. R. 8 Calc. 932

117. ——— *Proclamation of sale—Civil Procedure Code (Act XIV of 1882), ss. 289, 311—Substantial injury* A sale of revenue-paying land is not *ipso facto* void by reason of a copy of the sale-proclamation not having been fixed up in the Collector's office as required by s 289 of [illegible]

118 ——— *Irregularities in publication of sale—Evidence of such irregularities—Affixing proclamation of sale—Nazir's re-* [illegible]

conspicuous part of the property, are acts which must precede the posting of the notices in the Court-house as required by s 290. Three mouzahs were attached in execution of decrees obtained by *A* and *B* Prior to the sale, *C*, who had also obtained a decree against the owner of the land, applied for leave to execute his decree, in order that he might participate in the sale-proceeds under s 295 of the Civil Procedure Code Upon the day fixed for the sale, the Deputy Commissioner was unable, through illness, to attend, and he postponed the sale for three days Two of the mouzahs were sold, and realized more than enough to satisfy the decrees of *A* and *B* The third was then sold in satisfaction of *C's* decree Upon an application by the judgment-debtor to set aside the sale on the ground of irregularity, it appeared that notice of the sale had been posted in the Court-house more than thirty days before the date fixed for the sale, but had only been published on the properties to be sold five days before that date; that notice of the existence of a mortgage on the properties, but no further particulars was given, and the mortgagee was allowed to purchase; and that the Deputy Commissioner had accepted the reports of the Nazir and Court-peon as to the proclamation of sale, and had refused to allow the judgment-debtor to give evidence of its insufficiency *Held*, that the proclamation of sale on the [illegible]

irregularities *Held*, also, that the Deputy Commissioner was not entitled to proceed upon the reports of the Nazir and Court peon, but was bound to hear the evidence tendered by the judgment-debtor, though he was justified, under s 291, in postponing the sale as he had done *Held*, further, that the third judgment-creditor, who had not attached the property, was still entitled to have the sale proceeded with and his decree satisfied under the provisions of s 295. MEGH LALL POOREE *v* SHIB PERSHAD MADI . . . I. L. R. 7 Calc. 34

S C MEGH LAL POOREE *v* MOHAMMED DUTT JHA . . . 8 C. L R. 369

119. ——— *Irregularity in publication of sale—Civil Procedure Code, ss 274 and 289—Omission to beat drum—Material irregularity.* Omission to have a drum beaten as [illegible]

v NANA . . . I. L. R. 10 Bom. 504

120. ——— *Irregularity in publishing and conducting a sale—Waiver of irregularity by the judgment-debtor.* Previous to the

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

date fixed for the sale of certain property in execu-

and sale ...

mission by the judgment-debtors that the publication and proclamation of the sale had been duly

judgment debtors *Girdhari Singh* v. *Hurdeo Narain Singh, L R. 3 I A. 230*, distinguished THAKOOR MAHATAB DEO v LEELANUND SINGH I. L. R. 7 Calc. 613 : 9 C. L. R. 398

121. ——— *Irregular publication of proclamation of sale—Sale held too soon after proclamation* It is a material irregularity for the proclamation to be published less than thirty days prior to a sale in execution of a decree, and where damage has resulted, the sale may be set aside. *Megh Lal Pooree* v *Mohammed Dutt Jha, 8 C. L R. 369 I L R 7 Calc 34*, followed ABDUL NOSSIA v. DOOLAL DOSS . 11 C. L. R. 303

(*Contra*) RAMCHANDAR BAHADUR v KAMTA PRASAD . . . . I. L R 4 All. 300

122. ——— **Sale held too soon after proclamation**—*Sale of immoveable property in execution before thirty days from date of fixing up proclamation—Material irregularity in publishing or conducting sale—Civil Procedure Code, 1882, ss 290, 311.* An infringement of the rule contained in s. 290 of the Civil Procedure Code is an irregularity vitiating a sale in execution of decree, and is something more than a material irregularity in publishing a sale to which s. 311 refers BAKHSHI NAND KISHORE v. MALAK CHAND I. L R. 7 All 289

123 ——— *Civil Procedure Code, s 306—Delay in making deposit—Adjournment of sale—Absence of substantial injury* The ...

more than a mere irregularity and does not vitiate the sale. VENKATA v. SAMA I. L R. 14 Mad. 227

124. ——— *Civil Procedure Code, 1882, ss. 290, 311—Material irregularity—Proof of substantial ...*

TASADDUK RASUL KHAN v AHMAD HUSAIN I. L. R 21 Calc. 66 L R. 20 I. A. 176

125. ——— *Civil Procedure Code, s 311—Material irregularity in publishing or conducting sale—Substantial injury—Notification omitting to state place of sale—Sale held after date advertised—Civil Procedure Code, ss 287, 290.* Where a proclamation of sale of immoveable property in execution of a decree omitted to state the place of sale, and where the sale took place on a date other than that notified in the proclamation, and before the expiration of the thirty days required by s. 290 of the Civil Procedure Code :—*Held*, that the non-compliance with the provisions of ss 287 and 290 of the Code was more than mere irregularity, that it must have caused substantial injury, and that the order confirming the sale must be set aside. *Bakshi Nand Kishore* v. *Malak Chand, I. L. R 7 All. 289*, referred to. *Per* MAHMOOD, J. ...

126 ——— *Civil Procedure Code, 1882, s. 290—Ground for setting aside sale.* The infringement of the provisions of s 290 of the Civil Procedure Code is not a mere irregularity, but it vitiates the sale *Bakhshi Nand Kishore* v. *Malak Chand, I. L R 7 All. 289.* SADHUSARAN SINGH v. PANCHDEO LAL . I. L. R. 14 Calc. 1

127. ——— *Civil Procedure Code, ss. 290, 311—Sale of immoveable property in execution of decree—Sale held before expiration of thirty days from the proclamation—Application by judgment-debtor to set aside sale—"Illegality"—"Material irregularity."—Proof of substantial injury whether necessary.* Where a sale of immoveable property in execution of a decree took place before the expiration of the thirty days required by s. 290 of the Civil Procedure Code and without

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

the consent of the judgment-debtor :—*Held*, by EDGE, *C.J* (BRODHURST, *J.*, dissenting), that the holding of the sale under these circumstances was not merely an irregularity within the meaning of s. 311 of the Code, but was an illegality, and

Lall Pooree v *Shib Pershad Madi, I L R 7 Calc 34; Kalytara Chowdhrain* v. *Ramcoomar Goopta, I L R. 7 Calc. 466, Tripura Sundari* v *Durga Churn Pal, I. L R 11 Calc 74, Bonomali Mozumdar* v. *Woomesh Chunder Bundopadhya, I L. R 7 Calc 730; Bundy Ali* v. *Madhub Chunder Nag, I. L. R. 8 Calc 932, Nothu* v. *Harbhuj, All Weelly Notes (1885) 304; Jasoda* v *Mathura Das, I L R 9 All 511*, and *Bakshi Nand Kishore* v. *Malak Chand, I L R 7 All 289*, referred to GANGA PRASAD *v* JAG LAL RAI

I. L R 11 All. 333

128. ——— *Proclamation of sale—Sale before hour fixed—Civil Procedure Code (Act XIV of 1882), s 287—Sale set aside as being*

proclamation. *Held*, that there had been no sale within the meaning of the Code, proclamation of the time and place of sale and the holding of the sale at such time and place being conditions precedent to the sale being a sale under the Code BASHARUTULLA *v* UMA CHURN DUTT

I. L. R. 16 Calc. 794

129. ——— **Property sold before advertised time**—*Sale invalid* A sale by public auction in execution of a decree, which is con-

that the whole of the proceedings were invalid. CHEDAMI LAL *v.* AMIR BEG I. L R. 7 All. 676

130. ——— *Property sold before advertised time.* Where the fact of an execu-

den duty of the Court to take evidence and determine whether bidders had been prevented from attending, and whether an irregularity of a material kind had occurred. KHODEJA BEBEE *v* RAM NARAIN DAN 12 W R 511

131. ——— *Property not sold at advertised time—Alteration in sale order.*

12 W. R. 281

132. ——— *Property not sold at advertised time—Purchase by decree-holder*

a very inadequate value, there is an irregularity which may cause material injury to the debtor. KISHEN PROSSUNNO MOJOMDAR *v* NURDUMA DOSSEE . . . 17 W. R. 339

133. ——— **Alteration in particulars of property after advertising for sale**—*Material irregularity* The property of a judgment-debtor was proclaimed and advertised for sale in execution of a decree on a certain day. The proclamation set out particulars of the property, but subsequent to such proclamation a portion of the property was released to a third party Notwithstanding this fact, no fresh proclamation was made, and the sale took place on the day originally fixed. *Held*, that the omission to issue a fresh pro-

PROKASH SINGH *v* SARDAR DOYAL SINGH

I. L. R. 3 Calc. 544: 2 C L. R. 260

134 ——— *Civil Procedure Code, ss 247 and 289—Proclamation—Property broken up into lots—Separate proclamations*

SALE IN EXECUTION OF DECREE— *contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd*

is so divided. A mere breaking up of a property into lots does not necessarily make it several properties for the purposes of a proclamation of attachment or sale. Where estates, though embraced in the same process, are really at such a distance that there is no moral certainty of communication to persons on or interested in the one of what is publicly done on the other, there should, no doubt, be a separate proclamation on each, in order that full intimation may be given of what is to be done. DE PENHA *v.* JALBHOY ARDESHIR SET

I. L. R. 12 Bom. 368

135. ———— Adjournment of sale—*Notice—Discretion of person selling* An auctioneer who sells under a decree has power to adjourn the sale from time to time (upon giving proper notice), but whether he does so or not is a matter in his own discretion GOVIND HARI VALEKHAR *v.* BANK OF INDIA. BANK OF INDIA *v* RAGHO NARAYAN . . 4 Bom. A. C. 164

136. ———— *Adjournment of sale—Notice.* An execution-sale properly notified may be adjourned with the consent of the parties. GOVIND CHUNDER AOOCH *v* BAMUN DOSS MOOKERJEE . . . . . . 22 W. R. 481

137. ———— *Postponement of sale—Postponement without valid reason Held,* that the judgment-debtor could not complain of the order of the Subordinate Judge postponing a sale in execution of decree from the 25th to the 26th, unless he could show that he had suffered substantially by the postponement. But the attention of the Court was called to the importance of abiding by the date fixed in the proclamations of sale as far as possible, and not postponing sales without good reason. ASMUTOONNISSA BIBEE *v.* KHUDEMOONNISSA BIBEE . . . 17 W. R. 278

138. ———— *Postponement of sale—Civil Procedure Code, 1859, s 343* When property has been put up for sale at auction in execution of a decree, and bids have been *bonâ fide* made for it, the Court is not competent to postpone the sale, or to decline to conclude it, and order another auction, merely on the representation of the

BHYROO PERSHAD . . 1 Agra Mis. 11

139. ———— *Sale, postponement of, for benefit of debtor.* Certain properties were to be sold in execution of decree. As to some, the sale took place as far as possible on the day fixed, but was publicly put off to the next day, when, no higher price being obtainable, it was concluded at the price bid on the first day. *Held*, that there

17 W. R. 210

140. ———— *Postponement of sale—Civil Procedure Code, 1859, s. 249—Ground for postponing sale.* A Judge cannot order a Subordinate Judge to postpone a sale in a case pending before the Court of the latter officer. An application by a Collector under s. 249 of the Civil Procedure Code for the postponement of a sale in the execution of a decree of land paying revenue to Government should not be granted where it is not alleged that satisfaction of the decree might be made within a reasonable period by a temporary alienation of the land. JAISHEE RAM *v.* BIJAI KOOER

5 N. W. 177

141 ———— *Equitable grounds for setting aside sale—Sale contrary to order for postponement—Mistake.* Where a sale in execution took place under an order obtained notwithstanding a consent on the part of the decree-holder's pleader to a petition by the judgment-debtor for a postponement, the petition so consented to having been by mistake afterwards presented to

142 ———— Sale held after postponement by Court—*Sale after order postponing sale where order arrives too late to stay sale.* When a Court executing a decree passes an order postponing a sale, and the sale takes place notwithstanding, in consequence of the order arriving

143. ———— *Order for postponement made before, but arriving at Collector's*

144. ———— *Order for postponement arriving after sale had been held—Civil Procedure Code, 1877, ss 311, 312.* On the day

SALE IN EXECUTION OF DECREE— *contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

be held, and that the sale which was effected, the

action was not otherwise illegal. MIAN JAN *v* MAN SINGH . . . . . **I. L. R. 2 All. 686**

145. ——————— *Sale held after postponement by Court—Order for postponement not reaching the conducting officer—Material irregularity in conducting sale—Civil Procedure Code, s 311.* The Court executing a decree passed an order postponing a sale in execution, but the order failed to reach the officer conducting the sale, and the sale was consequently held. The judgment-debtor applied to have the sale set aside as void *Held,* that the effect of the Court's order for postponement of the sale was to deprive the officer of all legal authority to hold it on the date previously fixed; that his not being aware of the order was not

that the defect had caused substantial loss to the judgment-debtor; and that the Court could not confirm the illegal sale, but must hold it to be void *Sukhdeo Rai* v. *Sheo Ghulam, I L. R 4 All 332 Ram Dial* v *Mahtab Singh, I L. R 3 All. 701*, and *Ganga Prasad* v *Jag Lall Rai, I. L R 11 All 333,* referred to. SANT LAL *v* UMRAO-UN-NISSA **I. L. R 12 All. 96**

146. ——————— *Code of Civil Procedure (Act XIV of 1882), s 545—Order passed by Appellate Court for stay of execution—Sale held*

when communicated. If a property is sold before such an order is communicated to the Court holding the sale, such sale is not void and cannot be treated as a nullity *Foujdar Khan* v. *Bainee Doobey, 3 Agra 398*, *Majha Singh* v *Jhow Lal, 6 N. W. 354*, and *Main Jan* v. *Mian Singh, I. L R. 2 All. 686,* distinguished BISSESWARI CHOWDHURANI *v.* HURRO SUNDAR MOZUMDAR **1 C. W. N. 226**

147. ——— **Proclamation of adjourned sale**—*Postponement of sale* A proclamation of thirty days is necessary when the property is first advertised for sale, not when the sale is postponed for the convenience of the debtor S 225 of the Civil Procedure Code, 1859, related to a re-sale, and not to a postponed sale BUDREE NATH BHUTT *v* CHUNDER SHEKUR MAN SINGH **1 W. R. Mis. 3**

NOORUL HOSSEIN *v.* OMATOOL FATIMA **25 W. R. 34**

SALE IN EXECUTION OF DECREE— *contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd*

148. ——— **Necessity for fresh proclamation**—*Postponement of sale* Where a sale is postponed, a fresh notice and proclamation ought to issue SHOSHEE MOOKHEE BURMONYA *v.* DWARKANATH BISWAS . **6 W. R. Mis. 84**

149 ——————— *Postponement of sale—Notice—Necessity for fresh proclamation—Act VIII of 1859, s. 249.* Where a sale in execution of a decree is postponed, whether indefinitely or to a fixed date, it is necessary in the absence of an express arrangement between all the parties, that a fresh proclamation should be made giving notice of the day to which the sale has been postponed It may be presumed, when the notice is wanting, that there has been an absence of bidders, from which alone substantial injury must probably have arisen to the judgment-debtor. GOOPEENATH DOBEY *v.* ROY LUCHMEEPUT SINGH

I. L. R. 3 Calc. 542 : 1 C. L. R. 349

OKHOY CHUNDER DUTT *v* ERSKINE **3 W. R. Mis. 11**

150. ——————— *Postponement of sale—Sufficient notice of sale—Necessity for fresh notification* Where a sale was notified to take place on the 8th, and on that day the order for the postponement of the sale to the 9th was made in open Court:—*Held*, that that was a sufficient notification of the sale being held on the 9th, and that a fresh notice was not necessary GOWREE NATH SAHOY *v* FUKEER CHAND . **18 W. R. 347**

151. ——————— *Postponement of sale—Necessity for fresh proclamation.* Where

vention of the provisions of s. 249 of Act VIII of 1859, as, when a sale is postponed, there must be fresh proclamation of the sale and date when it is to take place SANWUL SINGH *v* MAKHUN PANDEY **2 N. W. 14**

152 ——————— *Omission to issue fresh proclamation—Material injury* A decree having been obtained against *A* and *B* upon a mortgage, the latter appealed to the High Court and subsequently, on the mortgaged properties

rights and interests would be sold. *Held*, that the

SALE IN EXECUTION OF DECREE— *contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

the sale was set aside. MOHINY MOHUN DASS CHOWDHRY *v.* BHOOBUN JOY SHAHA **6 C. L. R. 237**

153. ——————— *Indefinite postponement—Fresh notice, omission of—Material injury* Where a sale in execution does not take place

of an indefinite postponement, an estate has been purchased for an inadequate price, and especially by the judgment-creditor, the irregularity is one that has occasioned substantial injury and justifies a setting aside of the sale. JHOOMUCK CHOWDHRY *v.* RADHA PERSHAD SINGH **25 W. R. 328**

154. ——————— *Civil Procedure Code, 1877, s. 290—"Consent"—Lapse of time between proclamation and actual sale—Postponement of sale.* An application made on the day of sale by the judgment-debtor that a part only of his property may be sold instead of the entirety, cannot be considered such a "consent" as, by virtue of s. 290 of Act X of 1877, would do away with the necessity of a proclamation for sale being issued thirty days before the day fixed for sale Where successive postponements of the day of sale have been made, but the last of these is made by the

proclamation and the actual day of sale is requisite HARBUNS SAHAI *v* BHAIRO PERSHAD SINGH **I. L. R. 5 Calc 259**

s.c. HURBUNS SAHAI *v* BHAIRO PERSHAD **4 C. L. R. 23**

See also BHEKRAJ KOOERI *v* GENDH LALL TEWARI . **I. L. R. 5 Calc. 878**

155. ——————— *Civil Procedure Code (Act XIV of 1882), s 291—Omission by consent to issue fresh proclamation of sale after adjournment* Where a sale in execution of decree was adjourned on the application of one of two judgment-debtors, who waived the issue of a fresh proclamation of sale, and the interests of both were sold —*Held*, on the application of the other judgment-debtor to set aside the sale, that the omission to issue a fresh proclamation of sale under s. 291 of the Civil Procedure Code amounted only to an irregularity, and did not vitiate the sale. *Rameshur*

I. L. R. 18 Calc. 496

SALE IN EXECUTION OF DECREE— *contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

156. ——————— *Agreement as to proclamation on postponement of sale—Civil Procedure Code, 1859, s. 249.* An execution-sale

the sale took place as agreed upon, the judgment-debtor contended that he was entitled, under Act VIII of 1859, s 249, to have a fresh proclamation issued on the spot where the properties were situated. *Held*, that, as at the time of his application for postponement he did not contemplate any such proclamation, he could not now object to it not having been issued HET NARAIN SINGH *v.* GOSSAIN LUCHMEE NARAIN POOREE . **23 W. R. 256**

157. ——— **Sale on a holiday when Court is closed** A sale in execution of a decree is illegal if made on a holiday, whether it is a fixed holiday or only a day which the Courts are closed by order of the High Court. HARO JEMADAR *v* JADUB CHUNDER HOLDER. **3 W. R. Mis 24**

158. ——————— *Sale on close holiday—Irregularity in publication or conduct of sale.* The sale of immoveable property by an Amin on a close holiday is not illegal, nor is it an irregularity in publishing or conducting the sale. RISRAM MAHTON *v.* SAHIB-UN-NISSA **I. L. R. 3 All. 333**

159. ——— **Sale under two separate decrees**—*Separate sales.* Where the Court executing two decrees made separate orders directing the sale on the same date of certain immoveable property in execution of such decrees, the officer conducting the sales was not bound to sell such property once for all in execution of both decrees, and his selling such property separately was therefore not an irregularity in the conduct of the sales. COURT OF WARDS *v* GAYA PRASAD. **I. L. R. 2 All. 107**

160. ——— **Purchase by decree-holder without permission of Court.** A sale at which the decree-holder himself, or some other person for him, without the permission of the Court first obtained, becomes the purchaser, is not *ipso facto* void; it is a good sale, unless and until set aside by the Court under the provisions of s. 294 of the Civil Procedure Code, 1877. JAVEHRBAI *v.* HARIBHAI . . **I. L. R. 5 Bom. 575**

In the matter of VEERAPAH CHETTY **6 B. L. R. Ap. 37 : 14 W. R. 405**

161. ——————— *Purchase by decree-holder without permission of Court—Civil Procedure Code (Act XIV of 1882), ss. 291, 311—*

SALE IN EXECUTION OF DECREE— *contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

Substantial injury. Under the terms of s 294 of the Civil Procedure Code, it is discretionary with the High Court to set aside an execution-sale at which the decree-holder has bid and purchased

162. ———— *Civil Procedure Code, 1882, s 294—Validity or otherwise of sale.* In a suit in which it was contended that a pur-

I. L. R. 11 Bom. 588

163 ———— *Civil Procedure Code (Act X of 1877), s 294, amended by Act XII of 1879—Purchase at a Court-sale on behalf of a judgment-creditor without permission of the Court* Under the Civil Procedure Code of 1877, as amended by Act XII of 1879, a purchase made at a Court-sale on behalf of a judgment creditor was not invalid for want of permission of the Court That is also the law under Act XIV of 1882, but such a purchase may be set aside by the Court on application under s 294 as being irregular PARAMASIVA *v.* KRISHNA . I. L. R. 14 Mad 498

164 ———— *Purchase by judgment-creditor without leave of Court—Remedy of judgment-debtor—Civil Procedure Code (1882),*

165. ———— *Civil Procedure Code (Act XIV of 1882), ss 294, 311—Application to set aside sale—Leave to bid—Assignee of decree under oral assignment* Where the auction-purchaser at a sale in execution of a decree had before the sale merely entered into an agreement with the decree-holder to purchase the decree for a certain sum of money which, however, was not paid till after the sale, and no instrument of assignment of the decree had been executed —*Held*, that the auction-purchaser was not a decree-holder within the meaning of s. 294, Civil Procedure Code An assignee of a decree under an oral assignment has no *locus standi* at all to apply for the execution of a decree, and it is not necessary for such an assignee to obtain leave to bid at the sale held in execution of a decree. DAKSHINA MOHAN ROY *v.* BASUMATI DEBI 4 C. W. N. 474

166. — —— **Purchase by decree-holder** —*Refusal of application by judgment-creditor to be permitted to bid at sale—Invalidity of sale—Civil Procedure Code (Act XIV of 1882), s 294.* A mortgagee, having obtained a decree declaring his lien on certain property, put up for sale in

that, inasmuch as the plaintiff (decree-holder) had

benami, and that the sale therefore ought not to be enforced MAHOMED GAZEE CHOWDHRY *v* RAM LALL SEN . . I L. R 10 Calc. 757

167. ———— *Purchase by decree-holder— Material irregularity—Dissuading purchaser from bidding—Civil Procedure Code (Act X of 1877), s 311—Leave to bid—Decree-holder related to manager of defendant* When liberty is given to a decree-holder to bid at the sale of the judgment-debtor's property, he is bound to exercise the most scrupulous fairness in purchasing that property, and if he or his agent dissuades others from purchasing at the sale, that of itself is a sufficient ground why the purchase should be set aside Where a decree-holder was joint in family with the

DRO NATH MUNDUL

I. L R. 7 Calc. 346 . 9 C. L. R. 263

168 ———— *Purchase by decree-holder — " Material irregularity " —Liberty to bid—Conduct calculated to deter bidders—Civil Procedure Code (Act X of 1877), ss 294, 311.* The holder of a decree, in execution of which property is sold, is absolutely bound, under s 294 of Act X of 1877, to have express permission from the Court before he can purchase the property ; and whether this objection is taken and pressed or otherwise, a sale to him is invalid unless he has got explicit permission. The use at a sale of language by an

SALE IN EXECUTION OF DECREE— *contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

intending bidder in disparagement of the property for the purpose of influencing bystanders, and deterring them from bidding for the property, is a "material irregularity" sufficient to render the sale invalid under s. 311 of the same Act. RUKHINEE BULLUBH *v* BROJONATH SIRCAR

I. L. R. 5 Calc. 308

169. ——————— *Disparaging remarks by bystanders or purchasers other than the decree-holder—Notice of sale—Practice regarding sales in execution of decrees—Adjournment of sale—Civil Procedure Code (Act XIV of 1882), ss 311, 291.* Disparaging remarks made by bystanders or by purchasers at an execution-sale other than the decree-holder do not constitute such an irregularity as is contemplated by s. 311 of the Code of Civil Procedure. *Gunga Narain Gupta v Annunda Moyee Burroanee, 12 C L R 494,* followed *Woopendro Nath Sircar v Brojendro Nath Mundle, I. L. R. 7 Calc 346 9 C L R 263,* and *Rukhinee Bullubh v Brojonath Sircar, I L R 5 Calc 308,*

an appointed day. As each property is taken up

170. ——————— *Civil Procedure Code, 1882, s 311—Position of decree-holder who has obtained leave to bid—Dissuading persons from bidding—Non-disclosure amounting to fraud.* A creditor had obtained a decree on the footing of a mortgage, and in execution brought the property of his judgment-debtor to sale At the time of sale the decree-holder, who had obtained leave to bid, entered into an agreement with *P* to the effect that, if *P* would dissuade other persons from bidding

bidding, and in consequence the property was sold on the 11th April 1891 for RS3,000, which was a little more than half its actual value The sale was confirmed on the 29th June 1891, and the judgment debtor, who at the time of the sale was a minor under the Court of Wards, attained his majority on the 21st April 1894, and filed this petition praying to set aside the sale on the 15th May 1894 *Held*, that the omission on the part of the decree holder to disclose the agreement to the Court amounted to a fraud upon the Court entitling

SALE IN EXECUTION OF DECREE— *contd.*

17. SETTING ASIDE SALE—*contd*

(*b*) IRREGULARITY—*contd.*

the judgment-debtor to say that in point of law no leave to bid was granted, and that the withholding of information is no less a ground for cancelling a sale than actual misrepresentation on the part of the applicant who becomes the purchaser, and that therefore the sale must be set aside. JAYINILABDIN RAVUTTAN *v.* VIJIA RAGUNADHA AYYARAPPA NAIKAN GOPALAR . **I. L. R. 19 Mad. 315**

Held on appeal to the Privy Council—A decree-holder who has obtained leave to bid at a judicial sale is, in regard to restrictions upon him, in the same position as any other purchaser. A charge against a bidder that he and those who have acted in concert with him have acted in such a manner as to prevent the best price from being obtained does not of itself amount to a charge of fraud, nor will proof of such concert invalidate the sale to him. The judgment of the High Court in *Woopendro Nath Sircar v. Brojendronath Mundal, I. L. R. 7 Calc. 346,* though a correct decision on the case, was too broadly expressed in comprehending any dissuasion by a bidder at a judicial sale of other

having been made aware of the arrangement. The omission to disclose this fact had, in the opinion of the High Court, amounted to a fraud upon the Court executing the decree, and entitled the

171. ——————— *Purchase by son of decree-holder—Code of Civil Procedure (Act X of 1877), s. 294* A purchase by the son of a

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

absolutely void if the purchase were made with funds which were joint property of the father and son NARAYAN DESHPANDE *v.* ANAJI DESHPANDE I. L. R. 5 Bom. 130

Since the amendment of the Civil Procedure Code by Act XII of 1879 the sale would not be treated as absolutely void, but as liable to be set aside by the Court on application by the judgment-debtor or other party interested in the sale

172. ———— *Rejection of highest bid—Abortive sale caused by act of judgment-debtor—Highest bidder declared not the purchaser—Validity of sale.* Three attempts to sell land taken in execution under a decree had been rendered abortive by the acts of the judgment-debtor, and a delay of seven years occasioned, during which by his conduct he defeated the execution of the decree. When the property was put up for sale for the fourth time, the Collector rejected the two highest bids, on the ground that neither of the bidders could produce a mooktearnamah from the persons for whom respectively they professed to act as agents, nor produce the required deposit, and he declared the third highest bidder the purchaser of the land *Held*, that under the circumstances the conduct of the Collector was justifiable and the sale valid MOHESH NARAIN SINGH *v.* KISHNANUND MISSER Marsh. 592
2 Ind. Jur. O. S. 1: 5 W. R. P. C. 7
9 Moo I. A. 324

173 ———— *Deposit by purchaser—Purchase by decree-holder* At a sale in execution of a decree, when the sale of any lot is completed, the purchaser should then and there be required to make the deposit prescribed by the Civil Procedure Code, failing which the lot should at once be put up to sale at the risk of the first purchaser The decree-holder, if the lot is knocked down to him, is as much bound to make the prescribed deposit as any other auction-purchaser CHULKOO DUTT JHA *v* LEELANUND SINGH
W. R 1864, Mis 30

174. ———— *Purchase by decree-holder—Payment not in cash, but by giving receipts for amount due to him* Where the decree-holder is himself the purchaser at a sale in execution, there is no reason why he should not, instead of paying the price in cash, give receipts for the amount due to him under his decrees, supposing their value is sufficient to cover the amount for which the property is sold The fact that he does so is not a valid objection to the sale KHELLAT CHUNDER GHOSE *v.* KESHUB CHUNDER PAUL CHOWDHRY
16 W. R 46

175. ———— Payment of purchase-money—*Civil Procedure Code, 1859, ss 254, 256, 257—Default in making deposit.* Directions as to the payment of the purchase-money at sales in execution of decree arising under s. 254, Act VIII

SALE IN EXECUTION OF DECREE—*contd*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

DOSSEE *v* GOPEE SOONDUREE DOSSIA
6 W. R Mis 82

176. ———— *Payment of purchase-money—Civil Procedure Code, 1877, s 294, and ss 306, 313—Set-off of purchase-money—Omission to make deposit* The requirements of s 306 of the Civil Procedure Code applying to all cases of sale of immoveable property, under Ch. XIX, a decree-holder buying with permission given under s 294, and desiring to set off his purchase-money against the amount of the decree, is not exempt from the necessity of making, at the time of sale, a deposit of 25 per cent on the amount of such purchase-money; and such deposit must be made in cash The option so to set off the purchase-money cannot be exercised by the purchaser until the confirmation and payment of expenses of the sale Where, however, all parties interested in the amount to be deposited have waived their right to have that amount deposited in cash, the sale ought not to be set aside on the ground that a cash deposit has not been made GOPAL SINGH *v* ROY BUNWAREE LALL SAHOO . 5 C. L. R. 181

177. ———— *Payment of purchase-money—Civil Procedure Code, 1877, s. 306—Failure to pay deposit of purchase-money required by that section* The person declared to be the pur-

178 ———— *Failure by purchaser to make the deposit required by s. 306 of the Civil Procedure Code—Material irregularity in conducting sale—Civil Procedure Code (Act XIV of 1882), ss 244, 306, 308, 311, and 312* Failure on the part of the person declared to be the purchaser

Singh, I L R 5 All 316, dissented from BHIM SINGH *v* SARWAN SINGH . I. L. R. 16 Calc. 33

179 ———— *Inability of purchaser to make deposit—Re-sale—Substantial injury—Civil Procedure Code (Act X of 1877), s. 293.*

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(b) IRREGULARITY—*contd.*

At a sale in execution of a decree the property was knocked down to a bidder at R260 The bidder was unable to make a deposit, and the pro-

between the original bid and the price at which the property was sold. BEPIN CHUNDER SHICKDAR *v.* PURRESHNATH BISWAS . I. L. R. 9 Calc. 98

s c. BEPIN CHUNDER SHICKDAR *v.* MODHOO SUDUN CHOWDHURI . . 16 C. L. R. 316

180. ——————— *Omission to make deposit—Default of purchaser after sale of portion of property sufficient to satisfy decree.* Where a portion of the property of a judgment-debtor has been sold in execution for a sum suffi-

SIRCAR . . . . 8 C. L. R. 41

181. ——————— *Failure to make deposit—Re-sale without notice—Irregular procedure.* At a Court-sale in execution of a decree, *T* bid R3,550 for the judgment-debtor's land on the 24th March 1882, but the Ameen re-sold the property the next day for R2,500 on the ground that the deposit was not duly made. *T* objected on the 28th March and a fresh sale was ordered by the Court without giving notice to the judgment-debtor.

Held, that the judgment-debtor was entitled to have

YAN *v.* RAMASAMI AYYAN

I. L. R. 6 Mad. 197

182. ——————— *Failure to pay purchase money—Re-sale.* At a sale in execution of decree, certain property was knocked down to a bidder, who made default in payment of the purchase-money Subsequently the Judge again put the property up for sale, and re-sold it at a lower price. The decree not being satisfied, the Judge put up other property which had been advertised for sale with the property abovementioned, without getting from the defaulter the difference between the price obtained at the second sale and that obtained at the first. On an application by the judgment-debtor to have the sale of the second property set aside, *Held* that no sufficient cause was shown for

114, followed. GOUR CHUNDER BISWAS *v.* CHUNDER COOMAR ROY

I. L. R. 8 Calc. 291 : 10 C. L. R. 236

183. ——————— *Failure to pay deposit—Re-sale on default in deposit—Civil Procedure Code, 1859, s. 253* In a re-sale for default under s 253, Act VIII of 1859, the officer conducting the sale was not bound to commence from the next highest bid below that made by the defaulter, instead of commencing the sale *de novo* GOUR MOOKH SINGH *v* LALLA GOUR SUNKUR

1 W. R. Mis. 11

184. ——— Inadequacy of price. Smallness of price is not a sufficient ground for setting aside a sale, unless it be the effect of an irregularity in the sale-proceedings. REET BHUNJUN SINGH *v* MITTURJEET SINGH

6 W. R. Mis. 31

NUDDEA KISHORE DOSS *v.* BUNGSHEE MOHUN DOSS . . . . . . 17 W R 210

HUBBEBOOL DOSS *v* ALLENDER. HUBBEEOOLA HOSSEIN *v* LAND MORTGAGE BANK

14 W. R. 44

ALIMOODDY CHOWDHRY *v.* CHUNDER NATH SEN

24 W. R. 227

185. ——————— *Inadequacy of price—Inadequate price produced by mistake—Misstatement in notification.* Where an irregularity in an execution-sale (*e g.*, misstatement in the notification) produces a mistake, and the property is consequently sold at an inadequate price, the judgment-debtor is entitled to have the sale reversed. KHODEJA BIBEE *v.* JOHAD ROHEEN

14 W. R. 320

186. ——————— *Civil Procedure Code, 1882, s 287—Misrepresentation of value in the proclamation of intended judicial sale—Substantial injury within the meaning of s. 311.* The value of property of which the sale has been ordered in execution of a decree, when stated in the proclamation of the intended sale, is a material fact within sub-s. (*e*) of s. 287 of the Code of Civil Procedure. An under-statement of the value of the property having been made in such a proclamation, which was circulated to mislead bidders, and to prevent them from offering adequate prices, or from bidding at all, and the sale having resulted in a price altogether inadequate.—*Held*, that such misstatement was a material irregularity in publishing or conducting the sale, although there might be no rule requiring publication of the value in that proclamation; and that the special remedy provided in

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd*

s. 311 was applicable, as substantial injury had resulted. SAADATMAND KHAN *v* PHUL KUAR

I. L. R. 20 All. 412
L. R. 25 I. A. 146
2 C. W. N. 550

187. ———————— On a sale of property in execution of a decree, the value stated in the sale proclamation is a material fact within sub-s. (*e*) of s. 287 of the Code of Civil Procedure Under-valuation of such property is a material irregularity in publishing or conducting the sale. SIVASAMI NAICKER *v* RATNASAMI NAICKER

I. L. R. 23 Mad. 568

188. ———————— *Inadequacy of price—Material irregularity—Confirmation of sale—Code of Civil Procedure (Act XIV of 1882), ss*

I. L. R. 8 Bom. 424

189. ———————— *Inadequacy of price.* The circumstance that property was sold in execution of a decree below its proper value, and that few persons attended the sale, is not sufficient to vitiate the sale RUGHOO NATH SINGH *v* TOODEY SINGH . . . . . 5 N. W. 19

190. ———————— *Inadequacy of price—Error in notification—Civil Procedure Code, 1859, ss 256, 257.* At a sale held on the 9th September 1872, in execution of a decree, the respondent purchased an estate for R55,000 The notifica-

material error Subsequently the Judge refused to confirm the sale and to issue a certificate to the respondent. The High Court, on application by the respondent under 24 & 25 Vict., c 104, s 15, held that the objections made were insufficient, and

to the judgment-debtor therefrom, the sale might have been set aside ; but that the above petition for postponement amounted to an admission by the judgment debtor that the notification was correct, or that there was no such irregularity as would be likely to mislead GIRDHARI SINGH *v* HURDEO NARAIN SINGH

L. R. 3 I. A 230 : 26 W. R. 44

Affirming the decision of the High Court in HURDEO NARAIN SAHOO *v* GIRDHAREE SINGH

19 W. R. 227

191. ———————— *Inadequacy of price—Error in notice of sale.* Mere inadequacy

mention of the name of a wrong pergunnah in the notice of sale is not such an irregularity, when the notice has been served in the right mouzah and the estate has been identified NOORAL HOSSEIN *v.* RAM COOMAR SAHEE . . 25 W. R. 326

192. ———————— *Inadequacy of price—Irregularity in publishing or conducting sale.*

193 ———————— *Material irregularity—Code of Civil Procedure, 1882, ss. 291 and 311—Sale at inadequate price owing to hour of sale not being fixed.* Where a debtor's property under attachment had been ordered to be

very inadequate price by reason of the paucity of bidders :—*Held*, affirming the decision of the Subordinate Judge, that there had been material

the irregularity complained of. *Tasadduk Rasul*

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

Khan v. *Ahmed Husain, I. L. R 21 Calc. 66: L. R. 20 I. A. 176*, explained. SURNO MOYEE DEBI *v.* DAKINA RANJAN SANYAL

I. L. R. 24 Calc. 291

194. ———————— *Civil Procedure Code, 1882, ss. 291 and 311—Material irregularity—Substantial loss—Inadequacy of price.* Where a material irregularity is proved to have occurred in the conduct of a Court-sale, and it is shown that the price realized is much below the true value, it may ordinarily be inferred that the low price was a consequence of the irregularity, even though the manner in which the irregularity produced the low price be not definitely made out When a sale is adjourned under s 291, the provisions of that section must be followed with exactitude VENKATASUBBARAYA CHETTI *v* ZAMINDAR OF KARVETINAGAR

I L. R. 20 Mad. 159

195. ———————— *Sale at an inadequate price, through irregularity in sale-proceedings.* Where six tenures with separate recorded jummas were lumped together and sold in execution of decree as one lot, whereby the plaintiff and his co-sharers were precluded from buying up any one or more of the six tenures, and no description of the properties to be sold was given either in the sale proclamation or lutbundi, in consequence of which the defendant was apparently the only bidder, and he purchased six tenures at an inadequate price, the sale was reversed as fraudulent and illegal. SREEKUNT DOSS *v* RAMJEEBUN ROY

18 W. R. 312

196. ———————— *Inadequacy of price—Irregularity indicating suspicions of fraud* Where immoveable property of considerable value had been sold for R11 in a sale in execution of a decree for R17-11-0, and purchased benami by the execution-creditor in the name of a relative,

of the original due GOBIND CHUNDER MOOKERJEE *v* RAM KOMAL CHATTERJEE . **25 W. R. 364**

197. ———————— *Inadequacy of*

nor the title-deeds as in a private sale, but only the right, title, and interest of the judgment-debtor at the time of sale MEAH KHAN *v.* NARAIN CHUNDER CHOWDHRY . . . **18 W. R 197**

198. ———————— *Inadequacy of price—Substantial injury—Civil Procedure Code Act XIV of 1882), s 311.* The relative cause and effect between a proved material irregularity and inadequacy of price may either be established by direct evidence or be inferred, where such inference is reasonable, from the nature of the irregularity and the extent of the inadequacy of price. Where,

Singh, I L. R 9 Calc. 656, and *Lala Mobaruk Lal* v. *Secretary of State for India, I. L. R 11 Calc. 200*, referred to. GUR BUKSH LALL *v* JAWAHIR SINGH **I. L R. 20 Calc. 599**

199. ———————— *Civil Procedure Code (Act XIV of 1882), ss. 287, 311—Sale, pro-*

the proper price, amounts to a material misre-

publishing the sale may either be established by direct evidence or be inferred from the circumstances of the case *Gur Buksh Lall* v. *Jawahir Singh, I L R 20 Calc. 599*, and *Surnomoyee Debi* v. *Dakhina Ranjan Sanyal, I L R 24 Calc. 291*, relied upon MOTI LAUL ROY *v* BHAWANI KUMARI DEBI (1902) . . **6 C. W. N. 836**

200 ———— **Confirmation of sale—**

application was rejected and the sale was confirmed under s. 312 Subsequently the judgment-debtor brought the present suit against the auction-

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd*

(6) IRREGULARITY—*contd.*

on the ground of irregularity DAMODAR BHAUSHET SONAR *v* VINAYAK TRIMBAK (1901)
I. L. R 26 Bom. 40

201. ———— **Fraud**—*Civil Procedure Code (Act XIV of 1882), ss 244 and 311—Execution-proceedings—Partition—Mortgage* After a sale has been confirmed, an application to set it aside for fraud is maintainable under s 244 of the Civil Procedure Code *Mallarjan* v *Narhari, I L R 25 Bom 337,* explained A co-sharer, who has obtained a portion of the mortgaged properties on a partition after the execution of a mortgage-bond by the other co sharers hypothecating their undivided shares in the said properties, and who has been made a party to the mortgage suit, is a necessary party to the execution-proceedings The sale of his share of the property, held in execu-

Ranjit Singh, I L R 27 Calc 242, referred to GOLAM AHAD CHOWDHRY *v* JUDHISTER CHUNDRA SHAHA (1902) . I. L. R. 30 Calc. 142 ; s.c. 7 C. W. N. 305

202. ———— **Leave to bid**—*Civil Procedure Code, ss 244, 294—Procedure—Suit to set aside sale in execution, on the ground that the real purchasers were the decree-holders, who had not obtained leave to bid—Proper remedy by application* The plaintiff sued to set aside a sale of certain property in execution of a decree against him, on the grounds that the sale proceedings had been secretly brought about without the knowledge of the plaintiff, and that the certified auction-purchasers were *benamidars* for the decree-holders, who had not obtained permission to purchase *Held,* that, under the above circumstances, the

Das Sanyal, I. L. R 19 Calc 683, and *Bhuban Mohan Pal* v *Nanda Lal Dey, I. L. R 26 Calc. 324,* referred to DURGA KUNWAR *v* BALWANT SINGH (1901) . . . . I. L. R. 23 All. 478

203. ———— **Postponement of sale**—*Civil Procedure Code (Act XIV of 1882), s. 311—Postponement of sale from proclaimed date, and subsequent sale without fresh proclamation—Waiver of fresh proclamation by judgment-debtor—Objection to sale, by other judgment-creditor, for want of proclamation—Sustainability* A, the decree-holder in a suit, attached property of his judgment-debtor B, the holder of another decree against the same judgment-debtor, brought the property to sale in execution of his decree. The sale was at first

204 ———— *Civil Procedure Code (Act XIV of 1882), ss 291, 311—Sale, adjournment of—Specification of hour—Irregularity in publishing and conducting sale—Inadequacy of price.* When a sale is adjourned, it is the duty of the

was obtained by the judgment-debtors on payment of 1,000 and the sale was fixed for the 21st July; again an adjournment was taken and the sale was fixed for the 22nd September, and subsequently on another adjournment being taken by the judgment-debtor the sale was fixed for the 24th November when the property was sold The judgment-debtors waived fresh sale-proclamations on all these dates, and did not ask the Court to fix an hour All these dates, *i e*, the 21st July, 22nd September and 24th November are days of sale in the district and 12 A.M. is the usual hour for sales to

the judgment-debtors. The law regarding irregularity in the publication of sale and inadequacy of price consequent thereto discussed. MAHABIR PERSHAD SINGH *v* DHANUKHDARI SINGH (1904)
8 C. W. N. 686

205. ———— *Civil Procedure Code (Act XIV of 1880), ss 291, 311—Waiver—Estoppel—Adjournment on application of judgment-*

SALE IN EXECUTION OF DECREE— *contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

debtor—Fresh sale-proclamation. An application

consequently the sale fetched a low price, provided that when he presented his petition for adjournment he was ignorant of the fact that the proclamation had not been properly posted up on the various properties according to law. Such a waiver does

referred to PREO LALL PAUL CHOWDHRY *v.* RADHIKA PROSAD PAUL CHOWDHRY (1901)
6 C. W. N 42

206. ——— *Civil Procedure Code (Act XIV of 1882), ss 291, 311—Waiver—Adjournment of sale at the instance of the judgment-debtor—Non-specification of hour.* When a sale is adjourned under s 291, Civil Procedure Code, it is necessary to mention the hour of sale, and its non-specification is a material irregularity within the

referred to The fact that the judgment-debtor consents that the sale should be held without the issue of a fresh proclamation does not indicate that he waives the non-specification of the hour of the day to which the sale is adjourned, inasmuch as he has no control over the form of the order of the Court. To show that substantial injury was the result of the irregularity complained of, the judgment-debtor is only to show that there is reason for inferring that it was due to and resulted from material irregularity *Surnomoyee Debi* v *Dakhina Ranjan Sanyal, I. L R 24 Calc 291*, *Macnaghten* v *Mahabir Per-Ishad Singh, L R 16 I A 107*, and *Arunachellam Chetti* v *Arunachellam Chetti, L R 15 I A 171*, referred to BHIKARI MISRA *v* RANI SURJA MONI PAT MAHA DAI (1901)
6 C W. N. 48

207 —— **Publication of proclamation**—*Civil Procedure Code (Act XIV of 1882), ss 287, 291, 311—Publication of sale-proclamation—Material irregularity* Publication of a sale-proclamation upon the decree-holder's property, at a distance of some half-a-mile from the judgment-debtor's property, is a material irregularity in the publication of the sale Where there is a series of short postponements of less than seven days, which, taken together, in the aggregate amount to more than seven days, a fresh proclamation of

SALE IN EXECUTION OF DECREE— *contd.*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*contd.*

sale is necessary under s. 291. JAMINI MOHAN NUNDY *v.* CHANDRA KUMAR ROY (1901)
6 C. W. N. 44

208. — **Publishing and conducting sale**—*Ground for setting aside sale—Civil Procedure Code (Act XIV of 1882), ss. 310A, 311.* It is of the Civil n the ground onducting it, n application under s. 311 of the Code. PHUL CHAND RAM *v.* NURSINGH PERSHAD MISSER (1899)
I. L. R. 28 Calc. 73

209. ——— **Receipt**—*Execution of decree—Joint decree—Sale in execution—Purchase by decree-holders—Receipt, for part of decretal money, given by one decree-holder on behalf of both—Sale set aside—Appeal—Civil Procedure Code, ss 244, 294, 311.* Two persons holding a joint decree caused certain immoveable property of their judgment-debtor to be sold, and, having obtained permission to bid, themselves became the purchasers. The property was knocked down to the two decree-holders jointly An application was then made, to the officer conducting the sale, by one of the decree-holders auction-purchasers, but purporting to act

Procedure A receipt for the amount of the purchase-money was given to the officer conducting

also On appeal to the District Judge, the order of the Subordinate Judge was set aside, and an

SRI RAM (1901) . **I. L R. 24 All. 108**

210 ——— **Non-payment of required portion of the purchase-money at date of sale**—*Execution of decree—Sale in execution—*

SALE IN EXECUTION OF DECREE— *contd.*

17. SETTING ASIDE SALE—*contd*

(*b*) IRREGULARITY—*contd*

Irregularity Held, that the fact that an auction-purchaser at a sale held in execution of a decree did not pay the 2 per cent of the purchase money required by s. 306 of the Code of Civil Procedure at the time of the sale was a mere irregularity, which would not affect the validity of the sale, unless it could be shown that substantial injury was thereby caused to the judgment-debtor. *Intizam Ali Khan* v. *Narain Singh, I L R 5 All 316*, declared to be no longer law. AHMAD BAKSH *v.* LALTA PRASAD (1905) . . . I L R. 28 All. 238

211 ——— **Jurisdiction.**—*Sale, setting aside—Irregularity*—When a Court, in which an application for execution was pending, received an order from another Court under s 273 of the Civil Procedure Code for attaching the decree and returned *the order with an intimation that it*

[illegible]

212 ——— **Value, statement of, if material**—*Sale proclamation—Service, if should be in every part of the property—"Property"* The statement of the sale-proclamation of a value which proves to be inadequate is an irregularity, but not a material irregularity Such statements are made without much consideration and it is well known that purchasers do not take serious notice of any statement in the sale-proclamation as to the value of the property to be sold S 274 of the Civil Procedure Code does not require that the sale-proclamation should be served in each of the villages comprised in the property to be sold The word "property" in that section evidently refers to each "lot" to be sold separately from the rest. Though it is a sound rule to follow, *viz*, to serve a separate proclamation in each of the villages embraced in the same process when they are at such a distance from one another that there is no moral

[illegible]

Procedure Code *Tripura Sundari* v. *Durga Churn Pal, I. L R 11 Calc. 74*, referred to. *Pedro Antonio* v *Jalbhoy Adeshir, I. L R 12 Bom 368*, commented on. ABDUL KASHEM *v* BENODE LAL DHONE (1907) . . . 12 C. W. N. 757

213. ——— **Absence of notice to**

[illegible]

SALE IN EXECUTION OF DECREE— *contd*

17. SETTING ASIDE SALE—*contd.*

(*b*) IRREGULARITY—*concld.*

[illegible]

fell under s 244 (*c*) of the Code and was appealable *as a decree. The question involved was* "a question relating to the satisfaction of the decree" within the meaning of the clause. The non-issue of a notice to *a party concerned is not a material* irregularity in publishing or conducting the sales,

[illegible]

to the action of the officer by whom the sale was held. The sale took place eight years after the decree. *Held*, that as no notice was issued to the appellant the order of both the lower Courts must be reversed and the sale set aside. PARASHRAM *v.* BALMUKUND (1908) . I. L. R. 32 Bom 572

(*c*) SUBSTANTIAL INJURY.

214. ——— **Proof of substantial injury**—*Civil Procedure Code, 1859, s. 256* Even where material irregularity had occurred, as from non-issue of proclamation of sale, the party applying to set aside the sale on that ground was bound, under s. 256, Act VIII of 1859, to prove that he had sustained substantial injury thereby. JOY TARA DOSSI *v* MAHOMED HOSSEIN

2 W R. Mis 2

NILMONEE SHAHA *v* RAM CHURN DEB 6 W. R. Mis 45

ABOOL MAHOMED *v.* SHIB DOOLAREE TEWAREE 11 W. R 114

LAEK RAM *v* MOHESH DOSS . 12 W. R. 488

NUJMOODDEEN AHMED *v.* ABDOOL AZEEZ 15 W. R. 95

CHUNDER SEKHUR DEB *v* JADUB CHUNDER SETT 19 W. R. 78

SANWAL SINGH *v.* MAKHUN PANDEY 2 N. W. 143

SHEO PROKASH MISSER *v.* HURDAI NARAIN 22 W. R. 550

This now forms an express enactment in the Code.

215. ——— *Presumption as to irregularity and injury—Civil Procedure Code*

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd.*

(c) SUBSTANTIAL INJURY—*contd*

the result of the irregularity. *Macnaghten* v. *Mahabir Pershad Singh, I L R. 9 Calc. 656*, and *Lala Mobaruk Lal* v. *Secretary of State for India in Council, I. L. R. 11 Calc. 200*, discussed SATISH CHUNDER RAI CHOWDHURI *v* THOMAS

I. L. R. 11 Calc. 658

216. ——— *Presumption as to irregularity and injury—Civil Procedure Code (Act X of 1877), s 311—Witnesses, laches in summoning* On an application under s 311 of the Civil Procedure Code (Act X of 1877) to set aside a sale, it appeared that there had been a material irregularity in publishing the sale ; but no witnesses were called to prove that substantial injury had been caused thereby It also appeared that, seventeen days after the applicant had applied for proclamation to be issued to his witnesses, he deposited the requisite fees , and that subsequently there was a delay of seven days in the office in issuing such proclamations, which were ultimately issued only three days prior to the day fixed for the hearing. On the applicant alleging that, in

there having been a material irregularity in publishing a sale , but when both a material irregularity and substantial injury have been proved, the Court may reasonably presume that the substantial injury is due to such irregularity *Held*, also, that the applicant, having been guilty of laches himself, could not be allowed to set up the delay ... oduction of ... *oy Luchmee-* ... considered ... CHUNDER BUNDOPADHYA

I L. R. 7 Calc. 730 : 9 C. L. R. 341

217. ——— *Civil Procedure Code, s 311—Alleged irregularity attending sale in execution—Failure to prove substantial injury* ... wed the ... mpleted ... alleged ... within the requirements ...

SALE IN EXECUTION OF DECREE—*contd.*

17. SETTING ASIDE SALE—*contd*

(c) SUBSTANTIAL INJURY—*contd.*

Court below had assumed that the property had been sold for less than it ought to have fetched, such substantial injury as inadequacy of price should have been proved to have occurred in order to bring the case within s. 311. *Macnaghten* v. *Mahabir Pershad Singh, I L. R. 9 Calc 656*, referred to and followed ARUNACHELLAM *v* ARUNACHELLAM

I. L. R. 12 Mad. 19

218. ——— *Civil Procedure Code, 1882, ss. 290 and 311—Material irregularity—Proof of substantial injury.* The non-compliance with the requirement of s. 290 of the Civil Procedure Code that before sales of immoveables in execution of decree thirty days should intervene between proclamation and sale, is a material irregularity within the meaning of s 311. But its effect is not to make the sale a nullity without proof of substantial injury thereby to the judgment-debtor As to this, the latter section requires affirmative evidence. TASADDUK RASUL KHAN *v.* AHMAD HUSAIN

I. L R. 21 Calc. 66
L R. 20 I. A. 176

219. ——— *Civil Procedure*

irregularity in publishing or conducting a sale, and that a price below the market value has been realized, but he must go on to connect the one with the other, that is, the loss with the irregularity as effect and cause, by means of direct evidence. *Tasadduk Rasul Khan* v. *Ahmad Husain, I L R 21 Calc. 66*, referred to. JAGAN NATH *v.* MAKUND PRASAD

I. L. R. 18 All. 37

220. ——— *Civil Procedure Code, 1882, s 311—Application to set aside sale in execution—Proof of substantial injury* *Held*, that in an application under s 311 of the Code of Civil Procedure to set aside a sale in execution of

quence of such material irregularity *Arunachellam* v *Arunachellam, I L. R 12 Mad 19*, and *Tasadduk Rasul Khan* v *Ahmed Husain, I. L. R 21 Calc. 66*, referred to. SHIRIN BEGUM *v* AGHA ALI KHAN

I. L. R 18 All. 141

See also SURNOMOYEE DEBI *v.* DAKINA RANJAN SANYAL . . . I. L R. 24 Calc. 291

and VENKATASUBBARAYA CHETTI *v* ZAMINDAR OF KARVETINAGAR . I. L. R. 20 Mad. 159

221. ——— Value of property—*Civil Procedure Code (Act XIV of 1882), s. 311—Injury—Abwab.* In a proceeding arising out of an application under s 311, Civil Procedure Code, the lower Court, in fixing the value of the property,

SALE IN EXECUTION OF DECREE— *contd*

17 SETTING ASIDE SALE—*concld*

(c) SUBSTANTIAL INJURY—*concld*

took into consideration, not merely the rents realizable from the tenants, but also *abwabs* that used to be realised from them *Held*, that *abwabs*, *i e*, illegal cesses, should not be taken into account *Held*, also, that means loss which is injury wrongful; and, when a person loses what he has been in the habit of wrongfully gaining, it is not substantial injury or injury of any sort or kind SHOSI BHUSAN SADHU *v.* AHMED HOSSEIN (1903)
7 C. W. N. 439

(*d*) EXPENSES OF SALE

222. ——— **Liability for expenses of sale**—*Sale set aside for irregularity* Where an execution-sale was set aside, on the ground of irregularity on the part of the Ameen and other officials — *Held*, that the judgment-debtor was not chargeable with the expenses of such sale HULSE *v.* LUCHMUN DASS . . . **1 Agra Mis 1**

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS

(*a*) COMPENSATION

1. ——— **Right to compensation for improvements on ejectment**—*Act XI of 1855, s. 2* A purchaser at a Sheriff's sale was not entitled to compensation under Act XI of 1855, s 2, for improvements to the land during his occupation if he had relied solely on the bill of sale BHOYRUBNATH KHETTRY *v* DOYALCHUNDER LAHA
Bourke O. C. 159

2. ——— *Bonâ fide purchaser—Inquiry as to title—Act XI of 1855* A [illegible]

fore a purchaser who had bought property on no [illegible]

BISSONATH GHOSE . . . **Cor. 41**

(*b*) RECOVERY OF PURCHASE-MONEY.

3. ——— **Right to refund of purchase-money**—*Mode of recovery—Civil Procedure Code, 1859, s 258* Under s 258, Act VIII of 1859, when a sale of immoveable property is set aside, the purchaser is entitled to recover back his purchase money If the Court, reversing the sale, omit to make such order, the purchaser can sue to recover the money from the person who has received it. GREESH CHUNDER POTTAR *v.* LOOKHOODA MOYEE DABEE . **1 W. R. 55**

DOOLHIN HUR NATH KOONWEREE *v.* BAIJOO OOJHA . . . . **2 Agra 50**

SALE IN EXECUTION OF DECREE— *contd.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*contd.*

(*b*) RECOVERY OF PURCHASE-MONEY—*contd*

4. ——— *Civil Procedure Code, 1859, s 258* When a sale of immoveable property in execution of a decree was set aside by a competent Court, the right of the purchaser to recover back his purchase-money, under s 258, Act VIII of 1859, was absolute, even though he himself [illegible]

[illegible] BROJEBADUR ROY CHOWDHRY *v* JUGGURNATH ROY . . . **6 W. R. 147**

5 ——— *Subsequent reversal of decree on appeal.* The plaintiff purchased certain property at a sale under an execution upon a decree and paid the purchase-money. The purchase-money was applied partly in satisfying the decree-holder and partly in satisfying other persons admitted by the decree to participate The decree was afterwards reversed upon appeal, and the execution-debtor reinstated in his rights *Held*, that the plaintiff was not entitled to recover the purchase-money from the execution-debtor CHOOLUN SINGH *v* ROY MOHUNLALL MITTER **Marsh 183**

S C ROY MOHUN LALL MITTER *v* CHOOLUN SINGH . . **1 Hay 438**

6. ——— *Civil Procedure Code (Act XIV of 1882), ss 310A, 315—Application by a purchaser for refund of purchase money—Madras City Civil Court, jurisdiction of* A house was attached and sold as the property of one against whom a decree of the Small Cause Court, Madras, had been passed The property was [illegible] was paid [illegible] le was set [illegible] Part of [illegible] cution of [illegible]

by the various persons who had received portions thereof *Held*, that the City Civil Court had jurisdiction to entertain the application. VIRASAMI CHETTI *v* LILADHARA VYASS
I. L. R. 21 Mad. 398

7. ——— *Sale set aside for want of interest of debtor in the property* When a sale is set aside by reason of the execution-debtor having no interest in the property sold, the purchaser [illegible]

BHAI *v* PREMCHAND RAICHAND
5 Bom. O. C. 83

(*Contra*) KRISHNAPA VALAD SANTU *v.* PANCHAPA VALAD GURUPADAPA . **6 Bom. A. C. 258**

SALE IN EXECUTION OF DECREE—*contd.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*contd.*

(*b*) RECOVERY OF PURCHASE-MONEY—*contd*

KALU BIN VISAJI *v.* DAMODHAR GOBIND **9 Bom. 92**

MAHOMED BASIRULLA *v.* ABDULLA **4 B. L. R. Ap. 35 : 15 W. R. 196 note**

8. ——————— *Proportionate share of purchase-money on portion of sale being set aside.* Where the plaintiff purchased at an auction-sale under a decree the rights and interests of a person and his minor brother in certain property, and the decree was subsequently set aside as far as it concerned the minor brother's share :—*Held*, that the purchaser was entitled to a refund of a proportionate share of the purchase-money, and that a decree for the same against the wrong-doers, the decree-holder and the judgment-debtor jointly, was a proper decree NEEL KUNTH SAHEE *v* ASMUN MATHO . . . . **3 N. W. 67**

DOOLHIN HUR NATH KOONWEREE *v* BALJOO OOJHA . . . . . . **2 Agra 50**

9. ——————— *Want of interest of debtor—Right, title, and interest.* S 258, Act VIII of 1859, only applied to cases where a sale of immoveable property had been set aside under

no interest at all or less than was supposed, was no ground for setting aside the sale or refunding the purchase-money RAJIBLOCHUN *v* BIMALAMANI DASSI . . **2 B. L R. A. C. 82**

S C RAJEEB LOCHUN SAWUNT *v* MOHESSUREE DOSSEE **10 W. R. 365**

10. ——————— *Suit to recover purchase-money—Want of interest of debtor—Warranty of title—Liability of Sheriff and execution-creditor—Civil Procedure Code, 1859, s 258—Irregularity in sale-proceedings* A purchaser of property, whether immoveable or moveable, at a sale in execution of a decree under the Code of Civil Procedure, 1859, held in accordance with the provi-

the defect or absence of title in the thing sold on the part of the execution-debtor , but if there was an express assertion that the goods sold were the property of the execution-debtor, the Sheriff and the execution-debtor were bound by such warranty to the extent, at least, that one of them, in whose hands the purchase-money was, was bound

SALE IN EXECUTION OF DECREE—*contd.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*contd*

(*b*) RECOVERY OF PURCHASE-MONEY—*contd.*

execution had been set aside. Where therefore certain shares were attached by the execution-creditor as the property of the execution-debtor, and were afterwards sold in execution by the Sheriff, and the execution-orders and warrants and the Sheriff's proclamation of sale contained assertions of interest of the execution-debtor in these shares, whereas he had no such interest .—*Held*, that the purchaser at the execution-sale was entitled to have

the purchaser's remedy thereafter was against the execution-creditor only. *Bank of Hindustan* v. *Premchand Raichand, 5 Bom O C. 83*, commented upon. FRAMJI BESANJI DASTUR *v.* HORMASJI PESTANJI . . **I. L R. 2 Bom. 258**

11 ——————— *Suit to recover purchase-money when judgment-debtor had no interest—Act VIII of 1859, ss. 257, 258* Where an auction-purchaser at a sale in execution of a decree bought the right, title, and interest of the judgment-debtor in the property sold in execution, and it was

though a purchaser might, under s 258 of Act VIII of 1859, recover his purchase-money, it was only when the sale was set aside for irregularity under s. 257 SOWDAMINI CHOWDHRAIN *v.* KRISHNA KISHORE PODDAR **4 B. L. R. F. B. 11 : 12 W. R. F. B. 8**

See also RAJIBLOCHUN *v* BIMALAMANI DASI **2 B L. R. A. C. 82**

12. ——————— *Suit for refund of purchase-money for property bought at auction-sale in execution of decree—Uncancelled sale.* The plaintiff purchased at an auction-sale, in execution of a decree, the right title, and interest of a judgment-debtor in certain property The sale was confirmed on November 30, 1866. On proceeding

for a declaration of the judgment-debtor's right

SALE IN EXECUTION OF DECREE—*contd.*

18 SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*contd.*

(b) Recovery of Purchase-money—*contd.*

title, and interest in the property Bisseswar Panday v. Bhagwan Das . **3 B. L. R. A. C. 301: 12 W. R. 176**

13. ——— *Want of interest in debtor—Civil Procedure Code, 1882, ss. 313, 315—Purchase of property where debtor has no saleable interest* Under s 313 of the Code of Civil Procedure, a purchaser at a sale in execution of a decree may resist the confirmation of the sale and prevent its conclusion, while under s 315 he may apply, after the confirmation of the sale, for refund of the purchase-money on the ground that nothing

the purchaser should have obtained actual possession and have been deprived thereof. Sivarama v. Rama . . . **I. L. R. 8 Mad. 99**

14. ——— *Suit by purchaser for purchase-money—Civil Procedure Code, 1882, ss 313, 315—Debtor without saleable interest —Per* Straight, Oldfield, and Tyrrell, *JJ —*

receive back his purchase-money, or to those in which the judgment-debtor, though having an interest, such interest is, by prohibition of law or for some other reason, unsaleable *Held*, by the Full

the special procedure in the execution department mentioned in s 315 Munna Singh v Gajadhar Singh **I. L. R. 5 All. 577**

15. ——— *Purchaser deprived of property, judgment-debtor having no interest in it—Application for refund of purchase-*

(*Contra*) Hira Lal v. Karimunnissa **I. L. R. 2 All. 780**

16. ——— *Collusion with judgment-debtor—Civil Procedure Code, 1882, s. 315.*

SALE IN EXECUTION OF DECREE—*contd.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*contd.*

(b) Recovery of Purchase money—*contd.*

Upon an application for refund of purchase money under s. 315 of the Code of Civil Procedure, the Munsif, being of opinion that the purchaser had in collusion with the judgment-debtor run up the price of the land at auction far beyond its value, with a view to prevent other property attached from being sold to satisfy the decree, rejected the

was found to have no interest in the land, the purchaser was entitled to a refund of the money paid to the decree-holder. Kunhi Moidin v Tarayal Moidin . . **I. L. R. 8 Mad. 101**

17. ——— *Civil Procedure Code, 1877, s 315—Suit to recover purchase-money where debtor is found to have no interest.* A purchaser at an auction sale of property found subsequently in a suit to which the decree-holder was a

18. ——— *Suit to recover purchase money—Civil Procedure Code, ss. 313, 315—Want of saleable interest—Order confirming*

the petition and confirmed the sale on the 15th March 1881 The sale was subsequently set aside by a decree obtained by *V* in a suit against *P* and

19. ——— *Civil Procedure Code, ss. 295, 315—Execution of decree—Suit by purchaser for return of purchase-money* Where an auction-purchaser seeks to have refunded the price paid by him for property sold in execution of a

in the execution department mentioned in s. 315 of the said Code. *Munna Singh* v. *Gajadhar Sing,*

SALE IN EXECUTION OF DECREE— *contd.*

18 SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*contd.*

(*b*) RECOVERY OF PURCHASE-MONEY—*contd.*

KALU BIN VISAJI *v.* DAMODHAR GOBIND **9 Bom. 92**

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8. ———— *Proportionate share of purchase-money on portion of sale being set aside.* Where the plaintiff purchased at an auction-sale under a decree the rights and interests of a person and his minor brother in certain property, and the decree was subsequently set aside as far as it concerned the minor brother's share —*Held*, that the purchaser was entitled to a refund of a proportionate share of the purchase-money, and that a decree for the same against the wrong-doers, the decree-holder and the judgment-debtor jointly, was a proper decree NEEL KUNTH SAHEE *v* ASMUN MATHO . . . **3 N. W 67**

DOOLHIN HUR NATH KOONWEREE *v* BAIJOO OOJHA . . . **2 Agra 50**

9. ———— *Want of interest of debtor—Right, title, and interest.* S 258, Act

s c RAJEEB LOCHUN SAWUNT *v* MOHESSUREE DOSSEE . **10 W. R. 365**

10. ———— *Suit to recover purchase-money—Want of interest of debtor—Warranty of title—Liability of Sheriff and execution-creditor—Civil Procedure Code, 1859, s 258—Irregularity in sale-proceedings* A purchaser of property, whether immoveable or moveable, at a sale in execution of a decree under the Code of Civil Procedure, 1859, held in accordance with the provi-

the execution-debtor were bound by such warranty to the extent, at least, that one of them, in whose hands the purchase-money was, was bound

SALE IN EXECUTION OF DECREE— *contd.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*contd.*

(*b*) RECOVERY OF PURCHASE-MONEY—*contd.*

money, in case of the sale being set aside, was, by that Act, given expressly only where the sale was of immoveable property, yet the same consequence would follow where a sale of moveable property in execution had been set aside. Where therefore certain shares were attached by the execution-creditor as the property of the execution-debtor, and were afterwards sold in execution by the Sheriff, and the execution-orders and warrants and the Sheriff's proclamation of sale contained assertions of interest of the execution-debtor in these shares, whereas he had no such interest :—*Held*, that the purchaser at the execution-sale was entitled to have the sale set aside, and his purchase-money returned to him ; but the Sheriff's liability to the purchaser in such a case ceased so soon as he had paid over the proceeds of the sale to the execution-creditor, and the purchaser's remedy thereafter was against the execution-creditor only *Bank of Hindustan* v. *Premchand Raichand, 5 Bom. O C 83,* commented upon. FRAMJI BESANJI DASTUR *v.* HORMASJI PESTANJI . . **I. L. R. 2 Bom. 258**

11. ———— *Suit to recover purchase-money when judgment-debtor had no interest—Act VIII of 1859, ss. 257, 258* Where an auction-purchaser at a sale in execution of a decree

KISHORE PODDAR **4 B L. R. F. B. 11 : 12 W. R. F. B. 8**

See also RAJIBLOCHUN *v.* BIMALAMANI DASI **2 B. L. R. A. C. 82**

12. ———— *Suit for refund of purchase-money for property bought at auction-sale in execution of decree—Uncancelled sale* The plaintiff purchased at an auction-sale, in execution of a decree, the right, title, and interest of a judgment-debtor in certain property The sale was confirmed on November 30, 1866 On proceeding to take possession, he was opposed by the defendant, who asserted that he was in possession of the property, and that it was his. In a suit under s. 258 Act VIII of 1859, for a refund of the purchase-money the sale still remaining uncancelled —*Held*, that the suit must be dismissed ; that s. 258 of Act VIII of 1859 only applied to cases where the auction-sale had been cancelled ; that the proper course for the plaintiff to have pursued was to have brought a suit under s. 269 of Act VIII of 1859 for a declaration of the judgment-debtor's right

SALE IN EXECUTION OF DECREE— *contd.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*contd.*

(b) RECOVERY OF PURCHASE-MONEY—*contd.*

title, and interest in the property BISSESWAR PANDAY v. BHAGWAN DAS . **3 B. L. R. A. C. 301 : 12 W. R. 176**

13. ———— *Want of interest in debtor—Civil Procedure Code, 1882, ss 313, 315—Purchase of property where debtor has no saleable interest* Under s 313 of the Code of Civil Procedure, a purchaser at a sale in execution of a decree may resist the confirmation of the sale and prevent its conclusion, while under s 315 he may apply, after the confirmation of the sale, for refund of the purchase-money on the ground that nothing passed by the sale To entitle a purchaser, under

the purchaser should have obtained actual possession and have been deprived thereof SIVARAMA v RAMA . . . **I. L. R. 8 Mad. 99**

14. ———— *Suit by purchaser for purchase-money—Civil Procedure Code, 1882, ss 313, 315—Debtor without saleable interest —Per* STRAIGHT, OLDFIELD, and TYRRELL, *JJ* — That the words in s 315 of the Civil Procedure Code, "no saleable interest" mean "nothing to sell," and are not intended to confine the cases in which a purchaser at an execution-sale shall be entitled to receive back his purchase-money, or to those in which the judgment debtor, though having an interest, such interest is, by prohibition of law or for some other reason, unsaleable *Held*, by the Full Bench, that a purchaser at a sale in execution of a decree can maintain a suit against the decree holder for recovery of his purchase-money, when it is found that the judgment-debtor had no saleable interest in the property sold, and he is not limited to the special procedure in the execution department mentioned in s 315 MUNNA SINGH v. GAJADHAR SINGH . . **I. L. R. 5 All. 577**

15. ———— *Purchaser deprived of property, judgment-debtor having no interest in it—Application for refund of purchase-money—Civil Procedure Code, 1877, s 315* Where immoveable property was sold in the execution of a decree under the provisions of Act VIII of 1859,

(*Contra*) HIRA LAL v KARIMUNNISSA **I. L. R. 2 All. 780**

16. ———— *Collusion with judgment-debtor—Civil Procedure Code, 1882, s. 315.*

SALE IN EXECUTION OF DECREE— *contd.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*contd.*

(b) RECOVERY OF PURCHASE-MONEY—*contd*

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was found to have no interest in the land, the purchaser was entitled to a refund of the money paid to the decree holder. KUNHI MOIDIN v TARAYAL MOIDIN . . **I. L. R. 8 Mad. 101**

17 ———— *Civil Procedure Code, 1877, s 315—Suit to recover purchase-money where debtor is found to have no interest.* A purchaser at an auction sale of property found subsequently in a suit to which the decree-holder was a party to belong to a third party is entitled to recover back his purchase-money under s 315 of the

18. ———— *Suit to recover purchase-money—Civil Procedure Code, ss 313, 315—Want of saleable interest—Order confirming*

the petition and confirmed the sale on the 15th

19. ———— *Civil Procedure Code, ss 295, 315—Execution of decree—Suit by purchaser for return of purchase-money* Where an auction-purchaser seeks to have refunded the price paid by him for property sold in execution of a

... Munna Singh v Gajadhar Sing,

SALE IN EXECUTION OF DECREE— *contd.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*contd.*

(b) RECOVERY OF PURCHASE-MONEY—*contd.*

I. L. R. 5 All 577, followed. KISHUN LALL *v.* MUHAMMAD SAFDAR ALI KHAN

I. L. R. 13 All. 383

20. ——————— *Suit by the purchaser in execution-sale to recover the purchase-money—Civil Procedure Code (Act XIV of 1882), s. 315—Want of saleable interest.* The plaintiff purchased land sold in execution of a decree in favour of the defendant, but was subsequently evicted by the son of the judgment-debtor. He then sued in 1889 to recover the purchase-money paid by him, on the ground that the judgment-debtor possessed no saleable interest in the property in question It appeared that the son of

defendant had given evidence in support of the present plaintiff's contention; the judgment in that suit was now admitted in evidence against the defendant. *Held*, that the judgment above

therein. NILAKANTA *v* IMAMSAHIB

I. L. R. 16 Mad. 361

21. ——————— *Recovery of purchase-money—Portion of the property sold belonging to a stranger—Civil Procedure Code, 1882, ss 313, 315, and 316—Rights of purchaser—Warranty of title* Where a Court-sale in execution of a decree is not vitiated by fraud, the only extent to which

condition that the purchaser may recover back his purchase-money when he finds that the judgment-debtor has no saleable interest at all The implied warranty of title in respect of sales by private

I A 116, followed. SUNDARA GOPALAN *v.* VENKATA VARADA AYYANGAR

I. L. R. 17 Mad. 228

22. ——————— *Return of purchase-money when judgment-debtor found to have no saleable interest in property sold—Procedure for finding the fact of his having no interest—Notice*

SALE IN EXECUTION OF DECREE— *contd.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*contd.*

(b) RECOVERY OF PURCHASE-MONEY—*contd.*

got a certificate of sale, and obtained possession. Subsequently the land was claimed by one *B*, who sued *A*, the judgment-debtor, and *E*, the auction-purchaser, to set aside the sale and establish his title to the land. He succeeded in his suit, and in execution got possession of the land. Thereupon *E* (the auction-purchaser) applied, under s. 315 of the Civil Procedure Code (XIV of 1882), for a

It does not prescribe how the fact is to be ascer-

ESAT [illegible]

23. ——————— *Sale set aside —Suit by auction-purchaser to recover purchase-money—Civil Procedure Codes (Act VIII of 1859), ss. 256, 257, 258 ; (X of 1877) ss. 312, 315—Warranty Caveat emptor.* Certain immoveable property was attached and proclaimed for sale in the execution of a decree on the application of the decree-

...nt-debtor. ...ale of such ... belong to ... property. ... property ... under the ... purchased ...blish his

SALE IN EXECUTION OF DECREE—*contd.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*contd.*

(b) RECOVERY OF PURCHASE-MONEY—*contd*

and *Soudamini Choudhrain* v. *Krishna Kishore Poddar*, *4 B. L. R. F. B. 11*, followed *Makundi Lal* v. *Kaunsila*, *I. L. R. 1 All. 568*, *Neelkanth Sahee* v. *Asmun Matho*, *3 N. W. 67*; and *Doolhin Hur Nath Koonwcree* v. *Baijoo Oojha*, *2 Agra 50*,

In the matter of the petition of Mulo, *I. L. R. 2 All. 299*, dissented from. *Per* STRAIGHT, *J*—That,

24. ———————— *Sale by Sheriff under writ of fieri facias—Sale subsequently declared invalid—Suit to recover purchase-money—Liability of execution-creditor—Civil Procedure Code, 1859, ss. 201, 242.* The plaint in a suit by *A*

he remained for some time in possession and in receipt of the rents and profits; that eventually

a purchaser who, after the execution of the conveyance, is evicted by a title to which the covenants in the conveyance do not extend, cannot recover the purchase-money from his vendors, second, because the Sheriff was not the agent of *B*

had not been a total failure of consideration, and the plaintiff accordingly could not maintain the action in its present shape, *viz.*, for money had and received. The judgment of the High Court in

I. L. R. 3 Calc. 806

s. c. DORAB ALLY KHAN v. ABDOOL AZEEZ

L. R. 5 I. A. 116 . 2 C. L. R. 529

25. ———————— *Payments of purchase-money on an agreement as to possession between purchaser and execution-creditor—Sale subsequently set aside—Suit for purchase-money—Accord and satisfaction.* On the 9th of October 1866 the Sheriff of Calcutta executed a bill of sale to *A* of a certain talukh situated in Oudh, of which *A*

from the possession of the property within a year, *B*

SALE IN EXECUTION OF DECREE—*contd.*

18 SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*contd.*

(*b*) Recovery of Purchase-money—*contd.*

should take measures to reinstate him at his (*B's*) expense. *A died without heirs in July 1868, and the* Government of Oudh, not being aware that *A* had left a will, took possession of the talukh partly as on an escheat and partly because there were arrears of revenue due on the property. On the 2nd of

agreement had been broken, the suit was barred by limitation. Dorab Ally Khan v. Abdool Azeez Abdool Azeez v. Dorab Ally Khan

I. L. R. 6 Calc. 356

26 ———————— *Purchase of surplus proceeds of revenue sale afterwards set aside —Suit to recover purchase-money—Voluntary payment.* An estate of which *R* was one of the registered shareholders was sold for arrears of revenue,

hands of the Collector to be attached and sold in execution of his decree At the execution-sale *R's* interest was bought by *B* and from the money

High Court, that such a suit could not be maintained. Ram Tuhul Singh v Biseswar Lall Sahoo

15 B. L. R. 208 : 23 W. R. 305
L. R. 2 I. A. 131

Reversing the judgment of the High Court in Bissessur Lall Sahoo v. Ram Tuhul Singh

11 B. L. R. 121 : 19 W. R. 351

27. ———————— *Suit to recover purchase-money when sale is set aside—Minor—Costs—Fraud* A decree-holder fraudulently caused the sale in execution of his decree of certain immoveable property belonging to a minor. The minor *brought a suit for a declaration that such sale was*

the auction-purchaser was not a party to, or cognizant of, the fraud on the part of the decree-holder, that neither the mere fact that the auction-purchaser knew that he was purchasing the property of a minor, nor the mere fact that he did not ascertain whether or not the sale was justified by the terms of the decree, disentitled him to recover the purchase-money from the decree-holder. *Held,* also,

distinguished. *Held,* also, that he could not recover the costs incurred by him in defending the suit brought by the minor, being a suit he ought not to have defended. *Per* Stuart, *C.J*—That the

28. ———————— *Decree passed without jurisdiction—Suit to recover possession of lands sold in execution.* The plaintiff sued to establish his right to, and to recover certain lands in, the possession of which he had been obstructed by the defendant. The plaintiff purchased the lands at a sale held in execution of a decree obtained against the first and second defendants in the Court

Mudaly 6 Mad. 68

29. ———————— *Civil Procedure Code, 1859, ss 256, 258—Right on sale being set aside for irregularity—Right to recover money expended for benefit of indigo factory* When a sale is set aside under Act VIII of 1859, s. 256, where the purchaser had, before the sale was confirmed, taken possession, laid out money, and received rents

SALE IN EXECUTION OF DECREE— *contd.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*contd.*

(b) RECOVERY OF PURCHASE-MONEY—*contd.*

Where a purchaser *boná fide* took possession of

cial to the estate; he accounting for the rents and profits realized by him MORGAN *v* ABDOOL HYE
23 W. R. 393

Confirming order setting aside sale. ABDOOL HYE *v* MACRAE . . . 23 W. R. 1

30. ——— *Suit by purchaser for interest on purchase-money—Act VIII of 1859—Act X of 1877, s 315.* A judgment-debtor, whose property had been sold in execution of a decree under Act VIII of 1859, appealed from the order disallowing his application to set aside the sale, after Act X of 1877 (Civil Procedure Code) came into force The Appellate Court set aside the sale. The purchaser sued the decree-holder for interest on the purchase-money and the expenses of the sale, the purchase-money having been returned to him, under the order of the Court executing the decree, without interest and less such expenses.

circumstances of the case, the plaintiff ought not to be granted the relief sought RAGHUBAR DAYAL *v* BANK OF UPPER INDIA . I. L. R. 5 All. 364

31. ——— *Civil Procedure Code (Act XIV of 1882), ss 11, 315—Refund of purchase-money when judgment-debtor has no saleable interest in the property sold—Suit for such refund, whether maintainable—Remedy* S. 315 of the Code of Civil Procedure is not exhaustive, and does not

SALE IN EXECUTION OF DECREE— *concld.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*concld.*

(b) RECOVERY OF PURCHASE-MONEY—*concld.*

577; *Kishun Lal* v. *Muhammad Safdar Ali Khan, I. L. R. 13 All. 383*, and *Pachayappan* v. *Narayana, I. L. R. 11 Mad 269*, referred to. HARI DOYAL SINGH ROY *v.* SHEIKH SAMSUDDIN (1900)
5 C. W. N. 240

32. ——— *Decree—Conditions of sale—Title, abstract of, not corresponding with original—Setting aside sale, application for—Purchase-money, return of.* A purchaser of property at the Registrar's sale in execution of a mortgage-decree accepted the conditions of sale, whereby he was required to furnish requisitions within ten days after the actual delivery of the abstract of title. The purchaser did not furnish any requisitions. On the 19th August, 1899, by an order of the Court the purchaser was to pay the balance of the purchase-money into Court (he having already made deposit), without prejudice to his right to raise any question as to title or compensation. On the 31st August, 1899, the purchaser paid the balance of the purchase-money, in compliance with the order of the 19th August, 1899 On the 26th April, 1900, the purchaser applied for annulment of the sale or for compensation On the 30th August, 1900, the sale was set aside, but that order was reversed on appeal on the 28th February, 1902 After the order of the 28th February, 1902, the purchaser asked for inspection of the title-deeds in order to compare them with the abstract and, upon having certain Persian writing, which he discovered

sale on the ground that the abstract was incorrect and contained a material misdescription, and that he was, under the circumstances, entitled to have his purchase-money refunded. *In re Banister, L R. 12 Ch D 131, 150*, *M'Culloch* v *Gregory, 1 Kay and J. 286*, *Else* v *Else, L R 13 Eq 196*; *Upendra Nath Mitter* v *Obhoy Kali Dassee, 5 C. W. N 593*, referred to AGHORE NATH MOOKERJEE *v.* ADMINISTRATOR-GENERAL OF BENGAL (1903)
I. L. R. 30 Calc. 468

SALE OF GOODS.

See CONTRACT—BREACH OF CONTRACT.
See CONTRACT ACT (IX of 1872), s. 73.
15 B. L. R. 276

See CONTRACT ACT (IX of 1872), s 78
I. L. R. 4 Calc 801
I. L. R. 15 Calc. 1

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—BREACH OF CONTRACT . . 7 C. W. N. 912

SALE OF GOODS—*contd.*

See LIEN . . I. L. R. 18 Calc. 573
L. R. 18 I. A. 78

See PRINCIPAL AND AGENT—COMMISSION AGENTS . I. L. R. 16 Mad. 238
I. L. R. 17 Bom. 520
I. L. R. 20 Mad. 97

See SHIPMENTS . . 5 B. L. R. 619

———— **agreement for—**

See STAMP ACT, 1879, SCH. I, ART 46.
I. L. R. 14 Bom. 102

See STAMP ACT, 1879, SCH. II, ART. 2
I. L. R. 10 Mad. 27
I. L. R. 15 Mad. 150

———— **by description—**

See CONTRACT . I. L. R. 36 Calc. 736

———— **note or memorandum of—**

See STAMP ACT, 1879, SCH I, ART. 46
I. L. R. 14 Bom. 102

1. ———— **Appropriation to vendee**—*Passing of property to vendee—Bankruptcy of agents for purchase—Unpaid vendor—Stoppage in transit—Termination of transit—Goods landed in dock and held by dock authorities—Bom Act VI of 1879, ss. 43, 62—Port Trustees of Bombay—Bye-laws of Port Trust, rule 59* In August 1890 the plaintiffs, through *B, A & Co*, of Bombay, ordered from *B, R & Co*, in London, 100 bales of grey shirtings at 7*s.* 10*d.* per piece f o. b, November-December shipment. In order to carry out this order, *B, R & Co*

D & Co. to *B, R & Co* forwarding draft contained

All the shipments were made before the 1st December 1890, except the 12 bales by the *Wistow Hall*,

SALE OF GOODS—*contd.*

which were shipped on that day. On the several shipments being affected, *B, R & Co*, accepted bills of *D & Co*, payable three months after date. The bills of lading of the bales shipped in the *Nubia, Clan Drummond*, and *Hispania* were endorsed in blank by *B, R & Co.*, and sent by post to *B, A & Co*, of Bombay. The *Nubia* arrived at Bombay in November, and the plaintiffs received the 13 bales shipped by her, *B, A & Co.* having endorsed the bill of lading to the plaintiffs. No specific payment was made by the plaintiffs in respect of these bales, but at that time they had a sum standing to their credit in the books of *B, A & Co.* The invoices of 25 more bales, *viz.*, 13 bales *ex Clan Drummond* and 12 bales *ex Hispania*, arrived in Bombay later in November, and were handed to the plaintiffs. On the 1st December 1890 the plaintiffs paid R25,000 to *B, A & Co* Neither the *Clan Drummond* nor the *Hispania* had then arrived in Bombay On the 4th December 1890 *B, R &*

December 1890 *B, A & Co.* suspended payment in Bombay On the 13th December 1890 *D & Co.* telegraphed to their agents in Bombay, *R, S & Co.*,

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SALE OF GOODS—*contd.*

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plaintiffs' contract with *B, R & Co*, to the plaintiffs,—*B, R & Co.* having, by holding the bills of lading, the constructive possessions of the goods and the legal right to their actual possession, and to retain the same until their price was paid by the

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indefinite, covered the shipment by the *Roumania*,

DHAR JAIRAM NARRANJI *v* WREFORD
I. L. R. 17 Bom. 62

2. ——————— *Promissory note accepted by vendor for value of goods—Suit for the price of goods sold and delivered and not on the notes—Maintainability—Partnership—Promissory note signed by one of two partners for the price of goods purchased—Suit by vendor against both partners, based on the original contract—Liability of both partners.* Plaintiffs had sold and delivered opium to defendants on different occasions, taking a promissory note at each sale for the value of the parcel sold These promissory notes had been signed by one of two partners; they were made payable on demand to plaintiffs or their order; and they had not been negotiated Plaintiffs now sued all the partners for the amount due, framing the suit as one for the price of goods sold and delivered, and not basing it on the notes. The partner who had not signed the notes contended that the suit did not lie as framed, and that it should have been brought on the notes and not for the goods sold and delivered. *Held,* that plaintiffs were entitled to sue for the price of the goods sold and delivered, and that both of the partners were liable DARGAVARAPU SARRAPU *v* RAMPRATAPU (1901) . . I. L. R. 25 Mad. 580

SALE-PROCEEDS

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUITS
B. L. R. Sup. Vol. 13; 927

See SALE FOR ARREARS OF RENT—SURPLUS PROCEEDS OF SALE

See SALE FOR ARREARS OF REVENUE—SALE-PROCEEDS

——————— application of—

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES
I. L R. 30 Calc 953

——————— distribution of—

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES
I. L. R. 29 Calc. 803

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS

——————— suit for refund of—

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE . W. R. F. B. 180
I. L R. 12 All. 546

——————— suit to recover surplus—

See LIMITATION ACT, 1877, s 10
I L. R. 18 Calc. 234

See LIMITATION ACT 1877, SCH. II—

ART. 29 I. L R. 30 Calc. 440
ART. 62 . I. L. R 18 Calc. 234
ART 120 I. L. R. 20 Calc. 51
ART 132 . . 5 C. W. N. 356
ART 145 I. L. R 18 Calc 234

See MORTGAGE—POWER OF SALE.
I. L. R. 16 Bom. 141

——————— right of Government to—

See PAUPER SUIT—SUITS
I. L. R. I All. 596

——————— taking out of Court—

See LIMITATION ACT, 1877, ART. 179—STEP IN AID OF EXECUTION—SUIT AND OTHER PROCEEDINGS BY DECREE HOLDERS . . . . 6 W. R Mis. 49
15 W. R. 182
I L R. 6 All. 366
I. L. R. 10 Calc. 549
I. L. R. 17 Mad. 165
I. L. R. 22 Bom. 340

SALE PROCLAMATION.

See EXECUTION . I. L. R. 33 Calc. 666

See SALE IN EXECUTION OF DECREE—IRREGULARITY.

SALSETTE.

———— Law applicable in—*Christian inhabitants of the Island of Salsette—Converts from Hinduism to Christianity—Succession to property before Succession Act—Primogeniture—Hindu law, how far applicable—Manager of family—Mortgage by manager when binding on family property—Suit for redemption of mortgage—Sale in execution of decree—Purchaser, rights of—Power of Christian inhabitant of Salsette to make a will dealing with his share in ancestral property* The law of a conquered territory continues in force until altered by the Crown or the Legislature The Island of Salsette was conquered from the Marathas by the British ... Christian ... ed until ... (X of ... of primogeniture was not in force among the Christian inhabitants of Salsette In the absence of a widow and daughter, the sons took the property of their father in equal shares *Quære* Whether they did so under the Hindu law or the Portuguese law, or by force of usage existing among them A mortgage of certain property was made in 1875 by the eldest of three brothers *P*, *M*, and *E*, who were Christian inhabitants of the Island of Salsette They had inherited the property from their father, who died in 1840 The family had originally been a Hindu family, but had been converted to Christianity. *E* died in 1876, and *M* died in 1883, bequeathing his interest in the property to his nephew, the plaintiff, who was *P's* son In that year (1883) the mortgagee sued *P* alone upon the mortgage and obtained a decree which he afterwards assigned to the defendant, who sold the mortgaged property in execution of the decree, and at the sale purchased the property himself. The plaintiff now sued to redeem the property, ... among the Christian inhabitants of Salsette, and that *P*, although eldest son, had not succeeded to the whole of the family property He and his brothers took equal shares in the property of their father (ii) That the mortgage by *P* had been authorized by the family and was for family purposes, and was binding upon the family property. Although *P* and his brothers could not be regarded as co-parceners under Hindu law, yet, having regard to the fact that they were ...

SALSETTE—*concld.*

proof of the manager's authority to mortgage as it would in the case of an English manager under similar circumstances (iii) That the plaintiff was not entitled to redeem What was intended to be sold at the sale held in execution of the decree upon the mortgage was the whole interest in the mortgaged property. The defendant purchased ... member of the Christian community of the Island of Salsette is entitled to deal with his share in ancestral property by will. JALBHAI ARDESHIR SHET *v* MANOEL . . I. L. R. 19 Bom. 680

SALT.

See SALT ACTS AND REGULATIONS.

———— position of peon of Salt Department—

See PUBLIC SERVANT

I. L. R. 28 Calc. 344

———— search for contraband—

See ESCAPE FROM CUSTODY.

I. L. R. 19 Mad. 310

SALT ACT.

See SALT ACTS AND REGULATIONS.

———— breach of—

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE

I. L. R. 4 Mad. 335, 335 note

5 Bom. Cr. 61

SALT ACT (XII OF 1882).

———— s. 11—*Limitation prescribed for charging with offence—Fraud in concealing date of offence* The provisions of s 18 of the Limitation Act of 1877 do not apply to criminal cases, and the peremptory terms of s. 11 of the Indian Salt Act (XII of 1882) are not affected by that section. QUEEN-EMPRESS *v.* NAGESHAPPA PAI

I. L. R. 20 Bom. 543

SALT, ACTS AND REGULATIONS RELATING TO.

1 BENGAL.

1. ———— Beng. Reg. X of 1819, s. 36—*Possession of salt—Arrangement by Government.* The absence of a protective document makes salt contraband. But where the Government has made such an arrangement with a particular party as ...

SALT, ACTS AND REGULATIONS RELATING TO—*contd*

1. BENGAL—*contd.*

2 ——— Beng. Act VII of 1864, [illegible] attempt or intention to sell is proved or not QUEEN v OFATULLA . . 6 B. L. R. 381

s.c. GOVERNMENT OF BENGAL v AKATOOLLAH 15 W. R Cr. 21

3. ——— s. 16—*Rowana, endorsement of, by police or customs officers.* A rowana as defined by Bengal Act VII of 1864 is complete on the face of it without any certificate by way of endorsement signed by the Superintendent showing that the endorsement made by the preventive officers of customs has been examined by him S 16 of Act VII only gives power to fine when the salt is not specified in a rowana *In the matter of the petition of* KISHORY MOHUN PRAMANICK . 23 W. R Cr. 6

4 ——— *Salt carried partly by land and partly by water* Where a person who had taken a quantity of salt under a rowana for [illegible]

5. ——— ss 16 and 18—*Possession of contraband salt* In a case of conviction under s. 16, Bengal Act VII of 1864, for having in possession contraband salt, the Sessions Judge recommended that it should be set aside on the ground that the salt had already reached its destination, and was [illegible] plying [illegible] according [illegible]

6. ——— ss. 16 and 21—*Possession and sale of salt.* *A* was convicted under s 16, Bengal Act VII of 1864, and *B* under s. 21 of the same Act, the former with having had in his possession salt not covered by a rowana, and the latter with having sold to *A* the said salt *Held*, that the [illegible]

BHAGBUT DEY . . . 18 W. R. Cr. 64

7. ——— s. 17—*Infliction of penalty on owner and servant* In a case of conviction, under Act VII of 1864, of having in possession contraband salt, the penalty cannot be inflicted on the owner of the salt and also on the servant or gomashta of the owner who has the salt in his possession, as the possession of the latter is the possession of the former *In the matter of the petition of* GUNGADHUR SAHOO . . . . 22 W. R. Cr 9

8. ——— s. 18—*Confiscation of salt—Power of releasing from confiscation* By s 18, Bengal Act VII of 1864, salt, not being conveyed by the route and to the place prescribed in the rowana, becomes absolutely confiscated The power of releasing any such salt is vested in the Board of Revenue under s 39 and not in the Magistrate. QUEEN v BOIDONATH . . 7 W. R. Cr. 48

9 ——— *Conviction of both* [illegible] the salt was being transported when seized, their boat having been already confiscated by the Magistrate QUEEN v MODUN MOHUN PAL CHOWDHRY 23 W R Cr. 7

2 MADRAS

1 ——— Act XVII of 1840—*Possession of salt-earth* Being in possession of salt earth, from which salt may be manufactured, with the object of making salt, is an offence under the salt laws ANONYMOUS . . 4 Mad. Ap 53

2. ——— Mad Reg I of 1805, s. 18—"*Spontaneous salt,*" *possession of—Salt Excise Act, 1871* "Spontaneous salt" is salt which, produced naturally, requires no process of manufacture to render it suitable for human consumption. To collect spontaneous salt for domestic consumption, or to be found in possession of it for that purpose, [illegible] extended, to obtain or to be found in possession of spontaneous salt under circumstances which show an intention to evade payment of the excise is an offence ANONYMOUS . I L. R. 3 Mad. 17

3. ——— *Salt-earth, collection of or possession of.* The collecting of salt- [illegible]

I. L. R. 1 Mad. 278

4. ——— Mad. Act I of 1882, s. 26—*Possession of salt-earth.* The possession of earth impregnated with salt, not being a natural saline efflorescence or deposit, is no offence under s. 26 of the Salt Laws Amendment Act, 1882 (Madras). QUEEN v. THUNJI . . I. L. R. 7 Mad. 163

SALT, ACTS AND REGULATIONS RELATING TO—*contd*

2. MADRAS—*contd*

5. ——— cl. 3, s. 27 (e)—*Salt imported from foreign State, contraband.* S. 26 of the Salt Laws Amendment Act (Madras Act I of 1882) makes it penal to import salt by any route not legally sanctioned for that purpose, and also to possess salt known to have been imported in contravention of the salt laws, and s 27 of the said Act authorizes, *inter alia*, the Governor in Council to make rules for regulating the import of salt by land [illegible]

[illegible]

conviction was right QUEEN-EMPRESS *v.* PODIATHAL . . . **I. L. R. 8 Mad. 342**

3. BOMBAY

1. ——— **Acts XXVII of 1837 and XXXI of 1850**—*Maxim "Omnia præsumuntur contra spoliatorem"—Salt thrown overboard to avoid measurement—Salt removed in excess of permit.* Applying the maxim "*Omnia præsumuntur contra spoliatorem*," the High Court held that, where a vessel was seized on suspicion of having a greater quantity of salt on board than was allowed by its permit, and immediately afterwards a number of men boarded the boat, and with the assistance of the agent of the owner threw a considerable quantity of salt overboard, a presumption arose that there was an excess of salt on board at the time of the seizure beyond the amount allowed by the permit Where under a permit to pass a certain number of maunds of salt on which duty has been paid, an amount in excess of such number is removed, the whole of such salt must be considered as removed contrary to the provisions of the Salt Acts (Act XXVII of 1837 and Act XXXI of 1850); and the whole of such salt, and not merely the excess, is under these Acts liable to confiscation FRAMJI HORMASJI *v.* COMMISSIONER OF CUSTOMS **7 Bom. A. C 89**

2. ——— *Removal of salt—Property in salt naturally formed—Theft* Dishonest removal of salt naturally formed in a creek, which was under the supervision of an officer belonging to the Customs Department, constitutes theft, the salt having been legally appropriated by such officer (*Per* BAYLEY and WEST, *JJ.*) But removal for one's own use from a creek, of such salt not legally appropriated, constitutes no offence either under the Penal Code or Act XXXI of 1850 or [illegible]

[illegible]

3. ——— **Bom Act VII of 1873**—*Act XVIII of 1877—Duty paid under former Act—Effect of new Act by which duty increased coming into operation before removal of salt—Increased duty paid under protest—Suit to recover excess—Set off—Excise duty—Customs.* Prior to the 28th December 1877, the excise duty on salt manufactured in Bombay was R1-13-0 per maund, and the Act which regulated the importation and transport of salt in the Presidency of Bombay was the Bombay Salt Act (VII of 1873) The plaintiffs, who were salt merchants, were desirous of exporting salt from the salt-works at Uran and Panvel, and accordingly, under the provisions of Act VII of 1873, made four several applications in writing to the Assistant Collector of Salt Revenue for the necessary permits on the following dates, *viz*, 27th November 1877, 17th December 1877, 17th December 1877, and 24th December 1877. Each application stated the [illegible]

[illegible]

maunds 10,483, had yet been removed. On the 28th December 1877 Act XVIII of 1877 came into force, by which Act the excise duty on salt manufactured in Bombay was raised from R1-13-0 to [illegible]

[illegible]

Collector that excise duty, at the full rate of [illegible] per maund, had been paid upon the said salt. On production of these certificates at the ports of [illegible]

[illegible]

SALT, ACTS AND REGULATIONS RELATING TO—*concld*

3 BOMBAY—*concld*

in Bombay, but from payment of which they had been exempted on production of the certificates abovementioned. *Held*, that on the 28th December

operate retrospectively so as to destroy that right and to impose on the plaintiffs a heavier burden as a condition of their removing the salt *Held*, also, however, that, as the salt was allowed to pass into British Malabar on the strength of its having already paid the duty of R2-8-0 per maund at Bombay, the sum of R9,096-5-0 must be deemed to have been appropriated by the plaintiffs to the payment of the customs duty payable on the importation of the salt into the ports of British Malabar, and was therefore no longer recoverable from the defendant The plaintiffs, by applying to the Collector of Customs at Bombay for certificates that the duty had been

money had and received to the use of the plaintiff) to the payment of the enhanced customs duties at such ports BRITO *v* SECRETARY OF STATE FOR INDIA I L. R 6 Bom 251

4 ———— Bom. Act II of 1890, ss. 11, 47—*Salt pans—Lease under a license from Collector—Lessee not to sublet without Collector's permission—Sub-lease by the lessee without such permission—Deposit by sub-lessee with lessee—Illegal contract—Suit by sub-lessee to recover deposit cannot lie* Y obtained from Government a lease of certain salt pans to manufacture salt under a license One of the conditions of the lease was that the lessee should not sublet the salt pans without the written permission of the Collector Without any such permission, however, Y sublet the pans to R who, as a security for the performance of the conditions of the sub-lease, deposited a sum of R1,000 with Y. The sub-lease was acted upon and on the expiration of its term R brought a suit for the recovery of the deposit from the representative of Y, the latter denied R's right to recover the deposit on the ground that it formed a consideration for an agreement which, having been forbidden by law, was illegal. *Held*, dismissing the suit, that the defendant's plea should prevail. The real object and the necessary effect of the sub-lease was to enable the plaintiff to manufacture salt without a license in the guise of a sub-lease although that was forbidden by law and by the terms of the license ISMALJI YUSUFALLI *v* RAGHUNATH LACHIRAM (1909) . . . . I. L. R. 33 Bom 636

SALT-PANS, LEASE OF.

See STAMP ACT, SCH. II, ART 13
I. L. R. 18 Bom 546
I. L. R. 33 Bom. 636

SALTPETRE.

———— exclusive right to take—

See BETTIAH RAJ . 13 C. W. N. 454

———— Monopoly—*Manufacture—Regulation IV of 1814—Effect on the monopoly* The abolition of the monopoly of the East India Company to the manufacture of saltpetre by Regulation IV of 1814 was not intended to affect

license and realise royalty would not be inconsistent with the abolition of a monopoly. GOLAB CHAND *v*. JANKI KOER (1908) . I L. R. 36 Calc. 267

SALVAGE.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY
I L. R. 14 All. 273

———— consolidation of claims for—

See PRACTICE—CIVIL CASES—ADMIRALTY COURT . I L. L 22 Calc 511
3 C. W. N 67

———— lien for—

See JURISDICTION I. L. R. 31 Calc. 667

See LIEN . . I. L. R. 2 Calc. 58

See OFFICIAL ASSIGNEE.
I. L R. 31 Calc. 667

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—SALVAGE . 9 W. R. 252

1. ———— Principles of salvage lien—*Right to salvage* A claim to salvage is founded on a principle of equity which the Courts of British India are bound to recognize It accrues irrespectively of the circumstance that the rescue is from a danger incurred on inland waters, or of the circumstance that a portion of the services may be rendered

strain on the bridge and to remove the cargo. It was impossible to remove the boat until the whole of the cargo had been discharged. This was done, and the boat was towed to a place of safety, and the cargo was removed and stored in a warehouse.

SALVAGE—*contd.*

them in satisfaction of their claim GILMORE *v.* ROSE . . . . . 6 N. W. 311

2. ———— **Services entitling vessel to salvage**—*Towage.* Where a ship is in a condition

regards risk or exertion or other conduct of the salvors to make them differ from ordinary towage services, their reward should be estimated as for towage with salvage liberality. *In the matter of the* "ALABAMA" . . 2 Ind. Jur. N. S. 139

3. ———— *Towage—Extraordinary towage—Claim of master and crew—Award—Apportionment* The S S *C*, while employed as a Government transport to convey troops and stores from Bombay to Egypt, broke her screw shaft and became disabled. While in that condition, the S S *H B* met her and towed her back to Bombay, the voyage occupying eleven days. The owners of the S S *C* settled the claim of the owners of the S S. *H B* for R37,500, but refused to recognize any separate claim to remuneration to the plaintiffs, the master and crew of the S S *H B* *Held*, that the services rendered were, under all the circumstances of the case, salvage and not merely towage services, and that R10,000 was a fair remuneration,

ment. If towage leads to the rescue of a vessel

is especially the case where the master and crew of the salving vessel incur no risk to life But the

give such amount as is fit and proper with reference to all the circumstances of the case, including value. RAFFIN *v* S.S. "CHILKA" I. L. R. 7 Bom 196

4. — — — **Calculation of salvage award**—*Steamers* The Court is bound to consider the time, labour, skill, enterprise, and risk of the salvors, as well as the value of the property engaged in the service, and also the degree of danger

SALVAGE—*contd.*

to render services in such cases *In the matter of the* "LADY JOCELYN" . . 2 Mad. 355

5. ———— *Goods put on flat during squall.* A dinghee laden with gilders valued

that the owners of the flat had no claim for salvage, and that R150 was a fair remuneration for services rendered. UMA CHURN CHETTY *v* GORDON 1 Hyde 212

6. ———— *Arrest—Excessive bail—Costs—Salvage services—Amount of award increased on appeal.* In an action of salvage in which a ship was arrested, and the bail asked for was found to be excessive, the Court (PIGOT and TREVELYAN, JJ.) *held* that the promovents must pay the impugnants the costs occasioned by the bail required being excessive *George* v. *Gordon, L R.*

I L. R. 17 Calc. 84

7. — — *Amount of salvage awarded—Mode of estimating salvage services—Allocation of salvage amongst officers and crew—Bail—Costs* On the 13th August 1898 the S.S *Cashmere,* being (as found by the Court) in a position of risk and hazard, which by a change in the weather might have at once become one of danger was in need of assistance which the *Nasers* afforded

value of the S S *Cashmere* was ... that of the cargo on board was R56,510. *Held,*

generally, (*b*) allocation of salvage amongst ... and crew, (*c*) costs, (*d*) bail discussed BOMBAY AND PERSIA STEAM NAVIGATION CO *v.* S.S. "CASHMERE" . . I. L. R. 24 Bom. 55

8. ———— *Service to a vessel in distress, though not in imminent danger—Interruption of service by accident—Towage service convertible into salvage service—Distinction between towage and salvage service—The indicia of salvage ser-*

SALVAGE—*contd.*

is not necessary that the distress should be actual or immediate, or that the danger should be imminent and absolute. It will be sufficient if, at the time the assistance is rendered, the vessel has encountered any damage or misfortune which might possibly expose her to destruction, if the services were not rendered. Services rendered to a ship which is in a normal condition, and has received no injury and needs nothing more than expedition or acceleration of progress, will be treated as mere towage; it is otherwise in the case of a vessel which is in a disabled condition or has received substantial injury. In considering the question whether the service was of the nature of salvage service, the risks of navigation, the difficulty under which it was performed, and the danger in performing it have all to be taken into consideration. An ordinary towage service may, in consequence of supervenient danger, be converted into salvage [illegible]

interrupted by accident or some like cause, if it has been productive of benefit to the owners of the vessels, will not disentitle the salvors from their reward. In assessing the award the Court will take into consideration, not only danger and difficulties to which the salvor was exposed, but also the skill with which the work was performed. The shortness of service may often be taken as showing extraordinary skill and labour. When two separate salvage actions are consolidated at the instance of the common impugnant, and no order is made giving the conduct of both to one plaintiff, the promovents are entitled to separate costs. Practice of the Court followed, and costs given on the ordinary scale provided for in the rules under the Civil Procedure Code, and not under the schedule relating to Vice-Admiralty actions. *In the matter of the* STEAMSHIP "DRACHENFELS" "RETRIEVER" *v* "DRACHENFELS" "HOOGHLY" *v* "DRACHENFELS" . I. L. R. 27 Calc. 860

9. ———— *Compensation for rescuing vessel—Ingredients—Mode of assessing reward.* Salvage is not always a mere compensation [illegible]

[illegible]

SALVAGE—*concld.*

that a boat and some catamarans had been sent out by the owner of the vessel, but the finding of the Court was that it was most doubtful if the vessel could have been brought back to harbour by the party thus sent out, and that the danger from which she was rescued was very great, and that she was in imminent peril. The time occupied in the actual salving was about eight hours, but the salvors lost about a day in all, the skill displayed was considerable, and the value of the vessel salved was found to be R10,000. *Held*, that plaintiffs were entitled to R2,000 for the salvage services they had rendered. CLAN LINE STEAMERS *v* THE BALCES (1904)
I. L. R. 27 Mad. 187

SALVATION ARMY.

——— obstruction of street by—

See MADRAS POLICE ACT, 1888, s. 71
I. L. R. 14 Mad. 223

SAMAJ.

See BRAHMO SAMAJ.

SAMBALPUR.

See JURISDICTION OF CIVIL COURTS
I. L. R. 34 Calc. 636; 853

See PROCLAMATION
I. L. R. 35 Calc. 701

SAMBANDHA-NIRNAYA PATRA.

See WILL, VALIDITY OF
I. L. R. 36 Calc. 149

SAMPLES.

See DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT
I. L. R. 29 Calc. 323

See WARRANTY, BREACH OF
I. L. R. 29 Calc. 587

SANAD.

See GRANT—CONSTRUCTION OF GRANTS.
I. L. R. 9 Bom. 561
I. L. R. 12 Bom. 80; 534; 595
I. L. R. 15 Bom. 222; 625
L. R. 18 I. A. 22
9 C. W. N. 1009

See HEREDITARY OFFICE
I. L. R. 16 Bom. 374
L. R. 19 I. A. 39

See OUDH ESTATES ACT, 1869.
I. L. R. 17 Calc. 311; 444
L. R. 16 I. A. 183
L. R. 17 I. A. 54
I. L. R. 26 Calc. 81; 879

See OWNERSHIP, PRESUMPTION OF
I. L. R. 15 Mad. 101
L. R. 18 I. A. 149

See SERVICE TENURE.
I. L. R. 14 Bom. 82

See SETTLEMENT—CONSTRUCTION.
I. L. R. 17 Bom. 40

SANAD—*contd.*

See SETTLEMENT—EXPIRATION OF SETTLEMENT . I. L. R. 4 Bom. 367

——— endorsement on—

See REGISTRATION ACT, s. 17, CL. (b).
I. L. R. 14 Bom. 472

——— for collection of rents by gomashta—

See STAMP ACT, 1862, SCH A, CL. 43.
1 B. L. R. F. B. 55

——— grant of—

See RES JUDICATA—ESTOPPEL BY JUDGMENT . . I. L. R. 17 Mad. 384
L. R. 21 I. A. 93

——— production of—

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s 33 . I. L R. 15 Bom. 516

——— title under—

See OUDH ESTATES ACT, 1869.
I. L. R. 3 Calc. 645

1. ——— **Construction of sanad**—*Mokurari. Semble* The word "mokurari" in a sanad does not necessarily import perpetuity. GOVERNMENT OF BENGAL *v.* JAFUR HOSSEIN KHAN
5 Moo. I. A. 467

2. ——— *Istemrar sanad, effect of.* The effect of the istemrar sanad is to ascertain and limit the demand of the Government for

8 Mad. 114

3. ——— *Right to cut timber—Prescriptive title—Construction of grant.* In construing grants by former Governments, the rule of English law as to the construction of grants to the subject by the Crown is the correct rule to be applied by the Courts in India Where a sanad contained only the words "The village of Manavali had been conferred on you as inam, to be enjoyed by

taxes, together with the house-tax, but exclusive of haks due to hakdars, shall continue to be debited from year to year, from the year next succeeding," —it was *held* that the plaintiff's sanad did not operate as an alienation of the soil of the villages, or confer on him a proprietary title in it, and therefore gave the plaintiff no right to the timber growing upon the soil The owner of such sanad, having only a right in the revenues and none in the soil of a village, cannot by thirty years' user become the proprietor of the timber VAMAN JANARDAN JOSHI *v.* COLLECTOR OF THANA . 6 Bom. A. C. 191

4. ——— *Grant of village by Government, existing rights how affected by.* The grant of a village by Government, whether native or British, is subject to all existing rights against Government, whether or not the deed of

DESAI HIMATSINGJI JORAVARSINGJI *v.* BHAVABHAI KAYABHAI . . . I. L. R. 4 Bom 643

5. ——— *Grant by Government—Property in the soil.* A sanad by the

6 ——— *Office of bhoonyee in Cuttack—Jagirdari right.* Plaintiff's ancestor

by way of rent. *Held*, that the sanad of appointment to the office of *bhoonyee* created no jagirdari right, but that, on the contrary, the reservation of the rent of 6 annas 4 pies seemed to indicate that the tenancy remained, giving no right of exclusive occupancy to plaintiff as against defendant. CHOITUN MOHANTEE *v.* BHIKAREE MOHANTEE
17 W. R. 410

7. ——— *Nature of estate assigned—Prohibition of alienation.* The zamindar

SANAD—*contd.*

8. ———————— *S C*, a Hindu,

daughter, *C*. She had afterwards a son, who died in her lifetime without issue, but whose widow, by his permission, adopted, after his death, a son, *C L*. *K* held undisputed possession of the talukh, during her lifetime, and by her will devised it to *C*, her daughter, and *C L*, her grandson by adoption, in equal moieties. On *K's* death, *H. C*, as heir of his father, *S C*, took possession of the talukh, whereupon *C* and *C L* claiming under the will of *K*, sued for possession. *Held*, by the Court of first instance, that *C* took an absolute estate under the sanad on the death of her mother, *K*, but that having elected to take under her mother's will, and to admit the co-plaintiff *C L* to a half share in the estate, both plaintiffs were entitled to maintain the action. *Held*, by the High Court, on appeal, that *C*, having been born before the date of the sanad, took under it a life interest in the talukh, in succession to the life-interest of her mother; but that, as the plaintiffs had not sued

the sense of succession first of the mother, and then of the children born of her womb *Held*, by the Judicial Committee of the Privy Council, that the earlier words of the sanad, when read together, were to be taken as conferring an absolute estate on *K*, and that the effect of the concluding words "*no other heir of yours, etc*," was to make the absolute estate

v HURRISH CHUNDER CHOWDHRY
I. L. R. 4 Calc. 23: 3 C. L. R. 339
L. R. 5 I. A. 138

9. ———————— *Grant of Oudh talukh to Hindu widow and her heirs—Oudh Estates Act (I of 1869), ss 3, 4, 8, and s. 22, cl. 11—Separate property of Hindu widow, descent of* A sanad of a talukh in Oudh which had been previously confiscated by Government was granted with full power of alienation to the widow of the last owner, a Hindu, and to her heirs for ever, her name being

band in the event of her dying intestate without

the widow, descended, in the absence of a proved

L. R. 5 I. A. 1: 1 C. L. R. 318

10. ———————— *Impartibility of zamindari—Partition—Succession by widow* The

similar manner. *A* died leaving a son, *C*, who died in 1865 without issue, but having a widow. *Held*, by the Privy Council (reversing the

6 C. L. R. 422

11. ———————— *Impartibility—* "*Heirs.*" In 1793 the ancient zamindari of [illegible] which descended to a single heir, having been before British rule a raj or principality held on the same

SANAD—*contd.*

of military service, was resumed by the Government for arrears of revenue. In 1802 the Government formed two zamindaris out of it, and granted one of them, since called Nuzvid, to the second son of the rajas, under a "sanad-i-milkiat istemrari," which described the zamindari lands comprised in it as "the six pergunnahs of Nuzvid in the Kondapalli Circar." The provisions of the sanad did not differ from those of an ordinary grant under the permanent settlement. On the question whether this zamindari was, or was not, subject to the same rule of impartibility as that to which the ancient and entire zamindari of Nuzvid had been subject before 1793 :—*Held,* that the six pergunnahs granted in 1802 were a new zamindari, subject only to the ordinary obligations imposed on zamindaris in general; and the word "heirs" used in the sanad construed to mean heirs of the grantee according to the ordinary rules of inheritance of the Hindu law. The Hansapur case, *Beer Pertab Sahee* v. *Rajender Pertab Sahee, 12 Moo. I. A. 1,* distinguished. VENKATA RAO *v* COURT OF WARDS
I. L. R. 2 Mad. 128

S C. VENKATA NARASIMHA APPA ROW *v.* NARAYYA APPA ROW . . . 6 C. L. R. 153

S C. VENKATA NARASIMHA APPA ROW *v.* NARAYYA APPA ROW VENKATA NARASIMHA APPA ROW *v.* COURT OF WARDS . . L. R. 7 I. A. 38

12. ———— *Impartibility—*

had not been transmuted into partibility either by the passing of the Regulation XXV of 1802 or by that law coupled with the issue of the sanad containing certain of its terms. *Venkata Rao* v *Court of Wards, I L. R 2 Mad 128* (determining that

v *Rajender Pertab Sahee, 12 Moo. I. A 1,* as an authority for holding that a mode of acquisition which constitutes property as "self-acquired" in the hands of a member of an undivided family, and thereby subjects it to rules of devolution and of disposition different from those applicable to ancestral property, *does not thereby destroy its character* of impartibility MUTTU VADUGANADHA TEVAR *v.* DORASINGHA TEVAR . I L. R. 3 Mad. 290
L. R. 8 I. A. 99

13. ——— *Impartibility— Hindu law of succession.* Where an ancient pollium was converted into a zamindari with a permanent assessment in 1803 by Government, and a "sanad-i-milkiat istemrari" (deed of permanent property) was granted to the zamindar with the usual stipulations, reservations and directions, concluding with the words, "continuing to perform the above stipulations and to perform the duties of allegiance to the British Government, its laws and regulations, you are hereby authorized and empowered to hold in perpetuity to your heirs, successors, and assigns at the permanent assessment therein named, the zamindari of Sivagiri." *Held,* that the Hindu law of succession was applicable, subject to such modifications as flowed from the impartible nature of the estate. MUTTYAN CHETTI *v.* SANGILI VIRA PANDIA CHINNA TAMBIAR . I. L. R. 3 Mad. 370

14. ——— *Rent-free sanad —Purchaser at Government sale—Confirmation issued by Government.* In 1775 a rent-free sanad was granted to *M* for having put down wild elephants, the consideration in future being to cultivate and keep up a body of men and take care of the raiyats.

Government was competent to give such confirmation LOPEZ *v.* MADDAN THAKOOR
5 B. L. R 521

S C. LOPEZ *v* MUDDUN MOHUN THAKOOR
13 Moo. I. A. 467: 14 W. R. P. C. 11

15 ——— Proof of lost sanad—*Mirasidars—Proof of title—Evidence—Long possession.* Mirasidars who had sanads, but who have lost them, and those who never had them, may prove their title by other evidence, and long possession is a

16. ——— *Evidence—Beng. Reg. II of 1819, s 28—Beng. Reg. XIV of 18[illegible],*

L. R. I. A Sup Vol. 10

SANCTION.

See CIVIL PROCEDURE CODE 1882, s 539.
9 C. W. N. 151

See RECEIVER . 9 C W. N. 217

See SANCTION FOR PROSECUTION.

SANCTION—*contd.*

—— — of Board of Revenue—

See Bombay Survey and Settlement Act, 1865, s 32. I. L. R. 2 Bom. 110

See Partition—Form of Partition. 2 N. W. 26

See Partition—Miscellaneous Cases 5 B. L. R 135 : 13 W R. 381

———— of Collector—

See Madras Abkari Act, s 24. I L. R. 26 Mad 430

———— of Court—

See Administration. I. L. R. 32 Calc. 448
9 C. W. N. 239

See Civil Procedure Code, 1882, s 257A. I L R 27 Bom. 96

See Compromise—Compromise of Suits under Civil Procedure Code.
16 W R P. C. 22
I. L. R. 3 Mad 103
I. L. R. 9 Calc 810
I. L. R. 13 Bom. 137
I. L. R. 15 Bom. 594
I. L. R. 21 Mad. 91
I. L R 22 Mad. 378 ; 538
I. L. R 26 Bom. 109
13 C. W. N 163

See Compromise—Construction, Enforcing, Effect of, and setting aside Deeds of Compromise I. L. R. 6 Calc. 687

See Insolvency Act (11 & 12 Vic., c. 21), s 31.
I. L. R. 30 Bom 515

———— for sale of minor's property—

See Guardians and Wards Act, 1890, s. 29 . . I. L. R. 31 All. 378

———— to build—

See Bengal Municipal Act (III of 1884), ss. 238 and 273 . 5 C. W. N. 42

See Calcutta Municipal Consolidation Act (II of 1888), ss 247, 250, 427.
I. L. R. 30 Calc. 317

———— to build, given under misapprehension, induced by applicant—

See Calcutta Municipal Act (Beng. Act III of 1899), ss. 449, 580 and 631.
7 C. W. N. 853

—— to proceedings in lunacy—

See Lunatic . 8 B. L. R. Ap. 50

SANCTION—*concld*

———— to sue—

See Court of Wards Act (Bengal Act IX of 1879), s. 55
I. L. R 16 Calc 89
I. L R. 17 Calc. 688
L R. 17 I. A. 5
I. L. R. 27 Calc. 242

See Leave to sue

See Nawab of Surat . 12 Bom. 156
I. L. R. 12 Bom. 496

See Right of Suit—Charities and Trusts

SANCTION FOR PROSECUTION.

See Act V of 1861, s 4 (2).
I. L. R. 27 All. 296

See Act XXVII of 1870.
6 B. L. R. Ap. 98
15 W. R. Cr. 2

See Administrator-General.
I. L. R. 30 Calc. 927

See Criminal Procedure Code, 1898, s. 49 . . I. L. R. 26 All. 1

See Criminal Procedure Code, 1898, s 195.

See Criminal Procedure Code, ss. 195, 439 . . I. L. R. 23 All. 244

See Criminal Procedure Codes, s. 197 (1872, s. 466) . I. L. R. 2 Bom. 481

See Criminal Procedure Code, s. 439.
I. L. R. 31 Calc. 811

See Criminal Procedure Code, s. 476.
7 C. W. N. 423 ; 795
I. L. R. 31 Calc. 664
13 C. W. N. 1038

See District Judge, jurisdiction of.
I. L. R. 7 Mad. 314

SANCTION FOR PROSECUTION—*contd.*

See FALSE CHARGE . 5 C. W. N. 106

See JOINDER OF CHARGES. I. L. R. 25 Bom. 90

See LIMITATION ACT, 1877, SCH. II, ART. 178 I. L. R. 10 All. 350

See MAGISTRATE, JURISDICTION OF—REFERENCE BY OTHER MAGISTRATES. I. L. R. 16 Mad. 461.

See MALICIOUS PROSECUTION. I. L. R. 9 All 59

See PENAL CODE, s 206 I. L. R. 28 Calc. 217

See PROBATE AND ADMINISTRATION ACT, s 98 . . . 2 C. W. N. 597

See REGISTRATION ACT, 1877, s. 82. I L. R 11 Calc. 566
8 B. L. R. 423 : 17 W. R. Cr. 39
5 B. L. R Ap. 69 : 18 W. R. Cr. 15
8 B. L. R. 423 note : 14 W. R. Cr. 74
24 W R. Cr. 1

See REGISTRATION ACT, 1877, s. 83 (1866, s 95).
4 B. L. R Ap. 69 : 13 W. R. Cr. 21

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.
I. L. R. 20 Calc. 349
I. L. R. 25 All. 126
I. L. R. 26 Mad. 139

See SESSIONS JUDGE, JURISDICTION OF. I. L. R. 16 Calc. 766

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, 1882, s. 622. I L. R. 3 All. 508

———— application for—

See PRACTICE—CRIMINAL CASES—APPROVERS . I. L. R. 24 Calc. 492

———— by Government—

See CRIMINAL PROCEDURE CODE, 1898, s. 197 . . 13 C. W N. 1062

———— during pendency of civil suit—

See CRIMINAL PROCEDURE CODE, s 195 13 C. W. N 398

———— order for—

See APPEAL IN CRIMINAL CASES—ACT—PRESIDENCY MAGISTRATES ACT I. L. R. 2 Calc. 466

See LETTERS PATENT, HIGH COURT, CL. 15 I. L. R. 17 Mad. 105

———— order granting or refusing—

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE. I. L. R. 15 All. 61.

SANCTION FOR PROSECUTION—*contd.*

1. APPLICATION FOR, AND GRANT OF, SANCTION.

1. ———— **Court to which application should be made**—*Criminal Procedure Code, 1869, s. 169.* An application under s. 169 of the Criminal Procedure Code praying for sanction to institute a prosecution on a charge of perjury should, as a general rule, be first made to the Court before which the perjury is alleged to have been committed. *In the matter of the petition of* RAJAH OF VENKATAGIRI . . . . . 6 Mad. 92

In the matter of the petition of SHEEBPERSHAD CHUCKERBUTTY . . . 17 W. R. Cr. 46

2. ———— *Change of incumbents of office of subordinate Magistrate.* A subordinate Magistrate refused to grant sanction for a prosecution under s. 169 of the Criminal Procedure [illegible]

ANONYMOUS . . . . . [illegible]

3. ———— **Initiation of case needing sanction**—*Initiation by party and by Court—Cri*[illegible] *170, 171.* In a case [illegible]

11 W. R. 171

4. ———— *Initiation by Court—Criminal Procedure Code, 1872, s. 468—False charge—Penal Code, s. 211.* There being nothing in the law requiring that sanction to prosecute under s. 211 of the Penal Code should only be granted upon application by a private prosecutor, a District [illegible]

DUTT . . . . . . 10 C. L. R. 4

5. ———— *Initiation by Court—Criminal Procedure Code, 1872, ss 470,* [illegible]

[illegible]

6. ———— **Effect of grant of sanction**—*Criminal Procedure Code (Act X of 1882), ss 195 and 478—Civil Court's power to proceed under s. 478 after sanction given to a private person—Dis-*

SANCTION FOR PROSECUTION—*contd.*

1. APPLICATION FOR, AND GRANT OF, SANCTION—*concld.*

missal of a complaint by a private person, effect of. The granting of sanction to a private person under cl. (c) of s 195 of the Code of Criminal Procedure (Act X of 1882) does not debar a Civil Court from

7. ——— Practice in granting sanction—*Criminal Procedure Code (Act X of 1882), s 195—Revisional power, exercise of, by High Court.* When subordinate Courts grant sanction to prosecute under s. 195 of the Criminal Procedure Code, it is incumbent on them so to frame the proceedings before them as to enable the High Court to satisfy itself from the record whether the application for sanction has been properly granted or not A Magistrate, in disposing of a charge of theft, delivered the following judgment: " The charge of theft of doors and windows is not proved at all

in itself sufficient ground for granting sanction to prosecute him under ss 182 and 211 of the Penal

2 WHERE SANCTION IS NECESSARY OR OTHERWISE

1. ——— Prosecution of Municipal Corporation—*Presidency Magistrates' Act (IV of 1877), s 39—Public servant* A Municipal Corporation was not a public servant within the meaning of s 39 of Act IV of 1877, and might therefore be prosecuted under the Penal Code without the preliminary sanction of the Government required by that section. EMPRESS *v* MUNICIPAL CORPORATION OF THE TOWN OF CALCUTTA

I. L. R. 3 Calc. 758 : 2 C. L. R. 520

2. ——— Prosecution of Judge—*Sanction of Government—Criminal Procedure Code, 1861, s. 167.* The sanction of Government is required

3. ——— *Criminal Procedure Code, 1882, s 197—Sanction to prosecute Judge for words uttered on the bench.* Where a Judge was charged with using defamatory language to a witness during the trial of a suit —*Held*, that, under s. 197 of the Code of Criminal Procedure, the complaint could not be entertained by a Magistrate

SANCTION FOR PROSECUTION—*contd.*

2. WHERE SANCTION IS NECESSARY OR OTHERWISE—*contd.*

without sanction. *In re* GULAM MUHAMMAD SHARIF-UD-DAULAH . I. L. R. 9 Mad. 439

4 ——— *Sanction to prosecute a Judge—Criminal Procedure Code (Act V of 1898), s. 197* A pleader applied to the Chief Presidency Magistrate for sanction under s. 197 of the Criminal Procedure Code to prosecute an Honorary

ram, I L R 2 Bom 481, and *In re Sreemanto Chatterjee, unreported*, approved of. *In re Ghulam Muhammad, I L R. 9 Mad 439*, dissented from NANDO LAL BASAK *v* MITTER

I. L. R 26 Calc. 869
3 C. W. N. 539

5. ——— Offence committed in judicial proceeding—*False evidence* No special sanction was needed for the prosecution of a person for giving false evidence in a judicial proceeding. QUEEN *v* RAMAOTAR PANRE 25 W R. Cr. 5

6. ——— Criminal Procedure Code, 1882, s 195—*Abetment of offence—Penal Code, s 109* Though sanction to prosecute is necessary in cases falling under the sections of the Penal Code set forth in s 195, Criminal Procedure Code, no such sanction is required previous to the prosecution of a person charged with the abetment of such offences. QUEEN-EMPRESS *v* ABDUL KADAR SHERIFF SAHEB

I. L R. 20 Mad. 8

7. ——— Offence under s. 182, Penal Code—*Charge and conviction under different section of Penal Code than that for which sanction was given.* In a case in which a false charge was brought, a Magistrate gave the accused (*A*) permission under s 169, Code of Criminal Procedure, 1861, to prosecute the complainant (*B*) of an offence under s 211, Penal Code The Magistrate tried the complaint

8. ——— *Prosecution by private person—Criminal Procedure Code, 1882, s. 195.* A prosecution under s. 182 of the Penal Code may be instituted by a private person, provided that he first obtains the sanction of the public officer to whom the false information was given, or

SANCTION FOR PROSECUTION—*contd.*

2. WHERE SANCTION IS NECESSARY OR OTHERWISE—*contd.*

of his official superior *Queen-Empress* v. *Radha Kishan, I. L. R. 5 All. 36*, overruled. QUEEN-EMPRESS *v.* JUGAL KISHORE. **I. L. R. 8 All. 382**

9. ———— **Criminal Procedure Code (Act X of 1882), s. 195**—*Presidency Magistrate, jurisdiction of—Penal Code (Act XLV of 1860), ss. 116, 193—Abetment—Instigating person to give*

diction to try the case without the sanction of the Court before which the divorce proceedings were pending, as the offence charged was alleged to have been committed in relation to those proceedings CHANDRA MOHAN BANERJEE *v.* BALFOUR **I L R 26 Calc. 359**

10. ———— *Offence under Penal Code (Act XLV of 1860), s 193—Giving false evidence—Investigation by Police.* No sanction under s 195 of the Criminal Procedure Code is necessary for taking cognizance of an offence under s. 193 of the Penal Code when the alleged false evidence is said to have been fabricated, not in relation to any proceeding pending in any Court, but in the course of an investigation by the police into the matter of information received by them *Chandra Mohan Banerjee* v. *Balfour, I. L R. 26 Calc 359*, distinguished JAGAT CHANDRA MOZUMDAR *v* QUEEN-EMPRESS . **I. L. R. 26 Calc. 786**
3 C. W. N 491

12. ———— **Criminal Procedure Code, s. 195**—*Registration Act, s 41—Sanction of Registrar—Condition precedent to trial for forgery of will*

I. L. R. 10 Mad. 154

13. ———— *Police officer acting under s 161—Prosecution for giving false evidence to a police officer* A police constable taking down a statement under s. 161 of the Criminal Procedure Code is not a Judge, nor is the place where he officiates a Court His sanction is therefore not necessary under s 195 of the Criminal Procedure Code, to a prosecution for a false statement made to him, whether the charge be framed singly or alternatively. QUEEN-EMPRESS *v.* ISMAL VALAD FATARU **I. L. R. 11 Bom. 659**

SANCTION FOR PROSECUTION—*contd.*

2. WHERE SANCTION IS NECESSARY OR OTHERWISE—*contd.*

14. ———— *Registration Act (III of 1877), s. 34—Forged document registered*

I. L. R. 11 Mad. 3

15. ———— *Registration Act, 1877, ss. 82, 83.* Certain persons were charged with

enquiry, the Sessions Judge referred the case to the High Court under s. 215 of the Code of Criminal Procedure, in order that the commitment might be quashed on the ground that there was no legal sanction. *Held*, that no sanction was necessary as to the charge of forgery and that the provisions of s. 195 of the Code of Criminal Procedure were not applicable. QUEEN-EMPRESS *v.* VYTHILINGA **I. L. R 11 Mad. 500**

16. ———— *Sub-Registrar—Forgery—Penal Code (Act XLV of 1860), ss 463, 467—Court—Judicial inquiry—Administrative in-*

gery in respect of a forged document presented for registration in his office. *In re Venkatachala, I. L. R. 10 Mad. 154*, dissented from. The word "for-

17. ———— *Registration Act*

Queen-Empress v. ... explained. QUEEN-EMPRESS *v.* SOBHANADRI **I. L. R. 12 Mad. 201**

18. ———— *Registration Act (III of 1877), ss. 72, 75—"Court"—Sanction for prosecution for perjury* A Registrar acting under the Registration Act, ss. 72—75, is a Court

SANCTION FOR PROSECUTION—*contd.*

2. WHERE SANCTION IS NECESSARY OR OTHERWISE—*contd.*

for the purposes of the Criminal Procedure Code, s 195, and his sanction is therefore necessary for a prosecution for perjury committed in respect of the representation of a document to him for registration ATCHAYYA *v.* GANGAYYA

I. L. R. 15 Mad. 138

19. ——————— *Registrar—"Court"—Registration Act, 1877, s. 73.* A Registrar

QUEEN-EMPRESS *v* RAM LAL

I. L. R. 15 All. 141

20. ——————— *"Court"—Col-*

in certain appraisement proceedings some rent receipts, which were alleged to be forgeries, were

21. ——————— *Criminal Procedure Code (Act X of 1882), s 195—Complaint made to police—Penal Code (Act XLV of 1860), s 211—Prosecution for laying false charge* A complaint

necessary for the prosecution of the complainant under s 211 of the Penal Code PUTIRAM RUIDAS *v.* MAHOMED KASEM . 3 C. W. N. 33

22. ——— **Prosecution for false charge in complaint made at police station**—*Criminal Procedure Code, 1872, s. 468* A complaint made at a police station is not made before any Civil or Criminal Court, and, if it proved false, prosecution for it did not require the sanction of any Court under s 468, Code of Criminal Procedure GOVERNMENT OF BENGAL *v.* GOKOOL CHUNDER CHOWDHRY . . . . . . 24 W. R. Cr. 41

SANCTION FOR PROSECUTION—*contd.*

2 WHERE SANCTION IS NECESSARY OR OTHERWISE—*contd*

RAM RUNJUN BHANDARI *v* MADHUB GHOSE

25 W. R. Cr. 33

before the same officer cannot be tried without a sanction. (*See* s. 467 of the Code of Criminal Procedure) IMPERATRIX *v* IRBASAPA

I. L R. 4 Bom. 479

24. ——— **Prosecution of police patel**—*Criminal Procedure Code (1872), s 466—Bombay Village Police Act (VIII of 1867), s 9—Bombay Police Amendment Act (I of 1876)* The prosecution of a police patel, for an offence committed by

previous sanction of Government, and therefore s 466 of the Criminal Procedure Code (Act X of 1872) did not apply IMPERATRIX *v* BHAGWAN DEVRAJ

I L R. 4 Bom. 357

25 ——— **Prosecution on alternative charge**—*Giving false evidence in one Court or in another—Criminal Procedure Code, 1872, s 470*

26. ——————— *Accused to whom pardon has been tendered, contradictory statements of—False evidence* When a pardon is legally tendered to the accused under s 337 of the Criminal Procedure Code (Act X of 1882), and the accused makes a statement on oath which he retracts in a subsequent judicial proceeding, a proper sanction is necessary for a prosecution for giving false evidence on each branch of the alternative charges *In re Balaji Sitaram, 11 Bom. 34,* followed. QUEEN-EMPRESS *v* DALA JIVA . I. L R. 10 Bom 190

27. ——————— *Criminal Procedure Code (Act V of 1898), s. 339—Tender of pardon—Trial of person who, having accepted a pardon, has not fulfilled the conditions on which it was offered—Prosecution for giving false evidence—Sanction of High Court.* No prosecution for the offence of giving false evidence in respect of statement made

2. WHERE SANCTION IS NECESSARY OR OTHERWISE—*contd.*

by a person who has accepted a tender of pardon should be entertained without the sanction of the High Court, as provided by s. 339, cl. (3), of the Code. QUEEN-EMPRESS *v.* NATU

I. L. R. 27 Calc. 137

28. ———— Charge of forgery—*Forged document used in civil case—Power of Deputy Magistrate—Criminal Procedure Code, 1861, ss. 169, 170.* A Deputy Magistrate could not commit a person for forgery under s 170 of the Code of Criminal Procedure when the Civil Court had sanctioned the prisoner's committal under s. 169, unless with the express sanction of that Court. QUEEN *v.* DWARKANATH BOSE . . . . 2 W. R. Cr 31

29. ———— *Forged document used in Civil case—Power of Magistrate—Criminal Procedure Code, 1861, s. 170.* S. 170, Code of

30. ———— *Criminal Procedure Code, 1872, s. 469—Prosecution of witness for forgery* The sanction required by s 469 of the

witnesses in, the suit, who are charged with the forgery of the document jointly with a party to the suit EADARA VIRANA *v* QUEEN

I. L. R . 3 Mad. 60

31. ———— Offence before or against

32

the

cial

Act

Code (Act X of 1882), s. 195. A Collector, on receiving information that his Deputy Chitnis had attempted to obtain a bribe, ordered his Assistant Collector t

a view to

Land Rev

found on

unfounded

informant and his witnesses for giving false evi-

2. WHERE SANCTION IS NECESSARY OR OTHERWISE—*contd.*

the Collector.

against the

that the

ctor was a departmental inquiry, and not a judicial proceeding, and that the Assistant Collector, while holding the inquiry, was not a Court. No sanction for prosecution was therefore necessary under s. 195 of the Criminal Procedure Code. *In re* CHOTALAL MATHURADAS . . I. L. R. 23 Bom. 936

33. ———— Charge against Village

the Government or other authority mentioned in

against village officer without sanction having been

34. ———— Disobedience to order promulgated by the Government—*Criminal Procedure Code (Act V of 1898), s 195—Penal Code (Act XLV of 1860), s 188—Epidemic Diseases Act (III*

had, in fact, been granted by the Chairman of the Municipality in which the order was disobeyed; but

SANCTION FOR PROSECUTION—*contd.*

2. WHERE SANCTION IS NECESSARY OR OTHERWISE—*contd*

Government, and not by any public servant, no sanction was required QUEEN-EMPRESS *v* SOUTH (1900) . . I. L. R. 24 Mad. 70

35. ——— Public servant—*Criminal Procedure Code (Act V of 1898), s 197—Necessity for sanction to prosecute public servant—Cases in which*

ment of a fee, is liable to a fine The Superintendent

was not necessary as the offence charged was not one which could be committed only by a public servant, nor did it involve as one of its elements that it had been committed by a public servant *Nando Lal Basak v Mitter, I. L R 26 Calc. 852,* followed. MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS *v* BELL (1901) . . I. L. R 25 Mad. 15

36 ——— Tahsildar—*Criminal Procedure Code (Act V of 1898), s 195—Alleged forgery of documents submitted to Tahsildar holding inquiry as to transfer of names in Land Register—Revenue*

3. WHEN SANCTION MAY BE GRANTED.

1. ——— Sanction previous to pro-

triable had no jurisdiction, and a conviction

SANCTION FOR PROSECUTION—*contd.*

3. WHEN SANCTION MAY BE GRANTED—*contd.*

founded on evidence taken without such sanction would be bad. REG *v.* PARSHRAM KESHAV 7 Bom. Cr. 61

See QUEEN *v* MOHIMA CHUNDER CHUCKERBUTTY 7 B L. R. 26 : 15 W. R. Cr. 45

2. ——— Prosecution for perjury—*Sanction after order for committal to sessions.* Sanc-

SINGH . . . . 3 B. L. R. A. Cr. 10

QUEEN *v.* LEKHRAJ 2 N. W. 132 : Agra F. B. Ed. 1874, 206

3. ——— Sanction "at any time"—*Criminal Procedure Code, 1861, s. 169—"At any time."* The

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must be const
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party to be
position than he was before SEETARAM SAHOO *v* SHEWGOLAM SAHOO . . 18 W. R Cr. 62

5. ——— *Charge of false*

made by him on oath after a tender of pardon can only be granted before, and not after, the commencement of the prosecution. QUEEN-EMPRESS *v.* DALA JIVA . . . I. L. R. 10 Bom. 190

6. ——— *Code of Criminal Procedure (Act V of 1898), ss. 195, 203—Sanction to prosecute for bringing a false complaint—Penal Code (Act XLV of 1860), s 211—Police-report declaring complaint false—Application for inquiry into the complaint—Complaint—Judicial determination.* An ap-

SANCTION FOR PROSECUTION—*contd.*

3. WHEN SANCTION MAY BE GRANTED—*concld.*

followed. SAHIRAM AGARWALLA *v.* JIBUN KAMAR (1900) . . . . 5 C. W. N. 254

4. NOTICE OF SANCTION.

1. ———— Necessity of notice—*Criminal Procedure Code (Act X of 1882), s. 195, cl. c,*

2. ———— *Criminal Procedure Code (Act X of 1882), s. 195—Notice to accused. Held,* by the Full Bench, that no notice is necessary to the person against whom it is intended to proceed before the Court, before which the alleged offence has been committed, can, under s. 195 of the Criminal Procedure Code, sanction a complaint being made to a Magistrate regarding one of the offences specified in that section. *In the matter of the petition of* KRISHNANUND DAS. KRISHNANUND DAS *v.* HARI BERA . . . I. L. R. 12 Calc. 58

MANGAR RAM *v.* BEHARI . I. L. R. 18 All. 358

3. ———— *Criminal Procedure Code, s. 195—Notice to accused.* A conviction

must be previously heard and a judgment formed upon legal evidence. In cases in which the Magistrate dismisses the original complaint upon a report from the police, there is no legal evidence before him on which to form his judgment. In cases, however, in which the Magistrate examines the complainant and hears the evidence and acquits or dis-

I. L. R. 10 Mad. 232

4. ———— *Criminal Procedure Code, s. 195—Omission to ...*

ceedings. Immediately on the judgment being delivered, the pleader appearing for the accused applied for sanction to prosecute the complainant under ss. 182 and 211 of the Penal Code. The

SANCTION FOR PROSECUTION—*contd.*

4. NOTICE OF SANCTION—*concld.*

the application heard and disposed of there and then intimated that he was prepared to show cause why

application to the High Court to revoke the sanction: —*Held,* that the Magistrate did not exercise a proper discretion under the circumstances in neglecting to give the complainant notice of the application, and an opportunity of being heard. KEDARNATH DAS *v.* MOHESH CHUNDER CHUCKERBUTTY

I. L. R. 16 Calc. 661

5. ———— *Criminal Procedure Code (Act V of 1898), s. 195—Omission to give accused opportunity to be heard.* Although notice is not invariably necessary in cases under the section referred to, the grant of an order sanctioning prosecution is a judicial act, and there may be circumstances—(such as in those cases in which there has been a difference of opinion as to the desirability for granting sanction)—in which a proper discretion cannot be said to have been exercised unless the persons sought to be prosecuted have given an opportunity to be heard. PAMPAPATI SASTRI *v.* SUBBA SASTRI . . . I. L. R. 23 Mad. 210

6. ———— *Criminal Procedure Code, s. 195—Notice to accused—Necessity.* There is no hard-and-fast rule that notice must be given in all cases to an accused person before sanction is accorded for his prosecution. *In the matter of* GOVINDU (1902) . I. L. R. 26 Mad. 592

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION.

1. ———— Nature of sanction—*Permissive nature of sanction—Discretion of party obtaining sanction—Criminal Procedure Code, 1872, s. 168.* The sanction to prosecute, contemplated in s. 468 of the Criminal Procedure Code, was not a

MONDUL. GRIDHARI MONDUL *v.* UCHIT JHA
I. L. R. 8 Calc. 435 : 10 C. L. R. 46

2. ———— *Sanction by High*

3. ———— Form of sanction—*Sanction*

SANCTION FOR PROSECUTION—*contd*

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION—*contd.*

4. ———————— The law does not require the sanction to a prosecution to be given in any particular form of words. QUEEN *v.* LEKHRAJ
2 N. W. 132 : Agra F. B. Ed. 1874, 206

5. ———————— *Criminal Procedure Code, 1882, s 195—Form of sanction for prosecution for false evidence—Requisites of a proper sanction.* A sanction to prosecute for giving false evidence should specify clearly the statement alleged to be false, so that the person sought to be charged may be definitely informed what is the criminal act alleged against him *In re* JIVAN AMBAIDAS
I. L. R. 19 Bom. 362

6. ———————— *Criminal Procedure Code, 1861, ss 169-170—Statement of particular offences* When a Civil Court gives sanction to a prosecution under ss 169 and 170, Code of Criminal Procedure, it should state with precision the particular offence or offences for the prosecution of which it gives sanction QUEEN *v.* OOMA MOYEE DEBEA . . . **13 W. R. Cr. 25**

7. ———————— *General sanction —Prosecution for false evidence—Penal Code,* s
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tion is based, and the exact offences which the Magistrate is to investigate, should be pointed out QUEEN *v.* KARTICK CHUNDER HOLDAR
9 W. R. Cr. 58

(*Contra*) QUEEN *v.* KADIR BUX *alias* KADIR MAHOMED . . . . . **11 W. R. Cr. 17**

8. ———————— *Prosecution under Criminal Procedure Code, 1872, s 170—Requisites of proper sanction* A sanction for a prosecution under s. 470 of the Criminal Procedure Code must designate the Court where the false statement was alleged to have been made and the occasion on which it was committed It is desirable, if not

11 Bom. 34

9. ———————— *Criminal Procedure Code, 1882, s 195—False evidence—Specifica-*

10. ———————— *Specification of place and occasion of offence—Criminal Procedure Code, 1882, s. 195* Sanction to a prosecution granted under s 195, Criminal Procedure Code, 1882, should specify the Court or other place in which, and the occasion on which, the offence was committed, and such sanction should not be granted without a preliminary inquiry, where such inquiry is "necessary," within the meaning of s. 476 of the Code EMPRESS *v.* NAROTAM DAS
I. L. R. 6 All. 98

11. ———————— *Specification of particulars of offence—Criminal Procedure Code, 1882, s 195—False evidence—Preliminary inquiry.* In a suit on a bond, instituted in the Court of a Munsif, the question whether the defendant had executed the bond or not was referred to arbitration The arbitrator decided that the defendant had not executed the bond, and that it was a forgery. The Munsif dismissed the suit in accordance with the award. The defendant then applied to the Munsif for sanction to prosecute the plaintiff, without specifying in his application the offences in respect of which he desired to prosecute. The Munsif granted sanction, merely observing that there were sufficient grounds for sanctioning the prosecution, without giving any reasons or *specifying the offence or offences in respect of* which sanction was granted *Held*, that the terms in which the Munsif had given his sanction to a prosecution were not sufficiently explicit, and that he should have mentioned the section or sections of the Penal Code under which he authorized criminal proceedings to be taken, as also in a general way the offence or offences to be charged, the date of commission, and the place where committed Further, that as the Munsif himself had not determined the question of forgery in the suit, he should have made some inquiry to satisfy himself that there were materials to justify a prosecution PARSOTAM LAL *v.* BIJAI
I. L. R. 6 All. 101

12. ———————— *Omission to specify particulars of offence—False evidence—Criminal Procedure Code (Act XXV of 1861), ss. 169 and 170.* Where persons were charged with offences

Held, that the sanction, which simply gave permission and did not specify the particular act or acts and the particular words which constituted the offences, was insufficient. QUEEN *v.* GABIND CHANDRA GHOSE
7 B. L. R. 28 note : 10 W. R. Cr. 41

13. ———————— *Criminal Proce-*

SANCTION FOR PROSECUTION—*contd.*

5 NATURE, FORM, AND SUFFICIENCY OF SANCTION—*contd*

14 ———————— *Criminal Procedure Code (Act V of 1898), s. 195—Notice to person to prosecute whom sanction is sought—Proceedings before Sessions Court—Proper exercise of discretion.* A Sessions Court, when granting sanction to

been properly granted or not. An order of a Sessions Judge, sanctioning a prosecution, containing nothing from which the High Court could conclude that he had directed his mind to the real question in such cases, namely, whether there was a *primâ facie* case on which a prosecution could be instituted with a fair chance of success, the High Court revoked the sanction PAMPAPATI SASTRI *v.* SUBBA SASTRI . . I. L. R. 23 Mad. 210

15. ———————— *Giving false evidence in a judicial proceeding—Penal Code (Act XLV of 1860), s. 193—Granting sanction to pro-*

in which, and the occasions on which, the offence was committed

imputed. Where therefore sanction was granted to prosecute certain persons, one of whom was a boy of eleven years, for giving false evidence in a dacoity case and the sanction did not contain the essentials referred to —*Held*, that it was defective in form and could not stand, and that the High

GOBARDHONE CHOWKIDAR *v.* HABIBULLA
3 C. W. N. 35

16. ———————— *Refusal of sanc-*

I. L. R. 2 All. 533

17. ———————— *Statement by Collector that he has no objection to give sanction again after sanction by Deputy Collector.* In a suit by *A* for arrears of rent above R100 a decree was passed against *B*, *C*, and *D*, wherein certain documents filed by them were held to be forgeries. *A* applied for and obtained an order from the Deputy Collector who tried

ing order: "Sanction has already been given once

cured by the subsequent proceedings, and the conviction must be quashed. QUEEN *v.* MAHIMA CHANDRA CHUCKERBUTTY
7 B. L. R. 26 : 15 W. R. Cr. 45

18. ———————— *Statement by*

evidence against *A*, I have no objection to give such sanction." *Held*, that the order was a sufficient sanction to support a prosecution. *In the matter of* JADU NATH HAZRA *v.* ANNODA PROSAD SIRCAR
11 C. L. R. 53

19. ———————— *Penal Code, s. 193—Sufficiency of sanction.* Sanction for the prosecution of the accused was accorded by an Assistant Sessions Judge in the following terms: "There is no doubt whatever that Tai, Baji and Bala, these three persons, made before me certain statements contradictory of the statements which they had made before the committing Magistrate. Therefore if from such statements of theirs they

Penal Code, and that it was not necessary that the authority giving the sanction should specify the particular section of the Penal Code under which the accused was permitted to be prosecuted. REG. *v.* TAI . . . . . 8 Bom. Cr. 24

20. ———————— *Issue of warrant—Implied sanction—Criminal Procedure Code, 1861, s. 169.* The object of the sanction required by s. 169, Code of Criminal Procedure, was to ensure

HOSSAIN . . . . 16 W. R. Cr. 37

21. ———————— *Instruction from Sessions Judge to Magistrate—Criminal Procedure*

SANCTION FOR PROSECUTION—*contd*

5 NATURE, FORM, AND SUFFICIENCY OF SANCTION—*contd*

Code, 1872, s 468—Prosecution for giving false evidence An instruction to the Magistrate of the district by the Court of Session, contained in the concluding sentence of its judgment in a case tried by it, to prosecute a person for giving false evidence before it in such case, was *held* not to amount to sanction to a prosecution of such person for such offence, within the meaning of s 468 of Act X of 1872, that section supposing a complaint, or at least an application for sanction for a complaint. EMPRESS *v.* GOBARDHAN DAS **I. L. R. 3 All. 213**

22. ———— ———————— *Criminal Procedure Code, 1882, ss 195 and 476—Nature of*

[illegible]

v Gobardhan Das, I L R 3 All 62, referred to *In the matter of the petition of* BANARSI DAS **I. L. R. 18 All 62**

23. ———————————— *Order of Munsif directing that Magistrate inquire into a case—Criminal Procedure Code, 1882, ss 195 and 476—"Sanction"—"Complaint"—Civil Procedure Code, 1882, s. 643* On the 2nd August 1884 a Munsif, who was of opinion that in the course of a suit which had been tried before him certain persons have committed offences under ss 193, 463, and 471 of the Penal Code, and that the prosecution of these persons was desirable, made an order which he described as

[illegible]

Munsif's order might be taken as having been passed under the latter section Also *per* PETHERAM, *C. J.*,

[illegible]

SANCTION FOR PROSECUTION—*contd.*

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION—*contd.*

on oath, like an ordinary complainant, in order to lay the foundation for a prosecution The language of s 476 indicates that where a Court is acting under s 195, a complaint in the strict sense of the Code is not required, and that the procedure therein laid down constitutes the "complaint" mentioned in s. 195. ISHRI PRASAD *v* SHAM LAL **I. L. R. 7 All. 871**

24. ———————————— *Report of police or medical officers—Prosecution under Bombay Military Cantonments Act, III of 1867* Reports of police or medical officers are not a sufficient sanction for prosecution under this Act A complaint on oath or solemn affirmation is necessary. REG. *v* LADU . . . . . . **7 Bom. Cr. 87**

25. ———————————— *Implied sanction —Criminal Procedure Code, 1869, s 168—Penal Code, ss 177, 193—Framing charge* The form of an accusation by a District Superintendent of Police

[illegible]

26. ———————————— *Implied sanction —Criminal Procedure Code, 1861, s 169* Where

[illegible]

REG *v* MUHAMMAD KHAN VALAD IMAM KHAN **6 Bom. Cr. 54**

27. ———————————— *Implied sanction —Prosecution for non-attendance in obedience to summons—Criminal Procedure Code, 1861, s. 168.* Prosecution for non-attendance in obedience to a summons was entertained without the sanction required by s. 168 of the Criminal Procedure Code. *Held*, that there was an implied sanction for the prosecution as the conviction was by the same Magistrate whose summons was treated with contempt. REG. *v.* GANU BIN TATIA SELAR **5 Bom. Cr. 38**

28. ———————————— *Implied sanction —Direction to commit* When a Sessions Court direct a commitment, it must be taken to sanction the prosecution out of which the commitment arises. QUEEN *v.* LEKHRAJ **2 N. W. 132: Agra, F. B. Ed. 1874, 206**

29. ———————————— *Letter from Civil Court to Subordinate Magistrate—Specification of sections of Penal Code for which sanction is given—Jurisdiction of Magistrate to commit under other section.* Where a Civil Court, by letter to a Subordinate Magistrate with committing powers gave sanction for the prosecution of the accused under *ss. 463 and 471 the Penal Code (making and using*

SANCTION FOR PROSECUTION—*contd.*

5 NATURE, FORM, AND SUFFICIENCY OF SANCTION—*contd.*

head of charge. Reg *v* Subi Sani

8 Bom. Cr. 28

30. ———————— *Suggestion that person ought to be prosecuted* When a Subordinate

matter of the petition of Khepu Nath Sikdar. Khepu Nath Sikdar *v* Grish Chunder Mookerjee I. L. R. 16 Calc. 730

31. ———————— *Criminal Procedure Code, s 197—Prosecution of public servants*

stand investigation by a Criminal Court" is not a legal sanction within the meaning of the Criminal Procedure Code, s 197, and a commitment on any of such charges should be quashed. Queen-Empress *v.* Samavier . I. L. R. 18 Mad. 468

32. ———————— *Criminal Procedure Code, ss 195, 476—Preliminary inquiry—Penal Code (Act XLV of 1860), s. 182—Criminal Procedure Code (Act X of 1872), s 471* Where a Deputy Commissioner issued a sanction to prosecute the accused upon an express application made on behalf of a certain person against whom a charge of torture had been made, and which he found, from reasons stated in his judgment, to be false —*Held,* taking the order to have been one made under s 195 of the Code of Criminal Procedure, that it was proper sanction, inasmuch as it was given to a contemplated prosecution by a definite person.

dence on the record contradicting the case which was thought to be false, or that there should be a

I. L. R. 16 Calc 370, referred to and distinguished. Baperam Surma *v* Gouri Nath Dutt

I. L. R. 20 Calc. 474

SANCTION FOR PROSECUTION—*contd.*

5 NATURE, FORM, AND SUFFICIENCY OF SANCTION—*contd*

33. ———————— *Criminal Procedure Code, ss 476, 195—Sanction by Magistrate for prosecution—Preliminary inquiry* When a Magistrate takes action under s. 476 of the Code of Criminal Procedure, it is not necessary to the validity of his order that he should hold a preliminary inquiry. *Baperam Surma v. Gouri Nath Dutt, I. L. R 20 Calc. 474,* followed. Queen-Empress *v* Matabadal . . I. L. R. 15 All. 392

34. ———————— *Criminal Procedure Code, 1898, ss. 195, 476—Sanction for prosecution for false statement made in proceedings under Land Acquisition Act (I of 1894).* Sanction under s 195 of the Code of Criminal Procedure should be given only on application made for it by some person who may desire to complain of the particular offence and whose complaint could not be entertained without such sanction. *In the matter of Banarsi Das, I. L. R 18 All 213,* and *Baperam Surma v. Gouri Nath Dutt, I. L. R 20 Calc. 474,* referred to. Durga Das Rukhit *v.* Queen-Empress

I. L. R. 27 Calc. 820

35. ———— **Sufficiency of sanction**—*Sanction of official superior—Penal Code, s 182—Criminal Procedure Code, 1861, s 168.* Where a

See In the matter of the petition of Abdool Luteef . . . . . 9 W. R Cr. 3

36. ———————— *Sanction of official superior—Criminal Procedure Code, 1861, s. 169—Judicial Commissioner sitting as Sessions*

17 W. R. Cr. 54

37. ———————— *Sanction men-*

The prisoner was tried for and convicted of an offence coming under the provisions of s 169 of the Criminal Procedure Code. *Held,* that the mention of s. 170 in the permission to prosecute granted by

SANCTION FOR PROSECUTION—*contd.*

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION—*contd*

the Civil Court might be treated as surplusage, and that the prisoner was rightly convicted REG. v. KHUSHAL HIRAMAN . . 4 Bom. Cr. 28

38. ——— *Sanction by official superior—District Superintendent of Police—"Inferior ministerial officer"—Criminal Procedure Code, 1861, s 168.* The sanction of a District Superintendent of Police to the prosecution of a charge of giving false information not to such District Superintendent himself, but to an Assistant District Superintendent, was *held* to be no sufficient sanction under s 168 of the Criminal Procedure Code, 1861 The words "inferior ministerial officer" referred to public servants of a lower grade than an Assistant Superintendent of Police QUEEN v OOTUM CHUND 2 N.W 287

39. ——— *Criminal Procedure Code, 1861, s 168—Person charged with giving false information under Penal Code, s 182* Where a person was accused under s 182 of the Penal Code with having given false information to a head constable, it was *held* that the provisions of s. 168 of the Code of Criminal Procedure, 1861, had been sufficiently complied with, inasmuch as the

40 ——— *Sanction given by Judge who afterwards tried the case—Criminal Procedure Code, 1872, s 469* The Court declined in this case to say under s. 469 of the Code of Criminal Procedure, 1872, that a conviction was bad, because the Judge who tried the case and the Judge who sanctioned the criminal proceedings was the same person QUEEN v. SUBAL CHUNDER GANGOOLY . . . . 22 W. R. Cr. 16

41. ——— *Notice to show cause not a necessary preliminary—Criminal Procedure Code, 1882, s 195.* An order under s 195 of the Code of Criminal Procedure sanctioning a prosecution for perjury is not bad by reason of notice to show cause not having been issued previously to the person against whom such order is made. *Krishnanund Das* v. *Hari Bera, I L. R 12 Calc. 58*, followed MANGAR RAM v BEHARI I. L. R. 18 All. 358

42. ——— *Criminal Procedure Code (Act X of 1882), ss 196, 532—Charge under Penal Code (Act XLV of 1860), s. 124A.* The accused, who was the editor, proprietor, and publisher of the *Kesari* newspaper, was charged

SANCTION FOR PROSECUTION—*contd.*

5 NATURE, FORM, AND SUFFICIENCY OF SANCTION—*contd.*

Code in the following form, dated July 26, 1897, was tendered in evidence "Under the provisions of s. 196 of the Code of Criminal Procedure, Mirza Abas Ali Baig, Oriental Translator to Government, is hereby ordered by His Excellency the Governor in Council to make a complaint against Mr Bal Gangadhar Tilak, B A , LL B , of Poona, publisher, proprietor, and editor of the *Kesari*, a weekly vernacular newspaper of Poona, and against Mr Hari Narayan Gokhale, of Poona, printer of the said newspaper, in respect of certain articles appearing in the said newspaper, under s. 124A of the Penal Code and any other section of the

was to be charged *Held*, that the order was sufficient and was admissible, but that, if it were not sufficient, the commitment might be accepted and the trial proceeded with under s 532 of the Code of Criminal Procedure *Queen-Empress* v *Morton, I L R 9 Bom. 288*, followed QUEEN-EMPRESS v BAL GANGADHAR TILAK. I. L. R. 22 Bom. 112

43. ——— **Sufficiency of sanction—Letter**—*Public servant—Substantive offence—Abetment—Fresh sanction—Criminal Procedure Code*

of forgery for the purpose of cheating. At the trial it was contended on behalf of the accused that there could be no conviction for abetment when sanction had been given for prosecution for the substantive offence only. *Held*, that the letter of the Inspector-General of Registration was a sufficient sanction to justify the conviction, and that no fresh sanction was necessary under s 230 of the Criminal Procedure Code. PROFULLA CHANDRA SEN v. EMPEROR (1903) I. L. R. 30 Calc. 905 s.c 7 C. W. N. 494

44. ——— **Naming of offender**—*Criminal Procedure Code (Act V of 1898), s 195 (4).*

45. ——— **Order in alternative**—*Criminal Procedure Code, ss 195, 476—Order directing prosecution—Order framed in the alternative held*

5 NATURE, FORM, AND SUFFICIENCY OF SANCTION—*concld.*

by that person in the Court of the District Magistrate, passed an order in the following form:—"I. . . District Magistrate, Bulandshahr, hereby charge you . . . that you, on the 21st

Dipchand for disposal B. Hardeo Sahai will fur-

and could not be acted upon HASAN SHAH v. HARDEO SAHAI (1903) . I L R. 25 All. 234

46. ———— Perjury, assignment of—*Criminal Procedure Code (Act V of 1898) ss 195, cl. (4), 234, 350, cl (1) and 537—Penal Code (Act XLV of 1860), s 193—Oaths Act (X of 1873) ss. 5 (b), 13* Although s 195, cl (4), does not in express terms render an assignment of perjury necessary, the application for sanction and the

alleged false statements were not set out in the order of sanction but were specified in the application for it, and also in the charges subsequently framed:—*Held*, that the accused was not prejudiced by the omission in the sanction *Balwant Singh* v. *Umed Singh, I. L R. 18 All 203, Queen* v. *Kartick Chunder Haldar*

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Ahir, 17

I L R.

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CHANDRA

I. L. R. 36 Calc. 808

6. POWER TO GRANT SANCTION

1. ———— Implied power—*Criminal Procedure Code, 1861*

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removeable, etc, was subordinate, the power of

there is a limitation QUEEN v. KRISTNA RAU 7 Mad. 58

2 ———— Power to sanction where no particular party is accused—*Sending case for investigation* A Court had power to send a case for investigation to a Magistrate under s. 171 of the

6. POWER TO GRANT SANCTION—*contd.*

Criminal Procedure Code, 1861, where no particular individual had been accused. ESSAN CHUNDER DUTT v. PRANNATH CHOWDHRY . W. R. F. B. 71

3 ———— What Courts can give sanction—*Criminal Procedure Code, 1862, s. 468—Case settled without evidence.* The Courts that had jurisdiction to grant a sanction to proceedings under s. 468 of Act X of 1872, where the Court before which the offence was alleged to have been committed, and the Courts to which such Court is subordinate. *In the matter of the petition of* KASI CHUNDER MOZUMDAR. JUGGUT CHUNDER MOZUMDAR v. KASI CHUNDER MOZUMDAR

I. L R. 6 Calc 440

S C. KAZI CHUNDRA MOZOOMDAR v. JUGGUT CHUNDRA MOZUMDAR . . 7 C L R 330

4. ———— *Criminal Procedure Code, 1882, s. 195—Offence committed in presence of Court—Preliminary inquiry—Case settled without evidence.* It is competent for a Civil Court

committed before it during the pendency of such

after such preliminary enquiry and based thereon is not illegal. *In re Kasi Chunder Mozumdar, I. L. R 6 Calc. 440,* and *Zamindar of Sivagiri* v. *Queen, I. L. R. 6 Mad. 29,* dissented from on this point. SHASHI KUMAR DEY v SHASHI KUMAR DEY

I. L. R. 19 Calc. 345

5. ———— Power of Appellate Court to sanction prosecution of abetment—*Offence committed before lower Court* Where an

Sanction to such a prosecution might be given even if the offence was abetment. *In the matter of* ISHAN CHUNDER GHOSE . . 15 W. R. 352

6 ———— Power of Civil Court—*Criminal Procedure Code, 1861, s 170* A Civil Court had no power to make an order, under s. 170 of

7. ———— *Power of Civil Court to commit for forgery or perjury—Criminal Procedure Code, 1882, ss 195 and 475—Witness*

SANCTION FOR PROSECUTION—*contd.*

6. POWER TO GRANT SANCTION—*contd*

restricted, in regard to offences relating to docu-

8. ———— Power of Mamlatdar—*Sanction of Collector—Prosecution of Kulkarni for false report—Criminal Procedure Code, 1861,*

of the Collector was not necessary for that purpose. Reg v. Malhar Ramchandra . 7 Bom Cr. 64

9. ———— Power of Revenue Court——*Criminal Procedure Code, 1872, ss 468, 469, 470—Prosecution for offence against public justice and offence relating to document given in evidence—"Subordination" of Revenue Courts to High Court* *Held* (Spankie, J, doubting), on a reference to the Full Bench, that a Court of Revenue was a Civil Court within the meaning of ss 468 and 469 of Act X of 1872. Observations by Stuart, C J, on the "subordination" of Courts of Revenue to the High Court within the meaning of ss. 468 and 469 of Act X of 1872. Empress v. Sabsukh

I. L R. 2 All. 533

10 ———— Power of District Magistrate—*Court of Assistant Magistrate—Preliminary inquiry—Criminal Procedure Code, 1882, ss. 195, 476* The Court of an Assistant Collector is not subordinate to that of the Magistrate of the district within the meaning of s 195 of the Criminal Procedure Code Empress v Narotam Das

I. L R 6 All 98

11. ———— *Information by accused of offence—Report by a police of falsity of information—Sanction by District Magistrate on police report—Judicial proceeding—Subordination of police officer to District Magistrate—Complaint—Criminal Procedure Code (Act V of 1898), ss 195 and 537—Penal Code (Act XLV of 1860), s 182.*

cution of the accused, who was convicted and sen-

sion the accused contended that the District Magistrate, having sanctioned his prosecution on the

That subordination contemplated some superior officer of police Nor could the report of the police officer be regarded as a complaint under s. 195 of the Code of Criminal Procedure, and therefore no proper sanction had been obtained The defect, however, was cured by s 537 of the Code of Criminal Procedure, as no failure of justice had been occasioned Ramasory Lall v. Queen-Empress

I L R 27 Calc 452
4 C. W N. 594

12. ———— *Criminal Procedure Code, 1872, s. 468—Relative positions of a Magistrate of the first class, the Magistrate of the district, and the Court of Session* *Held* (Oldfield,

sanction *In the matter of the petition of* Gur Dayal . . . I L R 2 All 205

13. ———— *Criminal Procedure Code, 1872, s 468—Sessions Court—Magistrate of first class—Magistrate of district* For the

14 ———— *Criminal Procedure Code, 1872, s 468—Subordinate Judge—District Judge* For the purpose of sanctioning a criminal prosecution under s 468 of the Code of

Imperatrix v Lakshman Sakharam

I. L R. 2 Bom 481

15. ———— Power of second class Magistrate—*Criminal Procedure Code, 1872, s 467—Sanction for prosecution for giving false in-*

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I. L. R. 6 Mad. 146

SANCTION FOR PROSECUTION—*contd.*

6 POWER TO GRANT SANCTION—*contd.*

16 ———. **Power of Sub-divisional Magistrate**—*Criminal Procedure Code, 1882, s. 195—Sanction to prosecute for false evidence granted by Magistrate on revising calendar.* A Sub divisional Magistrate, after perusing the calendar of a case tried by a Magistrate subordinate to him, sent for the record, and passed an order under s 195

KUPPU . . . . . I L R 7 Mad 000

17. ——— **Power of Small Cause Court Judge**—*Proceeding before Registrar—Forgery—Criminal Procedure Code (Act XXV of 1861), s. 170.* A specially registered bond was presented before the Small Cause Court Judge for execution, under s. 53, Act XX of 1866, and a decree passed upon it in usual form Subsequently the Registrar sanctioned the prosecution of the decree-

18 ——— **Power of Civil Judge**—*Criminal Procedure Code, 1861, ss 170, 171—Power of Judge to make order where application had been made to Sudder Ameen in whose Court offence occurred, and refused* The Civil Judge made an order, under ss 170 and 171 of the Penal Code, directing the Magistrate to investigate whether certain documents used before the Sudder Ameen were forged, and, if so, by whom *Held*, that he had jurisdiction to make the order, notwithstanding the Sudder Ameen had been applied to and had refused to make a similar order RADHANAUTH BANERJEE *v* KANGALEE MOLLAH . **Marsh. 407 : 2 Hay 538**

19. ——— ——— *Power of District Judge to order prosecution for forgery committed before Munsif—Witness—Criminal Procedure Code, 1882, ss. 195 and 476* Where a defendant in a suit in the Court of a Munsif applied to the District Judge for sanction under s 195 of the Code of Criminal Procedure to prosecute a witness who had given evidence in the Munsif's Court in support of a deed, produced as evidence before that Court, which had been found by the Munsif to be a forgery, and the District Judge refused the application, but, purporting to act under s. 476 of the Code, himself ordered the prosecution of such witness —*Held*,

. . . . . I L R 10 All 00

20 ——— **Power of Sessions Judge**—*Sanction given on inquiry ordered during trial.* Where, during an inquiry into allegations that a

SANCTION FOR PROSECUTION—*contd.*

6. POWER TO GRANT SANCTION—*contd.*

confession had been made under such circumstances as to render it inadmissible in evidence, the Sessions Judge accorded his sanction to the prosecution for

NATH DINKAR . . . . **8 Bom. Cr. 126**

21 ——— ——— *Criminal Procedure Code, 1882, s. 195—Sanction to prosecute—"Subordinate Court," what is a—Sanction to prosecute refused by Subordinate Judge in suit over R5,000—Jurisdiction of District Court to grant sanction in cases to which appeal lies to High Court from Subordinate Judge* In matters relating to the grant of sanction to prosecute under s. 195 of the Criminal Procedure Code (Act X of 1882), a Court is regarded as "subordinate" to another Court where the latter is the Court to which an appeal from the former ordinarily lies, and an application for such sanction must be made to such superior Court even in those particular cases in which an appeal lies to some other Court, *e.g*, to the High Court A decree-

The District Judge declined to interfere on the ground that, the decree being appealable to the High Court, the High Court alone could deal with the

former was subordinate to the latter Court within the meaning of s. 125 of the Criminal Procedure Code *In re* ANANT RAMCHANDRA LOTLIKAR **I L R 11 Bom 438**

22 ——— *Criminal Procedure Code, s 195—Sanction for prosecution of witness for perjury by Village Munsif.* V was tried and convicted under s 193 of the Penal Code for

v. VENKAYYA . . **I L R 11 Mad 735**

23 ——— *Criminal Procedure Code, s. 195—Sanction for prosecution for*

SANCTION FOR PROSECUTION—*contd*

6. POWER TO GRANT SANCTION—*contd*

A suit for arrears of rent under s. 93, cl (*a*), Act XII of 1881, was heard by a Tahsildar having the powers of and acting as an Assistant Collector.

holding that he had no jurisdiction in the matter

also decl

witness

of the C

Court a

prosecut

Procedure, 1882, in respect of false evidence given in the course of the trial of a rent case from the final decision in which there was no appeal to the Court of the Judge of the district, was still to be deemed *subordinate to it within the meaning of* that section, and the Court of the District Judge may be taken to be the Court to which appeals from the decisions of the Collector ordinarily lie HARI PRASAD *v.* DEBI DIAL **I L R 10 All 582**

24 ——— *Criminal Procedure Code (Act X of 1882), ss 195, 476—Order sanctioning prosecution—Evidence necessary for such order* Before a Court is justified in making an order under s 476, directing the prosecution of any person, it ought to have before it direct evidence fixing the offence upon the person whom it is sought to charge, either in the course of the preliminary enquiry referred to in that section or in the earlier proceedings out of which the enquiry arises It is not sufficient that the evidence in the other case may induce some sort of suspicion that the person had been guilty of an offence, but there must be distinct evidence of the commission of an offence by the person who is to be prosecuted *Queen* v *Baijoo Lal, I L R 1 Calc 450*, and *In the matter of the petition of Kali Prosunno Bagchee, 23 W R Cr 27*, followed. *In the matter of the petition of* KHEPU NATH SIKDAR. KHEPU NATH SIKDAR *v.* GRISH CHUNDER MUKERJI **I L R 16 Calc 730**

25 ——— *Criminal Procedure Code, 1882, s 195—"Subordinate Court"—*

Court to which appeals from the former ordinarily lie, *i.e.*, lie in the majority of cases. Though the

SANCTION FOR PROSECUTION—*contd.*

6. POWER TO GRANT SANCTION—*contd.*

v ELDERTON . . **I L R 22 Calc 487**

26 ——— *Criminal Procedure Code, 1882, ss 195, 407, and 476—Application for sanction to prosecute—Offence committed before 2nd class Magistrate—Magistrate, jurisdiction of—Application by letter for sanction to prosecute—District Magistrate's order sanctioning prosecution and prescribing the Court in which the prosecution should take place* The District Forest Officer

a second class Magistrate The District Magistrate had previously directed that all appeals from the second class Magistrate should be heard by the Deputy Magistrate, but he passed an order himself, whereby he (1) sanctioned the prosecution of *S*, and (2) directed that it should take place in the Court of the Head Assistant Magistrate *Held*, (1) that the District Magistrate had no jurisdiction to sanction the prosecution, for the reason that he

27 ——— *Inquiry preliminary to exercise of power to grant sanction—*

business of a particular group has jurisdiction to deal with an order under s. 643 of the Civil Procedure Code made by a Civil Court in any of the districts included in the group. MAHOMED BHAKKU *v.* QUEEN-EMPRESS

I. L. R. 23 Calc. 532

SANCTION FOR PROSECUTION—*contd.*

6. POWER TO GRANT SANCTION—*contd.*

28. ———— *Criminal Procedure Code, 1882, s 476—Inquiry before issue of an order under s. 144—Criminal Procedure Code—Judicial proceeding—False evidence.* A Magistrate making an inquiry before issue of an order under

I L R. 16 Mad 10

29 ———— *Criminal Procedure Code, 1882), s 191—Power of Court to go outside record* A Magistrate, in deciding whether to sanction under Criminal Procedure Code, s. 195, a prosecution for giving false evidence, has power to hold an inquiry and record other evidence besides that in the case before him, in the course of which the offence is supposed to have been committed. QUEEN-EMPRESS *v.* MOTHA

I. L. R 20 Mad. 339

30 ———— *Criminal Procedure Code, 1882, s 195—"Court to which appeals ordinarily lie"—Collector—District Judge.* For the purpose of granting or revoking a sanction to prosecute refused or granted under s 195 of the Code of Criminal Procedure, an Assistant Collector of the first class is subordinate to the District Judge. *Hari Prasad v Debi Dial, I. L R. 10 All. 582,* followed *Queen-Empress v Ajudhia Prasad, Weekly Notes. All (1895), 121,* considered SHANKAR DIAL *v.* VENABLES I L R 19 All 121

31. ———— *Criminal Procedure Code, 1882, s. 195—Sanction for prosecution*

false complaint —*Held,* that the sanction was bad in law as it was given without a judicial investigation of the complaint. MUKUNDA BEHARI *v.* BHIKARI CHARAN MAHANTI . 1 C W. N 452

32 ———— *Power of Court to grant sanction with regard to case pending in another Court—Power of Court to dispose of case pending on the file of another Magistrate without withdrawing it. Held,* that the Deputy Commissioner had no power to pass an order of dismissal under s. 203, Criminal Procedure Code, in a case which he had transferred to the First Extra Assistant Commissioner, and which was at the time pending in the Court of the latter, nor to grant sanction under the circumstances. KUTAB ALI *v.* EMPRESS . . . 3 C. W. N. 490

33 ———— *Penal Code (Act XLV of 1860), s 182—False information with intent to cause public servant to use his lawful power to the injury of another person—Criminal Procedure Code (Act V of 1898), ss. 195, 476—Judicial proceeding.* A Deputy Commissioner, upon receiving a

was one of the persons who made the petition originally to the Deputy Commissioner, and convicted him under s 182, Penal Code. *Held,* that the Sub-Divisional Officer had no jurisdiction to institute the proceedings or to grant sanction, inasmuch as the complaint which led to this trial was not made to him, but was made to the Deputy Commissioner without whose previous sanction or complaint no trial under s. 182, Penal Code, could be held. That s 476, Criminal Procedure Code, did not apply to the proceedings, as they were not judicial proceedings ASMUTULLA *v.* EMPRESS . . . . 4 C. W. N. 366

34 ———— What Court—*Code of Criminal Procedure (V of 1895), s. 195 (b)* The Court which tries the case on its merits, and not the Court before which proceedings were instituted and

6 C. W N. 35

35. ———— *Criminal Procedure Code (Act V of 1898), ss. 195 (7), 407 (2)—Court to which appeals ordinarily lie—Refusal to accord*

36. ———— Registrar of Small Cause

GOVERDHANDAS MEGHJI (1902)

I L. R. 27 Bom. 130

37 ———— *Registrar of the Small Cause Court—Judge—Validity of sanction—Power of the High Court on reference by Presidency Magistrate—Criminal Procedure Code (Act V of 1898), ss. 195 (1) cl (b); 432, 433 (1)—Fraudulent*

SANCTION FOR PROSECUTION—*contd*

6. POWER TO GRANT SANCTION—*concld.*

High Court deals only with the particular points of law stated for its opinion, but not with the facts of the case nor any other objection to the validity of the proceedings referred. The offence in s 120 of the Penal Code is committed, when the decree is

38 ——— **Commissioner's power to grant sanction for the prosecution of a witness examined by him**—*Criminal Procedure Code (Act V of 1898), s 195, subs-s (1), cl (b), s 503—Commission to examine witness—" Court"* During the pendency of a Sessions case a witness was examined on commission under s 503, Criminal Pro-

the proper authority to grant sanction for the prosecution of the witness was the Sessions Court and not the Deputy Magistrate, who acted only as Commissioner. Although a Commissioner for the examination of a witness under s 503, Criminal Procedure Code, may be a Court within the meaning of that section for the purpose of issuing process against the witness and for recording his evidence, still it is not a "Court" within the meaning of s 195, sub-s (1), cl (*b*) The word "Court" in s 195, sub-s (1), cl. (*b*), Criminal Procedure Code, must mean the Court whose duty it is to consider evidence and to decide whether it is true or false. SAADUT ALI KHAN *v* EMPEROR (1907)

11 C. W. N. 909

7. DISCRETION IN GRANTING SANCTION

1. ——— **Exercise of discretion**—*Criminal Procedure Code, 1861, s 169* The discretion vested in a Civil Court under s. 169, Code of Criminal Procedure, of sanctioning a criminal charge of perjury was one that should be most carefully exercised. QUEEN *v.* POOSA RAM

6 W. R. Cr. 11

SANCTION FOR PROSECUTION—*contd.*

7. DISCRETION IN GRANTING SANCTION—*contd.*

2. ——— *Case settled without evidence being gone into—Criminal Procedure Code, 1872, s 468* Per GARTH, C.J —Where

X of 1872, was guilty of great impropriety and indiscretion in so doing, inasmuch as it could have had no opportunity of judging of the *bonâ fides* of the claim or defence *In the matter of the petition of* KASI CHUNDER MAZUMDAR. JUGGUT CHUNDER MOZUMDAR *v* KASI CHUNDER MOZUMDAR

I. L. R. 6 Calc. 440

S C KAZI CHUNDRA MOZOOMDAR *v.* JUGGUT CHUNDRA MOZOOMDAR . . **7 C L R. 330**

3 ——— *Proof before Court of commission of offence—Criminal Procedure Code, 1882, s 195.* Before granting a sanction to prosecute under s 195 of the Code of Criminal Procedure, a Court is bound to satisfy itself that an offence has been committed; but it is not bound to hold any inquiry as to all the persons who may be implicated in such offence *In the matter of the petition of* GOVINDANNAYAR . **I. L R 7 Mad 224**

4 ——— *Proof before Court of commission of offence—Criminal Procedure Code, 1882, s 195—False charge—Penal Code, s 211—Preliminary inquiry* A prosecution of a charge under s 211 of the Penal Code should not be granted under s 195 of the Criminal Procedure Code as a matter of course, but only when the complainant can satisfy the Court that the interests of

I L. R. 6 All. 114

5. ——— *Criminal Procedure Code, s. 195—Penal Code (Act XLV of 1860) ss. 193, 463.* In a case in which the Court of first

SANCTION FOR PROSECUTION—*contd.*

7. DISCRETION IN GRANTING SANCTION—*contd*

sanctioning a prosecution explained. RAM PROSAD ROY v. SOOBA ROY . . 1 C. W. N. 400

6 ———— *Penal Code (Act XLV of 1860), s 211—Discharge of an accused person—Intentionally bringing a false charge.* Where a Deputy Magistrate refused to grant sanction to prosecute the complainant for bringing a false charge on an application being made to him by the accused persons four months after the date of their discharge, but on an application being made to the Sessions Judge for the purpose, the latter, without giving any notice to the persons against whom the sanction was asked for, made an order sanctioning their prosecution under s. 211 of the Penal Code —

RAM NATH CHAMAR v. RAM SARAN LALL 1 C W N 529

7 ———— *Criminal Procedure Code (Act X of 1882), s 195—Sanction to prosecute for making false affidavit—Application by person not a party to the suit through enmity—Proper grounds of sanction—Stage of proceedings when sanction to be granted.* No Court should en-

duals It is desirable in most cases that the Court should conclude and have all the facts before it before giving sanction, and that it should not do so at an early stage of the proceedings Where an application for sanction, unsigned and unverified, was filed before a Munsif, purporting to be on behalf of the defendant in a civil suit, who deposed that he was not aware of the application or its contents and was not desirous of prosecuting, and the Munsif found that it was filed by one *R* who was not a party

sanction was improperly granted by the Judge, and must be revoked *In the matter of the petition of* CHANDRA KANT GHOSE . . 3 C W. N 3

8 ———— *Criminal Procedure Code, 1872, s 468—Discretion of High Court to grant sanction after refusal by Small Cause Court* In a case in which the High Court was asked under s. 468, Code of Criminal Procedure, to sanction a prosecution for giving false evidence of a plaintiff in a suit before a Small Cause Court, which Court had refused such leave to the defendant, it was *held*

9 ———— *Criminal Procedure Code, 1872, s. 468—Grounds for sanction—Record* On an application for sanction to prosecute under s. 468 of the Code of Criminal Procedure, 1872, it was not competent to the Court to go beyond the record in determining whether or not sanction should be granted when the record itself discloses no foundation for the charges. *In re Kasi Chunder Mozumdar, I. L R. 6 Calc. 440,* approved. SANGILI VIRA PANDIA CHINNATAMBIAR v. QUEEN. ZAMINDAR OF SIVAGIRI v. QUEEN I L R. 6 Mad 29

10 ———— *Criminal Procedure Code, ss. 195, 435, 478—Forged documents filed in Court—Prosecution ordered by Court as to documents not on record—Power of High Court in*

Munsif; that the District Munsif was not compe- ... Siva- ... that ... aside.

I L R. 15 Mad 224

11. ———— *Criminal Procedure Code, 1882, ss 202, 203, 476—Penal Code, s. 211—Complaint dismissed without preliminary inquiry into the truth of complaint.* A Magistrate

opportunity of showing the truth or *bonâ fides* of the complaint. QUEEN v. YENDAVA CHANDRAMMA I. L. R. 7 Mad. 189

SANCTION FOR PROSECUTION—*contd.*

7. DISCRETION IN GRANTING SANCTION—*contd*

12 ———— *Forgery—Evidence of charge, necessity for* Sanction to a prosecution of a witness or of a party to a suit, for the forgery of a document put forward in course of the trial of that suit, should not be given, without all

Where a document was not put in evidence or dealt with as evidence, but merely had a place on the Judge's file, sanction was necessary SEETARAM SAHOO v SHEO GOLAM SAHOO . 19 W R 183

13 ———— Forgery—*Criminal Proce-*

cially considered But where there are no *prima facie* good grounds for instituting criminal proceedings, such sanction should not be granted GURU CHARAN SHAHA v GIRIJA SUNDARI DASSI (1902) . . I L R 29 Calc 887 s c 7 C W. N 112

14. ———— Reasonable probability of conviction—*Criminal Procedure Code* (*Act V of 1898*), *s 195—Petition to revoke sanction* A person whose prosecution had been sanctioned by

15 ———— Sanction by successor in office.—*Criminal Procedure Code* (*Act V of 1898*), *s 195—Sanction to prosecute—Delay, ground for refusal* Application for sanction to prosecute ought to be made promptly or the delay should be satisfactorily accounted for *Balwant Singh* v. *Umed Singh, I. L. R 18 All 203,* followed Where there was a delay for nearly one year in applying for sanction, and the delay was not

SANCTION FOR PROSECUTION—*contd.*

7. DISCRETION IN GRANTING SANCTION—*concld*

11 C W N 119

16. ———— Perjury—*Discretion of Magistrate in according sanction—Improper exercise—Criminal Procedure Code* (*Act V of 1898*), *s 195—Indian Penal Code* (*Act XLV of 1860*), *s. 193.* The primary consideration in a case of perjury under s 193 Indian Penal Code, is that the false

finding by the Magistrate who granted the sanction that the false statement was intentionally made and there did not appear any evidence in the case of any such intention —*Held* that the sanction was bad in law Where the petitioner who had been convicted and sentenced to imprisonment in a criminal case brought against him by certain Sonthals 17 years ago, having been asked in cross examination whether he was ever convicted and sentenced to imprisonment in a criminal case brought against him by some Sonthals, denied having been so convicted and sentenced, and the trying Magistrate on being

ing whether the false statement in any way affected his credibility and whether it was not possible for him to forget the circumstances of his previous conviction, and whether the question was at all relevant AZIBULLA SARCAR v UDOY SONTHAL 1908) . . . . 13 C. W N 422

8 REVOCATION OF SANCTION

1. ———— Extent of power of revocation—*Criminal Procedure Code* (*Act V of 1898*), *s 195* The power of revoking given under s. 195 (*b*) is only in respect of sanctions, and not of complaints. QUEEN-EMPRESS v ANKANNA I L R 23 Mad. 205

2 ———— *Power to revoke sanction—Distinction between a sanction granted to*

SANCTION FOR PROSECUTION—*contd.*

8. REVOCATION OF SANCTION—*contd.*

case to the private prosecution, but it has no power in the latter case to set aside a complaint duly made by a subordinate Court *Ishri Prosad* v. *Sham Lal, I. L R. 7 All. 871 ; Queen* v. *Baijoo Lall, I L. R 1 Calc. 450 ;* and *Gyan Chunder Roy* v. *Protab Chunder Dass, I. L. R 7 Calc 208,* referred to. QUEEN-EMPRESS *v.* RACHAPPA

I. L. R. 13 Bom. 109

3. ——— *Criminal Procedure Code, 1882, ss. 195, 476—High Court, jurisdiction of.* The High Court has no power on appeal to set aside a complaint duly made by a subordinate Court under s 476 of the Code of Criminal Procedure QUEEN-EMPRESS *v* NARAKKA

I L R. 13 Mad. 144

But *see* KHEPU NATH SIKDAR *v* GRISH CHUNDER MOOKERJEE . . I L R 16 Calc. 730

and *In the matter of the petition of* MATHURA DAS

I L R. 16 All 80

where the High Courts of Calcutta and Allahabad respectively, have *held* that the High Court has power to set aside such an order on revision

4 ——— *Criminal Procedure Code, 1882, s 195—Revocation of sanction granted in respect of an offence committed in the course of a civil suit of over R5,000 in value—Valuation of suit* Where sanction to prosecute is granted in

revocation of the order granting sanction will lie GANGA DEI *v* SHER SINGH . I L R. 17 All 51

5 ——— *Criminal Procedure Code (Act X of 1882), ss. 195, 369—Sessions Judge's power to review his order in proceedings taken to revoke sanction* A Sessions Judge, having once refused to revoke a sanction granted by a subordinate Court under s 194 of the Criminal Procedure Code (Act X of 1882) has no jurisdiction afterwards to review his order and set aside the

reviewed or revised by him. QUEEN-EMPRESS *v.* GANESH RAMKRISHNA . I L R 23 Bom. 50

6 ——— **Chief Judge of Small Cause Court**—*Chief Judge can revoke sanction, as a public officer—Jurisdiction of Small Cause Court to*

Court composed of one or more Judges *In the matter of* GOVERDHANDAS MEGHJI (1902)

I L R. 27 Bom 130

SANCTION FOR PROSECUTION—*contd.*

8. REVOCATION OF SANCTION—*contd.*

7 ——— Commissioner of Bhagal

Court of the Deputy Commissioner of the Sonthal Parganas is to be deemed to be subordinate to the Court of the Commissioner of Bhagalpur. Accord-

should be made to the Commissioner of Bhagalpur, and not to the High Court. MUNNA LAL CHOWDHRY *v* PADMAN MISSER (1903)

I. L R 30 Calc. 916

8. ——— **Joint Magistrate**—*Appeal—Revocation of sanction by Joint Magistrate specially authorised to hear appeals, legality of—Jurisdiction—Subordinate Court—Criminal Procedure Code (Act V of 1898), ss. 195 and 407.* Where a Joint Magistrate, who had been authorised by the District Magistrate, to hear appeals under s 407, cl. (2), of the Criminal Procedure Code, on appeal revoked a sanction to prosecute granted under s 195 of the Code by an Assistant Magistrate exercising second class powers.—*Held,* that the existence of the special power which was conferred on him by the District

(1902) . . . I. L R 30 Calc. 394

s c 7 C. W N. 114

9 ——— **Indefinite sanction**—*Sanction to prosecute for bringing a false charge—Criminal Procedure Code (Act V of 1898), s 195—Sanction, general and indefinite.* On information given by the petitioner against certain persons, accusing them of some offences under the Penal

SANCTION FOR PROSECUTION—*contd*

8. REVOCATION OF SANCTION—*contd*

judicial evidence before him, and had also held the necessary inquiry before granting sanction, the necessary conditions had been fulfilled, and it was [illegible]

[illegible]

fying the according of sanction Unless there is sufficient *primâ facie* evidence and a reasonable [illegible]

11 ——— Requisites of a valid sanction—*Criminal Procedure Code (Act V of 1898), s. 195, cls. (4) and (6)—Sanction for prosecution by Munsif, affirmed by District Judge—High Court's power to interfere—Questions of guilt to be gone into* Where sanction to prosecute a person given under s 195, Code of Criminal Procedure, was couched in such general terms that it was impossible to say exactly what offences were imputed to him and in connection with what deeds he was [illegible]

[illegible]

pliance with the law, if the necessary elements have to be gathered from the Court's judgment by implication No sanction should be granted unless the Court has made up its mind that the accused has committed the offences for which he is to be prosecuted. That question ought not to be left over for consideration at the trial. Where sanction to prosecute given by a Munsif was confirmed on ap- [illegible]

12.——— Sanction for prosecution pending appeal—*Appeal, pendency of—Prejudice to appellant—Doubtful prosecution—Criminal Procedure Code (Act V of 1898), s 195—Practice.* Where the prosecution of a person for giving false evidence, forgery, and using as genuine a forged document in a suit, pending an appeal [illegible]

SANCTION FOR PROSECUTION—*contd.*

8 REVOCATION OF SANCTION—*concld.*

[illegible]

13 ——— Revocation of sanction by Appellate Court— *Criminal Procedure Code, s. 195 (6)* The revocation by the Appellate Court of a sanction given by the Court of first instance, is a refusal of sanction within the meaning of sub-s (6), and an appeal lies therefrom to the High Court as well as in cases where the sanction refused by the Court of first instance is granted by the Appellate Court *Palaniappa Chetti v Annamalai Chetti, I L R 27 Mad 223*, approved.

[illegible]

9 EXPIRY OF SANCTION

1 ——— *Prosecution* commenced more than six months after granting of sanction, the period intervening being close holidays—*Penal Code, ss 193 and 471—Criminal Procedure Code, 1882, ss 195 and 537—Irregularity in criminal proceedings—Magistrate, jurisdiction of—General Causes Consolidation Act (I of 1887)* Sanction to prosecute *R* for offences [illegible]

provided by s. 195 during which a sanction may remain in force can be extended by reason of the period expiring during Court holidays, the proceedings of the Magistrate were without jurisdiction, and the commitment must be quashed. *Held*, further, that s 537 of the Code of Criminal Procedure was not intended to override the provisions of s. 195, nor can it be said that there has not been a failure of justice in the prosecution of a person after the period for which the sanction was in force has expired. RAJ CHUNDER MOZUMDAR *v.* GOUR CHUNDER MOZUMDAR . **I. L R 22 Calc. 176**

2 ——— Computation of period——*Criminal Procedure Code (Act V of 1898), s. 195—Sanction to prosecute—Computation of the period of six months—Starting point—Date of original sanction and not of appellate order.* The period of six months, during which sanction to prosecute remains in force under s. 195 (6) of the Code of Criminal Procedure, is to be computed from the date of the original order granting sanction, and not from that

SANCTION FOR PROSECUTION—*contd.*

9. EXPIRY OF SANCTION—*concld.*

of a final order of an Appellate Court declining to revoke it. *In re* MUTHUKUDAM PILLAI (1902)

I L R. 26 Mad 190

3. ——— **Extension of period**—

[illegible]

expiration of six months from the date of the order. Upon an application being made for an extension of time for the prosecution of the accused : *Held*, that good cause had been shown for the extension. KARUPPANA SERVAGARAN *v* SINNA GOUNDEN (1902)

I L R 26 Mad. 480

10 FRESH SANCTION.

1. ——— **Necessity for fresh sanction**—*Postponement of case—Expiration of limitation—Criminal Procedure Code, 1882, s. 195* It is competent for a Court which has granted sanction to a prosecution under s. 195 of the Criminal Procedure Code to give a fresh sanction, if the one previously granted has expired by efflux of time The limitation of six months mentioned in s 195 means that a Magistrate shall not take cognizance of a case under a sanction which is more than six months old, not that the whole prosecution must be completed within that period *Held*, therefore, where sanction to a prosecution had been granted under s 195, and the prosecution had been instituted, and the Magistrate, in consequence of the evidence of the complainant not being procurable, had ordered "the case to be shelved for the present," and the complainant, after the six months mentioned in s 195 had expired, applied to the Magistrate to re-open the proceedings, that it was competent for the Magistrate, having once taken cognizance of the case, and it still remaining on his file undetermined, to take up again at any moment, and proceed with the prosecution, without fresh sanction *In the matter of the petition of* GULAB SINGH. GULAB SINGH *v.* DEBI PROSAD

I. L. R. 6 All. 45

2. ——— **Power to grant fresh sanction**—*Fresh sanction granted more than six months after expiry of prior sanction—Grounds upon which such fresh sanction should not be granted—Criminal Procedure Code (Act X of 1882), s 195* Sanction was granted to prosecute a defendant for forgery and perjury alleged to have been committed by him in a civil suit which was decided against him on the 22nd August 1882 The defendant then preferred an appeal which was dismissed on the 9th August 1883 The plaintiff commenced criminal proceedings against the defendant, under the sanction, on the 23rd July 1884, but such proceedings having been commenced more than six months after the date of the sanction, the charge was

SANCTION FOR PROSECUTION—*contd.*

10. FRESH SANCTION—*concld.*

dismissed. The plaintiff then, on the 20th August 1884, applied for a fresh sanction, which was granted on the 13th April 1885 *Held*, that, assuming that the Munsif who granted the fresh sanction had power to do so, as to which the Court expressed no opinion, such fresh sanction should not have been granted unless some explanation was given for the omission to commence proceedings within six months ; and as no such explanation was given, nor any special grounds shown why a fresh sanction should be given, the Munsif did not exercise a sound discretion in granting such fresh sanction, and consequently his order was set aside. JOYDEO SINGH *v* HARIHAR PERSHAD SINGH

I. L. R. 11 Calc. 577

3. ——— **Power to re-try without fresh sanction**—*Conviction quashed for want of jurisdiction* Where sanction is given for a prosecution for perjury, and the case tried by an incompetent Court and the conviction quashed on [illegible] prisoner [illegible] order of [illegible] viction is [illegible] *of* RAMI REDDI . . . . . **I. L. R. 3 Mad. 48**

4. ——— **Fresh sanction, grant of, after expiry of six months from the date of** [illegible] 188[illegible] of s [illegible] Cod[illegible]

must be taken to mean six months from the date on which it was given in the first instance, and not from any subsequent date on which the purport of the order might have been repeated The Munsif [illegible]

sanction was such as is contemplated by s 195 of the Criminal Procedure Code. DARBARI MANDAR *v.* JAGOO LAL . . **I. L. R. 22 Calc. 573**

5. ——— **Sanction not acted upon within six months**—*Criminal Procedure Code, 1882, s. 195—Lapse of sanction* If an order under *s. 195* of the Code of Criminal Procedure lapses, not having been acted upon within six months, that does not bar the granting of fresh sanction on the same grounds if a sufficient reason for the delay be shown. *Darbari Mandar v. Jagoo Lal, I. L. R 22 Calc. 573*, not followed. *Gulab Singh v. Debi Prasad, I. L R 6 All 45*, and *Baldeo Singh v. Prasadi, All. Weekly Notes (1892) 245*, referred to. MANGAR RAM *v.* BEHARI

I. L. R. 18 All. 358

SANCTION FOR PROSECUTION—*contd.*

11. POWER TO QUESTION GRANT OF SANCTION

1. ——— **Power of Deputy Magistrate**—*Penal Code, ss. 182 and 211—Sanction granted by superior Court* A Deputy Magistrate has no power to question an order made by his superior, sanctioning a prosecution under ss 182 and 211 of the Penal Code Whether such sanction has been rightly or wrongly given is a question for the accused to raise before a competent Court EMPRESS v IRAD ALLY . **I. L. R. 4 Calc. 869**

s.c. NUSIBUNNISSA BIBEE v. ERAD ALI **4 C. L. R. 413**

2. ——— **Power of superior Court**—*Criminal Procedure Code of 1872, ss 468, 469—Finality of order as to sanction* *Held*, that the sanction referred to in ss 468 and 469 of Act X of 1872, when given by any of the Courts empowered under the Act, could not be disturbed by a superior Court *Per* TURNER, *Offg C J*, and PEARSON, OLDFIELD, and SPANKIE, *JJ*—When sanction is refused by one of the Courts, the refusal does not deprive the other Courts of the discretion given to them BARKAT-UL-LAH KHAN v. RENNIE **I. L. R. 1 All. 17**

3. ——— **Court trying the case**—*Criminal Procedure Code (Act V of 1898), s 195—Prosecution sanctioned by competent authority—Trial by another Magistrate in pursuance of sanction—Competency of Court to question propriety of sanction* Where sanction has been accorded under s. 195 of the Criminal Procedure Code by a competent Court, and a prosecution is instituted in pursuance thereof, it is not competent to the Court which is trying the case to question the propriety or legality of sanction in respect of an offence, of the

4. ——— **Superior Magistrate**—*Criminal Procedure Code (Act V of 1898), s 195—Grant of sanction to prosecute—Failure to decide that a primâ facie case has been made out—Legality of sanction* Application was made to a second class Magistrate for sanction to prosecute a person on a charge of abetment of giving false evidence in a judicial proceeding The Magistrate held an inquiry and examined three witnesses, and then refused to accord sanction. Application was then made to the Sub-Divisional Magistrate, who granted sanction In doing so, he did not hold that a *primâ facie* case had been made out, or that there was a probability of securing a conviction. He expressed the view that it was essential that the truth of the matter should be threshed out, and, for that

SANCTION FOR PROSECUTION—*contd.*

11. POWER TO QUESTION GRANT OF SANCTION—*concld.*

the second class Magistrate refusing sanction. VENKATESA AYYANGAR (1902) **I. L. R. 26 Mad. 193**

12 WANT OF SANCTION.

1. ——— **Objection to want of sanction.** *Semble* The objection to the want of sanction should be taken at the trial QUEEN v KRISTNA RAU . . . . **7 Mad. 58**

2. ——— **Jurisdiction of Court without sanction**—*Trial of offence under Criminal Procedure Code, 1872, s 468* A complaint of an offence under s 468 of the Criminal Procedure Code, 1872, unaccompanied by the requisite sanction, could not be entertained at all by the Magistrate even for the examination of the complainant. ANONYMOUS . . . . **8 Mad. Ap. 2**

3. ——— **Institution of case without sanction**—*Discretion of High Court to interfere—Trial finished without sanction* Where a charge was instituted without the necessary sanction, and the accused was tried and committed, the High Court refused to interfere, being of opinion that there was nothing to entitle the accused to the benefit of the exceptions in s 426 of the Criminal Procedure Code, 1861 KIRTI OJHA v RAJKUMAR **7 B. L. R. 29 note**

4 ——— **Trial without sanction**—*Criminal Procedure Code, 1882, s 197—Effect of subsequent sanction* Where, after a magisterial

there being no evidence that the want of sanction had occasioned a failure of justice KALLY MOHUN MOOKERJEE v EMPRESS . **13 C. L. R. 117**

6. ——— *Ground for quashing proceedings—Criminal Procedure Code, 1872, ss. 468, 469.* *Held*, by the Judge making the

invalid, and must be quashed, and the accused must be re-tried, sanction to their prosecution having been obtained. EMPRESS v. SABSUKH **I. L. R. 2 All. 533**

SANCTION FOR PROSECUTION—contd.

12. WANT OF SANCTION—*concld.*

7. ———— **Inquiry and commitment without sanction**—*Insufficient sanction—Criminal Procedure Code, 1882, ss 195, 476.* Where sanction to the prosecution of a person for the offence of using certain evidence known to be false was granted by a Court to which the Court in which such evidence was used was not subordinate, and such sanction did not specify the place in which, and the occasion on which, such offence was committed, and the Court granting the sanction did not make any preliminary inquiry, although such an inquiry was "necessary" in the sense of s. 476 of the Criminal Procedure Code :—*Held*, that, the indispensable preliminary conditions of s 195 of the Code being wanting to the prosecution, the committing Magistrate was incompetent to entertain the case, and the commitment was illegal and should be quashed EMPRESS v NAROTAM DAS . . . **I. L. R. 8 All. 98**

8. ———— **Commitment without sanction as to one prisoner**—*Ground for quashing commitment.* Where the sanction to the prosecu-

QUEEN v. RAJKISHORE ROY . **15 W. R. Cr. 55**

9. ———— **Proceedings without sanction**—*Extortion—Public servant—Criminal Procedure Code, 1861, s 167.* Where a complaint

illegal to treat the charge as a charge of extortion, and to proceed with the trial without sanction for the prosecution REG. v. PARSHRAM KESHAV **7 Bom. Cr. 61**

13. NON-COMPLIANCE WITH SANCTION.

1. ———— **Departure from terms of sanction**—*Power of Local Government—Prosecution of Judge or public servant—Criminal Procedure Code, 1861, s 167.* The Local Government, in sanctioning or directing (under s. 167 of the

SANCTION FOR PROSECUTION—concld.

13 NON-COMPLIANCE WITH SANCTION—*concld*

accused public servant, the High Court quashed the conviction of the accused, as having been without jurisdiction REG v. VINAYAK DIVAKAR **8 Bom. Cr. 32**

2. ———— **Non-prosecution under sanction**—*Criminal Procedure Code, 1872, s. 468 and s 142—Power of District Magistrate to proceed without complaint* Where sanction had been given under s. 468 of Act X of 1872 by a Deputy Magistrate to a person to prosecute another for

3. ———— **Effect on sanction of death of grantee**—*Criminal Procedure Code, s 195.* A Civil Court granted sanction under s. 195 of the Code of Criminal Procedure to the defendant in a suit to prosecute certain witnesses for perjury. The defendant died without having preferred a complaint His brother thereupon preferred a complaint, and the Magistrate dismissed it under s 253 of the Code of Criminal Procedure, on the ground that the sanction died with the defendant. The Sessions Judge held that the sanction was alive, and directed the District Magistrate to make further inquiry under s. 437. *Held*, that the Sessions Judge was right. *In re* THATHAYYA **I. L. R. 12 Mad. 47**

SAPINDAS.

See CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT, s 144 **10 C. W. N. 284**

See HINDU LAW—
ADOPTION—REQUISITES FOR ADOPTION—AUTHORITY. **I. L. R. 26 Mad. 627; 681** **I. L. R. 30 Mad. 50**

See HINDU LAW—INHERITANCE—GENERAL HEIRS—SAPINDAS.

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—GRAND-DAUGHTER. **I. L. R. 20 Bom. 173**

See HINDU LAW—INHERITANCE—SPECIAL

SAPINDAS—*concld.*

See Hindu Law—Inheritance—Special Heirs—Females—Widow.
I. L. R. 2 Bom 388
I. L. R 5 Bom. 110
L R. 7 I. A. 212
I. L. R. 15 Bom. 234
I. L. R. 21 Bom. 739
I. L. R 18 Mad 168

See Hindu Law—Inheritance—Special Heirs—Males—Brother's Daughter's Son . . 1 W. R. 43
I L R. 9 Calc. 563

See Hindu Law—Inheritance—Special Heirs—Males—Cousin.
I. L. R. 17 Calc. 518
I. L. R 22 Calc. 339
I L. R. 17 All. 523

See Hindu Law—Inheritance—Special Heirs—Males—Half-Blood Relatives . I L. R. 19 All. 215

See Hindu Law—Stridhan—Description and Devolution of Stridhan
I L. R. 12 Bom. 505
I. L R. 17 Bom 114
I L. R. 30 Bom. 431

———— meaning of—

See Succession to Stridhan (Mitakshara) . I. L. R. 30 Bom. 431
10 C. W. N 802
L R. 33 I. A. 176

SARANJAM.

See Dekkhan Agriculturists' Relief Act, 1879, s 44
I. L R 30 Bom 101

See Grant—Construction of Grants
I. L. R. 6 Bom. 598
I L. R. 15 Bom. 247

See Hindu Law—Partition—Property liable or not to Partition.
I. L R. 15 Bom. 247; 519

———— right to possession and management of—

See Limitation Act, 1877, Sch II, Art. 144—Immoveable Property.
I. L. R 15 Bom 247

See Pensions Act s 4
I L. R. 16 Bom. 598

See Service Tenure.
I. L R. 17 Bom. 431
L. R. 20 I. A. 50

SAUDAYIK.

See Hindu Law—Stridhan
I. L. R. 30 Bom. 239

SAYER COMPENSATION.

See Munsif, jurisdiction of.
I. L. R. 19 Calc. 8

SCHEDULE.

———— verification of—

See Insolvency Act, s 6
11 B L. R. Ap. 34

SCHEDULED DISTRICTS ACT (XIV OF 1874)

See Appeal in Criminal Cases—Acts—Act XI of 1846
I L. R. 15 Bom. 505

See Appeal in Criminal Cases—Acts—Act XXXVII of 1855
I. L R. 12 Calc. 536

See Criminal Proceedings
I. L. R 13 Mad. 353

See Guardians and Wards Act, 1890, s 1 . . I. L R. 18 Mad. 227

See High Court, jurisdiction of—Bombay—Criminal
I. L. R 25 Bom. 667

See Local Government.
I. L. R. 10 Bom. 274

———— notification under—

See High Court, jurisdiction of—Madras—Criminal.
I. L. R. 14 Mad 121

———— ss. 3, 5 and 6—

See Legal Practitioners Act, ss 6 and 8 . I. L R. 24 All 348

———— s 5—

See Execution of Decree—Transfer of Decree for Execution and Powers of Court, etc
I. L R. 15 Calc. 365

———— s. 6—

See High Court, jurisdiction of—Calcutta—Criminal.
I. L. R. 26 Calc. 874

———— s. 6, rules under—"*Hearing the appeal," meaning of—Rule 8, power of the High Court under.* Rule 6 of the rules framed under [illegible]

[illegible] the officer hearing the appeal shall see no reason to alter the decision appealed from, he may dismiss the same Where the Government Agent, to whom the appeal was preferred, sent for and perused the appeal petition and dismissed the same endorsing the order of dismissal on the petition, without fixing a day and hearing the appellant. [illegible]

[illegible] Muri Seshachelam (1905)
I. L. R. 28 Mad. 404

SCIENTER.

See Dogs, injury by, without provocation . . I. L. R. 36 Calc. 1021

SCIRE FACIAS, WRIT OF.

See Limitation Act, 1877, Sch II, Art. 180 . . I. L. R. 36 Calc. 543

——— Suit upon writ—*Non-joinder of plaintiff—Parties* Where a scire facias was issued

Golam Ali . . . 1 Ind. Jur. N. S. 249

SEA.

See Jurisdiction of Criminal Court—General Jurisdiction—Offence committed on the High Seas

SEA CUSTOMS ACT (VIII OF 1878).

——— ss. 18, 1—

See Detention of Goods. I. L. R. 34 Calc. 511

——— s. 19—

See Bombay Abkari Act (V of 1878), ss 3 (*10*), 9, 43. I. L R. 33 Bom. 380

——— s. 128—*Trans-shipment—Permit—Lien on goods mentioned in permit* A trans-shipment permit issued under s 128 of the Sea Customs Act (VIII of 1878) does not, like a bill of lading, represent the goods mentioned in it, or give any lien upon or control over them. Premji Trikamdas *v.* Madhowji Munji . I. L. R. 4 Bom. 447

——— s. 197 and s. 8—*Duty and liability of Customs Collector—Negligence of Superintendent of Customs* By the negligence of the Superintendent of Sea Customs at the port of C in removing goods to a sea custom warehouse
them
roof,
were
Collector of the district

I. L. R. 7 Mad. 42

SEAL.

See Registration Act, s 60 6 C. W. N. 528

SEAL WARRANT.

See Limitation Act, 1877, Sch II, Art. 179—Step in Aid of Execution—Miscellaneous acts of Decree-holder . I. L. R. 29 Calc. 580

SEAMAN, DISCHARGE OF.

See Merchant Shipping Act, 1854, ss 43, 207 . . 1 Ind. Jur N. S. 371
6 Bom. O. C. 42

SEARCH BY POLICE.

See Criminal Procedure Code, s. 103.

See Malicious Search. I. L. R. 27 Bom. 590

See Opium Act, s. 9. I. L R. 24 Calc. 691

See Private Defence, Right of. I. L. R. 19 Mad. 346

See Public Officer. I. L. R. 29 All 567

——— house search—

See Tort . . 13 C. W. N. 458

SEARCH FOR ARMS.

See Trespass . I. L. R. 36 Calc. 433

SEARCH-WARRANT.

See Arms Act, 1878, s. 19. I. L R. 15 All 129

See Calcutta Police Act, s. 5 I. L. R. 20 Calc. 670

See Escape from Custody I. L. R. 19 Mad. 310

See Stamp Act (II of 1899), s 33 I L R. 25 Mad. 525

See Trespass . I. L R. 36 Calc. 433

See Warrant . 8 W. R. Cr. 78
I. L. R. 13 Mad. 14
I. L. R. 22 Bom. 949

——— disposal of property—

See Criminal Proceedings I. L R. 26 Bom. 552

——— *Information—Absence of pending proceedings at the time of issue—Validation of illegal warrant—Re-issue of search warrant on judicial cognizance taken—Taking cognizance on information duly recorded—Nature of information—Sufficiency of information to justify initiation of proceedings—Bonâ fides of proceedings—Transfer—Criminal Procedure Code (Act V of 1898), ss. 96,*

on it, when he issued such warrant. If, however,

SEARCH-WARRANT—*concld.*

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s. 537 of the Code. S. 537 does not give legal effect to a defective warrant, but only validates a finding, sentence or order, defective in procedure The information, on which a Magistrate takes cognizance under s 190 (*1*) (*c*), must be recorded. *Thakur Pershad Singh* v. *Emperor, 10 C W N.* *775*, followed. It is nowhere laid down how much of such information the accused is entitled to have recorded, but, though all the allegations necessary to prove the offence have not been made out, if

so, if the Magistrate was only acting mistakenly Case transferred on the facts RASH BEHARY LAL MANDAL *v* EMPEROR (1908)
I. L. R. 35 Calc. 1076

SEAWORTHINESS.

See BILL OF LADING 8 W. R. 35
I. L. R 13 Bom. 571
I. L R 19 Bom. 639

See CONTRACT—CONDITIONS PRECEDENT
2 B. L R. O. C 127

See INSURANCE—MARINE INSURANCE
5 Moo I. A 361
Cor 5 : 2 Hyde 107

SEBAIT.

See SHEBAIT.

SECOND ADOPTION, VALIDITY OF.

See HINDU LAW—ADOPTION
11 C. W. N. 12

SECOND APPEAL.

See SPECIAL OR SECOND APPEAL.

See APPEAL.

See BENGAL TENANCY ACT, s 153
8 C. W. N. 472

See BURMA COURTS ACT, 1875, s. 27.
I. L. R. 10 Calc. 946

See SMALL CAUSE COURT, MOFUSSIL.

SECOND-CLASS MAGISTRATE.

See WITNESS . I. L. R. 35 Calc. 1093

SECOND MORTGAGEE.

——— lien of—

See MORTGAGE . 11 C. W. N. 284

SECONDARY EVIDENCE.

See EVIDENCE—SECONDARY EVIDENCE.

See EVIDENCE . I. L. R. 34 Calc. 293

See PAROL EVIDENCE.
I. L. R. 30 Mad. 386

SECRET TRUSTS

See WILL . I. L. R. 32 Mad. 443

SECRETARY OF CHARITABLE INSTITUTION.

——— suit by, against subscriber—

See RIGHT OF SUIT—SUBSCRIPTION.
10 C L. R. 197

SECRETARY OF MUNICIPAL BOARD.

——— order of—

See STAMP ACT, 1879, SCH I, ART. 22
I. L. R. 19 All. 293

SECRETARY OF STATE FOR INDIA.

See BOMBAY REVENUE JURISDICTION ACT
I. L. R. 28 Bom. 435

See PARTIES—PARTIES TO SUITS—GOVERNMENT

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—PARTIES.
7 C. W. N. 377

——— liability of—

See ACT OF STATE.

See MASTER AND SERVANT
I. L. R 36 Calc. 647

——— liability of, for wrongful attachment—

See MESNE PROFITS—ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS . I. L. R 28 Calc. 540

——— power of—

See CESSION OF BRITISH TERRITORY IN INDIA . . . 10 Bom 37
I. L. R. 1 Bom. 367
L. R. 3 I. A. 102

——— privilege of, as to debts—

See CROWN DEBTS.
I. L. R. 12 Calc. 445
5 Bom. O. C. 23

——— suit against—

See CIVIL PROCEDURE CODE, 1882, s. 424.
I. L. R. 24 Mad. 279
I. L. R. 25 All. 187

See COSTS—TAXATION OF COSTS.
I. L. R. 15 Mad. 405
I. L. R. 17 Mad. 162

SCIENTER.

See DOGS, INJURY BY, WITHOUT PROVOCATION . . I. L. R. 36 Calc. 1021

SCIRE FACIAS, WRIT OF.

See LIMITATION ACT, 1877, SCH. II, ART. 180 . . I. L. R. 36 Calc. 543

———— **Suit upon writ**—*Non-joinder of plaintiff—Parties.* Where a *scire facias* was issued under the old Supreme Court procedure at the suit of two, and one of them only sued upon it:—*Held*, [illegible]

SEA.

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION—OFFENCE COMMITTED ON THE HIGH SEAS.

SEA CUSTOMS ACT (VIII OF 1878).

———— **ss. 18, 1—**

See DETENTION OF GOODS. I. L. R. 34 Calc. 511

———— **s. 19—**

See BOMBAY ABKARI ACT (V OF 1878), ss 3 (*10*), 9, 43. I. L. R. 33 Bom. 380

———— **s. 128**—*Trans-shipment—Permit—Lien on goods mentioned in permit* A trans-shipment permit issued under s 128 of the Sea Customs Act (VIII of 1878) does not, like a bill of lading, represent the goods mentioned in it, or give any lien upon or control over them. PREMJI TRIKAMDAS *v* MADHOWJI MUNJI . I. L. R. 4 Bom. 447

———— **s. 197 and s. 8**—*Duty and liability of Customs Collector—Negligence of Superintendent of Customs* By the negligence of the Superintendent of Sea Customs at the port of C in removing goods [illegible] them [illegible] roof, [illegible] were [illegible] Collector of the district, who, under s 8 of the Sea [illegible]

acts of the Superintendent of Sea Customs. COLLECTOR OF GODAVARI *v.* ISUF KASIM NANA I. L. R. 7 Mad. 42

SEAL.

See REGISTRATION ACT, s. 60. 6 C. W. N. 528

SEAL WARRANT.

See LIMITATION ACT, 1877, SCH. II, [illegible] 179—STEP IN AID OF EXECU[illegible] MISCELLANEOUS ACTS OF [illegible] HOLDER . I. L. R. 29 C[illegible]

SEAMAN, DISCHARGE OF.

See MERCHANT SHIPPING [illegible] 207 . . 1 Ind [illegible] 6 B[illegible]

SEARCH BY POLICE.

See CRIMINAL P[illegible] CO[illegible]

See MALICIOUS SEARCH I. L. R. 27 Bom. 500

See OPIUM ACT, s. 9 I. L. R. 24 Calc. 601

See PRIVATE DEFENCE, RIGHT OF I. L. R. 19 Mad. 340

See PUBLIC OFFICER I. L. R. 19 All. 567

———— **house search—**

See TORT . . 13 C. W. N. 458

SEARCH FOR ARMS.

See TRESPASS . I. L. R. 36 Calc. 433

SEARCH-WARRANT.

See ARMS ACT, 1878, s 19 I. L. R. 15 All. 129

See CALCUTTA POLICE ACT, s 5. I. L. R. 20 Calc. 670

See ESCAPE FROM CUSTODY. I. L. R. 19 Mad. 310

See STAMP ACT (II OF 1899), s 33 I. L. R. 25 Mad. 525

See TRESPASS . I. L. R. 36 Calc. 433

See WARRANT . 8 W. R. Cr. 78
I. L. R. 13 Mad. 14
I. L. R. 22 Bom. 949

———— **disposal of property—**

See CRIMINAL PROCEEDINGS I. L. R. 26 Bom. 552

———— *Information—Absence of pending proceedings at the time of issue—Validation of illegal warrant—Re-issue of search warrant on judicial cognizance taken—Taking cognizance on information duly recorded—Nature of information—Sufficiency of information to justify initiation of* [illegible]

SEARCH-WARRANT—*concld.*

he subsequently takes cognizance under s. 190 (*1*) (c) and then re-issue the warrant, it is legal. *In re Harilal Buch, I. L. R 22 Bom 949*, followed. A warrant illegally issued under s. 96 cannot be treated as valid under s 98 by the operation of s. 537 of the Code. S 537 does not give legal effect to a defective warrant, but only validates a finding, sentence or order, defective in procedure. The information, on which a Magistrate takes cognizance under s 190 (*1*) (*c*), must be recorded *Thakur Pershad Singh v Emperor, 10 C. W. N. 775*, followed. It is nowhere laid down how much of such information the accused is entitled to have recorded, but, though all the allegations necessary to prove the offence have not been made out, if [illegible]

so, if the Magistrate was only acting mistakenly Case transferred on the facts RASH BEHARY LAL MANDAL v EMPEROR (1908)
I. L. R. 35 Calc. 1076

SEAWORTHINESS.

See BILL OF LADING 8 W. R. 35
I. L. R 13 Bom. 571
I. L R 19 Bom. 639

See CONTRACT—CONDITIONS PRECEDENT
2 B. L. R. O. C. 127

See INSURANCE—MARINE INSURANCE
5 Moo. I. A. 361
Cor. 5 ; 2 Hyde 107

SEBAIT.

See SHEBAIT.

SECOND ADOPTION, VALIDITY OF.

See HINDU LAW—ADOPTION.
11 C. W. N. 12

SECOND APPEAL.

See SPECIAL OR SECOND APPEAL.

See APPEAL.

See BENGAL TENANCY ACT, s 153
8 C. W. N. 473

See BURMA COURTS ACT, 1875, s 27.
I. L. R. 10 Calc. 946

See SMALL CAUSE COURT, MOFUSSIL.

SECOND-CLASS MAGISTRATE.

See WITNESS . I. L. R. 35 Calc. 1093

SECOND MORTGAGEE.

——— lien of—

See MORTGAGE . 11 C. W. N. 284

SECONDARY EVIDENCE.

See EVIDENCE—SECONDARY EVIDENCE.

See EVIDENCE . I. L. R. 34 Calc. 293

See PAROL EVIDENCE.
I. L. R. 30 Mad. 386

SECRET TRUSTS.

See WILL . I. L. R. 32 Mad. 443

SECRETARY OF CHARITABLE INSTITUTION.

——— suit by, against subscriber—

See RIGHT OF SUIT—SUBSCRIPTION.
10 C. L. R. 197

SECRETARY OF MUNICIPAL BOARD.

——— order of—

See STAMP ACT, 1879, SCH I, ART 22
I. L. R. 19 All. 293

SECRETARY OF STATE FOR INDIA.

See BOMBAY REVENUE JURISDICTION ACT
I. L. R. 28 Bom. 435

See PARTIES—PARTIES TO SUITS—GOVERNMENT

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—PARTIES.
7 C. W. N. 377

——— liability of—

See ACT OF STATE.

See MASTER AND SERVANT.
I. L. R. 36 Calc. 647

——— liability of, for wrongful attachment—

See MESNE PROFITS—ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS . I. L. R. 28 Calc. 540

——— power of—

See CESSION OF BRITISH TERRITORY IN INDIA . . . 10 Bom 37
I. L. R. 1 Bom. 367
L. R 3 I. A. 102

——— privilege of, as to debts—

See CROWN DEBTS.
I. L. R. 12 Calc. 445
5 Bom. O. C. 23

——— suit against—

See CIVIL PROCEDURE CODE, 1882, s. 424.
I. L. R. 24 Mad. 279
I. L. R. 25 All. 187

See COSTS—TAXATION OF COSTS
I. L. R. 15 Mad. 405
I. L. R. 17 Mad. 162

SECRETARY OF STATE FOR INDIA —*contd*

————suit against—*concld.*

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN.

1 Hyde 37
1 Mad. 286
I. L. R. 14 Calc. 256

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GOVERNMENT, SUITS AGAINST . **I. L. R. 17 Calc. 290**

———— **suit by, or on behalf of—**

See LIMITATION ACT, 1877, Sch. II, ART. 149 . **I. L. R. 19 Mad. 165**

1. ——— **Liability of Secretary of State for acts of public servants**—*Acts done within scope of his authority* The Secretary of State is only responsible for the acts of public servants done within the scope of his authority SETH DHUNRAJ *v* SECRETARY OF STATE FOR INDIA

1 N. W. 118 Ed. 1873, 204

2. ——— **Liability of Secretary of State for damages occasioned by negligence of Government servants**—*Negligence which would render ordinary employer liable.* The Secretary of State in Council for India is liable for the damages occasioned by the negligence of servants in the service of Government, if the negligence is such as would render an ordinary employer liable PENINSULAR AND ORIENTAL STEAM NAVIGATION CO *v.* SECRETARY OF STATE FOR INDIA

Bourke A. O. C. 166 : 5 Bom. Ap. 1

3. ——— **Suit against**—*Jurisdiction—Defamation in Government Resolution—Secretary of State, liability of, to be sued—Governor and Members of Council, liability of—Act of State—Government servants, powers of Government over—Liability to be dismissed or censured—Discovery—Privilege—Privileged document—Official communication absolutely privileged—Notice of suit, what is sufficient—Civil Procedure Code (Act XIV of 1882), ss. 416 and 424* The plaintiff, who was Huzur Deputy Collector of Poona, and as such exercised magisterial and revenue functions, sued the Secretary of State for India in Council for defamation The alleged defamation was contained in a Resolution of the Bombay Government, dated the 6th November, 1890, which after reciting the substance of certain papers which had been laid before the Government, stated that, after careful consideration of the facts disclosed in those papers and of the explanation tendered by the plaintiff, the Governor in [illegible]

in respect of the said misconduct. The defendant contended, *inter alia*, that the suit was not maintainable. *Held*, that the Court had no jurisdiction, and that the suit was not maintainable, on the following grounds (i) The Governor of Bombay and Members of Council are by Statute exempt from the jurisdiction of the High Court, so far as acts done in their public capacity are concerned: that being so, no action lies against the Secretary of State for India in Council in respect of such acts of the Governor and Members of Council; (ii) The Secretary of State can only be sued in respect of those matters for which the East India Company could have been sued, *viz.*, matters for which private individuals or trading corporations could have been sued, or in regard to those matters for which there is express statutory provision No [illegible]

was a public officer, whose employment was one [illegible]

communication, was absolutely privileged It [illegible]

[illegible] It was contended for [illegible]

Held, that the notice was sufficient. Such a notice is sufficient if it substantially fulfils its object in informing the parties concerned generally of the nature of the suit intended to be filed. JEHANGIR M CURSETJI *v* SECRETARY OF STATE FOR INDIA (1902) . . . **I. L. R. 27 Bom 189**

4. ——— *Illegal detention of property by Village officer—Detention under orders of his superiors—Liability of Village officer—* [illegible]

plaintiff for the illegal [illegible] officer of plaintiff's property, the Village officer pleaded that he had acted under the orders of a *Tahsildar*, and that the suit should have been brought against the Secretary of State, and not against the Village officer. *Held*, that the suit was maintainable against the Village officer SUBBARAYA REDDI *v.* JAGANNATHA REDDI (1902)

I. L. R. 26 Mad. 263

SECRETARY OF STATE FOR INDIA —*contd.*

5. ———— *Suit against Government on account of any act or omission of any Revenue officer—Title of suit.* The Court directed the suit to be amended by substituting for the present description of the defendant, the title "The Secretary of State for India in Council" SAKHARAM *v.* THE SECRETARY OF STATE FOR INDIA (1904) . . . . I. L. R. 28 Bom. 332

6. ———— *Suit against Government—Stat 21 & 22 Vict, c 106, ss 41, 42 and 65—Negligence of chief constable—Suit to recover damages—"Liabilities lawfully contracted and in-*

maintainable, inasmuch as the Chief Constable

made by the Bombay Government, but by an officer clothed by the Legislature with power in that behalf, the seizure of the goods was not in any sense productive of benefit to the Revenues of the Bombay Government nor was it a transaction out of which profit could be derived and there had been no ratification or adoption of the Act The term "Government of India" in s 42 of the Statute

the character of the charge, rather than to the conditions which can bring it into being, and in the later section to indicate the mode in which the

Company might have been made liable and the liability alleged must be one incurred on account of the Government of India In such a suit the plaint-

exemption from liability for the act of an agent. But it is settled law that where the duty to be performed is imposed by law and not by the will of the

SECRETARY OF STATE FOR INDIA —*concld.*

party employing the agent, the employer is not liable for the wrong done by the agent in such employment SHIVABHAJAN *v* SECRETARY OF STATE FOR INDIA (1904). I. L R. 28 Bom. 314

7 ———— Power of Government to

I. L. R. 33 Calc. 669

SECUNDERABAD, CANTONMENT OF.

See SECURITY FOR COSTS—SUITS
I L R. 21 Calc. 177

SECURITY

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s 545
I. L R. 31 Mad. 330

See CRIMINAL PROCEDURE CODE, 1898, s 106 (3) . I. L. R. 33 Calc. 33

See PROBATE AND ADMINISTRATION ACT, s. 78 . . I. L. R. 31 Calc. 688

See PRODUCTION OF PROPERTY
7 C W. N. 522

———— **for costs of respondent—**

See PRIVY COUNCIL APPEAL.
I. L R. 36 Calc. 653

———— **to appear—**

See FALSE EVIDENCE—GENERAL CASES.
5 C. W. N. 620

See RECOGNIZANCE TO APPEAR.

———— **to keep the peace—**

See RECOGNIZANCE TO KEEP PEACE.

SECURITY BOND.

See PROBATE AND ADMINISTRATION ACT, s. 78 . I. L. R. 31 Calc. [illegible]

1. ———— **Assignment of security bond**—*Assignee of security bond, rights of—Suit on security bond—Civil Procedure Code (Act XIV of 1882), s 349.* The assignee of a security bond, which was given to a District Judge under s. 349 of the Code of Civil Procedure for the production of a judgment-debtor, when called upon to appear, is entitled to [illegible]

SECURITY BOND—*concld.*

upon that bond. *Mingle Antone Kane* v. *Ramchandra Baje, I. L. R 19 Bom 694*, referred to. GOPI NATH CHOWDHRY *v.* BENODE LAL ROY CHOWDHRY (1904) . I. L. R. 31 Calc 162

2. ——— Registration—*Transfer of Property Act (IV of 1882), ss. 58, 59—S. 545 of the Civil Procedure Code, mortgaging immoveable property of above R100 in value requires registration under ss. 58, 59 of the Transfer of Property Act—Registra-*

attested by two witnesses, but was not registered The order of Court "Security accepted" was endorsed on it *Held*, that the security bond amounted to a mortgage within the meaning of s 58 of the Transfer of Property Act and not being registered was invalid under s. 59 of the Act as a mortgage and did not affect the property The bond was also compulsorily registrable under s 17 of the Indian Registration Act. The words "Security accepted" hereby showed that the Court thought the security sufficient The bond does not derive its validity from these words, and it cannot therefore be brought within s. 17, exception (i) of the Registration Act. *Tokhan Singh* v *Girwar Singh, I. L R. 32 Calc. 494*, followed NAGARURU SAMBAYYA *v* TANGATUR SUBBAYA (1908) . I. L. R. 31 Mad. 330

SECURITY FOR COSTS.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 380
I. L R. 32 Bom. 602
12 C. W. N 163

See CIVIL PROCEDURE CODE, 1882, s. 549.
I. L. R. 30 All. 143

See DIVORCE ACT (IV OF 1869)
I. L. R. 30 Calc. 631

See DIVORCE ACT, 1869, s 36
6 C. W. N. 414

See EXECUTION OF DECREE.
I. L. R. 32 Calc. 494

SECURITY FOR COSTS—*contd.*

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW, PENDING EXECUTION.
I. L. R. 16 Calc. 323

See EXECUTION OF DECREE—STAY OF EXECUTION . I. L R. 13 Bom. 241

See INSOLVENCY ACT, s. 73.
5 B. L. R. 179
15 B. L. R. Ap. 10

See LETTERS PATENT, HIGH COURTS, 1865, CL. 15 . I. L. R. 25 Mad. 654
I L R. 26 Mad. 502
I. L R. 18 Calc. 182
I. L. R. 21 Calc. 473

See PAUPER SUIT—APPEALS.
17 W. R. 68
I. L. R. 3 Mad. 66
I. L. R. 3 Bom. 241

See PRACTICE—CIVIL CASES—SECURITY FOR COSTS.

See PRIVY COUNCIL, PRACTICE OF—SUBSTITUTION OF APPELLANT.
I. L. R. 17 Calc. 693

See RES JUDICATA—CAUSES OF ACTION.
I. L. R. 26 Bom. 637

See RULES OF HIGH COURT, BOMBAY.
I. L. R. 13 Bom. 458

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT.
5 B. L. R. Ap. 23, 24
11 B. L. R. 415
14 B. L. R. 180

See SURETY—ENFORCEMENT OF SECURITY.
9 B. L. R. Ap. 17
I. L. R. 2 All. 604
I. L R. 12 Calc. 402
I. L. R. 15 Calc. 497
I. L. R. 16 Calc. 323

See TRUST . I. L R. 5 Calc. 700

1. SUITS.

1. ——— Security by plaintiff—*"Immoveable property"—Leasehold* Leasehold property is "immoveable property" within the meaning of s. 34, Act VIII of 1859 ULLMAN *v* JUSTICES OF THE PEACE FOR CALCUTTA
7 B. L. R. Ap. 60

2. ——— Suit by female—*Civil Procedure Code (Act XIV of 1882), s 380.* The Court has a discretion in exercising the powers

3 C. W. N. 753

3. ——— *Infant female plaintiff or next friend—Civil Procedure Code Act XIV of 1882), s 380—Practice.* Unless in exceptional cases, neither an infant female plaintiff

SECURITY FOR COSTS—*contd.*

1. SUITS—*contd*

nor her next friend ought to be required to give security for costs BAI POREBAI *v* DEVJI MEGHJI
I. L. R. 23 Bom. 100

4. ———— **Suit for money**—*Practice—Civil Procedure Code (Act XIV of 1882), s. 380; (Act VI of 1888), s 5.* A suit to recover certain specified articles and money alleged to have been wrongfully seized and taken possession of by the defendant, or to recover the value thereof, is a suit for money within the terms of the second paragraph of s 380 of the Civil Procedure Code, the term "suit for money" as there used being wider than a suit for debts. Circumstances under which the Court will order security for costs to be given by a female plaintiff in a suit DEGUMBARI DEVI *v* AUSHOOTOSH BANERJEE
I. L. R. 17 Calc. 610

5. ———— **Suit for amount of legacy under will**—*Civil Procedure Code, 1882, s 380—Suit in nature of administration suit—Discretion of Court—Construction of Statutes—"May"—"Shall."* The power given to the Court under s 380 of the Civil Procedure Code to order security for costs is discretionary, and one which the Court ought, or ought not, to exercise according to the circumstances of each case; and unless it is shown that the exercise of the power is necessary for the reasonable protection of the defendant, the [illegible]

[illegible] tors of a will for the amount of a legacy had, on account of the conduct of the defendants, no alter- [illegible]

[illegible]

perty within British India, to give security for the costs of the suit. A plaintiff who is entitled under a will to a beneficial interest in a part of the surplus [illegible]

6. ———— **Plaintiff in another Presidency.** The Court was held to have no power to order a plaintiff resident in another presidency to give security for costs. GAHAN *v.* OWEN
Cor. 11

7. ———— **Inhabitant of foreign territory.** When an inhabitant of foreign territory sues within British territory, it is imperative on the Court to demand security from him for the payment of all costs that may be incurred by the defendant in the suit, even though the defendant also is a resident of foreign territory. KOROONAMOYEE DEBIA *v.* OOMA CHURN DEB
12 W. R. 465

8. ———— *Civil Procedure Code (Act XIV of 1882), s 380—Cantonment of Secunderabad* For the purposes of s 380 of the Code of Civil Procedure, the British Cantonment of Secunderabad is a place out of British India. HOSSAIN ALI MIRZA *v* ABID ALI MIRZA
I. L. R. 21 Calc. 177

9. ———— *Plaintiff residing out of jurisdiction—Suit for administration.* The provisions of s 34, Act VIII of 1859, were not intended to apply to a case where the plaintiffs [illegible]

10. ———— **"Residence"**—*Civil Proce-* [illegible]

11 ———— *Civil Procedure Code (Act XIV of 1882), s. 380—Wadhwan—British India—Residence Held,* that a plaintiff, being a resident in Wadhwan in Kathiawar and possessed of immoveable property there, could not be [illegible]

12. ———— *Security where plaintiff has left the country* Where a plaintiff leaves the country before the case is decided, the proper course for the defendant is to apply to the [illegible]

13. ———— **Suit to enforce trust under a will**—*Want of personal interest.* In a suit by the representatives of a testator to enforce the due performance of charitable and religious tusts in which they are not personally interested, the plaintiffs ought to be required to give security for costs. BROJOMOHUN DOSS *v.* HUREELOLL DOSS
6 C. L. R. 58

SECURITY FOR COSTS—*contd.*

1. SUITS—*concld.*

14. ——— **Poverty**—*Speculative suit.* The mere fact that a plaintiff is a poor man, and has parted with a portion of his interest in the subject-matter of the suit for the purpose of obtaining funds to carry on the suit, is no sufficient ground to ask that security for the costs of the suit may be required of him ; it is otherwise where he is, not the real litigant, but a mere puppet in the hands of others KHAJAH ASSENOOLLAJOO *v* SOLOMON **I. L. R. 14 Calc. 533**

15. ——— **Suit for damages for breach of promise to marry**—*Practice—Civil Procedure Code (XIV of 1882), s. 380—Two plaintiffs, father and daughter.* A Parsi father and daughter (plaintiffs 1 and 2) sued for R10,000 as damages for the defendant's breach of his promise to marry the daughter (plaintiff 2). The defendant alleged that the suit was really a suit for the benefit of the father

a summons under s 380 of the Civil Procedure Code, requiring the plaintiffs to give security for costs. The Court ordered that security for costs should be given BOMANJI JAMSETJI MISTRI *v.* NUSSERWANJI RUSTOMJI MISTRI (1902) . **I. L. R. 27 Bom. 100**

2. APPEALS

1. ——— **Security by appellant**—*Power of single Judge of High Court to make order for security* A single Judge has full power to make an order for security for the costs of an appeal. MUZHUR HOSSAIN *v* DENOBUNDOO SEN **Bourke O. C. 119**

Affirmed on appeal . **Bourke A. O. C. 40**

2. ——— **Power of single Judge of High Court to make order for security.**

order, cause was shown that the Court had not jurisdiction, and that no reason for the application

Bourke O. C. 110

3. ——— **Appeal from order of Commissioner of Insolvency Court**—*Civil Procedure Code, 1859, s. 342.* S 342 of Act VIII of 1859 did not apply to appeal from the orders of a Judge sitting as a Commissioner of the Insolvent Court. *In the matter of* RAMSEBAK MISSER **5 B. L. R. 179**

4. ——— **Discretion of Judge**—*Notice to party affected—Civil Procedure Code, 1882, s. 549.* The discretion conferred on an Appellate Court by s 549, Civil Procedure Code, 1882, to demand security for costs, must be properly exercised ; and such discretion is not so exercised when the order requiring such security is made

made. SIRAJ-UL-HAQ *v.* KHADIM HUSAIN **I. L R. 5 All. 380**

5. ——— **Notice of order for security.** The issue of a preliminary notice to show cause why an appellant should not furnish security for the costs of appeal is not equivalent to a demand, and, if the order to furnish security is made in the absence of the appellant, the order must be communicated to him before he can be held to have disobeyed it. TIMMU *v.* DEVA RAI **I. L. R. 5 Mad. 265**

6. ——— *Civil Procedure Code, 1859, s. 342.* Circumstances under which an order may be made requiring security for costs of appeal to be deposited under s. 342 of Act VIII of 1859. BAMASUNDARI DASI *v.* RAMNARAYAN MITTER . . . . . **7 B. L. R. Ap. 59**

7. ——— **Pauper appellant**—*Civil Procedure Code, 1859, ss. 342, 345, 346.* By the words "before the appellant is called upon to appear and answer" in s 342, as compared with similar words used in subsequent sections, especially ss. 345 and 346, is meant, not the date mentioned in the notice, but the date on which the appeal is called on to be heard , and the Court has a discretion

security were interested in the matter, the case was considered a proper one in which security should be given. JOGENDRO DEB ROYKUT *v.* FUNINDRO DEB ROYKUT . . . . **18 W. R. 102.**

8. ——— *Grounds for order for security—Poverty of appellant—Civil Procedure Code, 1882, s. 549.* S. 549 of the Civil Procedure Code was never intended by the Legislature to derogate from the right of appeal given

SECURITY FOR COSTS—*contd.*

2 APPEALS—*contd*

yangar v. *Jainulavadin, I L. R. 3 Mad. 66*; and *Jogendro Deb Roykut* v. *Funindro Deb Roykut, 18 W. R 102,* referred to LAKHMI CHAND *v* GATTO BAI . . . **I. L. R 7 All. 542**

9. ——— ——— ——— *Grounds for order for security—Civil Procedure Code, 1882, s. 549—Poverty of appellant* *Held*, by the Full Bench (TYRRELL, *J*, *dubitante*), without laying down any general rule by which the exercise of the discretion conferred by s. 549 of the Civil Procedure Code should be governed, that the mere fact of the poverty of an appellant, standing by itself, and without reference to any general facts of the case under appeal, ought not to be considered sufficient alone to warrant his being required to furnish security for costs JIWAN ALI BEG *v* BASA MAL

I. L. R. 8 All 203

10. ——— *Civil Procedure*

SON *v* DEAS . . . I L. R 21 Calc. 520

11. ——— *Civil Procedure Code, 1882, s 549—Poverty of appellant—Vexatious conduct—Ground for requiring security* An appellant (residing within the jurisdiction) who has been ordered to pay the costs of the original hearing and has not done so cannot be required to furnish security for such costs before he is allowed to prose-

cree to give security for the costs of the appeal and of the original suit. DAGDU JAITRAM *v* CHANDRABHAN . . . **I. L. R. 24 Bom. 314**

13. ——— Civil Procedure Code, 1859, ss. 106, 342—*Assignee substituted for plaintiff.* Under s. 342, Act VIII of 1859, the High Court had discretion to demand security for costs from an appellant, if it saw fit to do so, at any time before the hearing of the appeal Where an as-

eight days after such neglect or refusal plead the

SECURITY FOR COSTS—*contd.*

2 APPEALS—*contd.*

bankruptcy or insolvency of the plaintiff as a reason for abating the suit HEERALALL SEAL *v.* CARAPIET . . . . . **13 W. R. 431**

14. ——— **Appellant out of jurisdiction.** *Quære* Whether in a case in which the appellant is not residing out of the British territories in India, the High Court has authority to demand security for costs from the appellant after the issue of summons, *i e*, notice of the appeal. HUFAZUTTOOLAH CHOWDRY *v.* HUMEEDHUR ROHMAN . . . **6 W. R. Mis 123**

15 ——— *Beng Reg. XIV of 1829, s 2, cl 1—Inhabitant of foreign territory*

security to cover costs in the appeal. In an appeal to the Sudder Court from a decree of the Zillah Court by a party then temporarily absent in England, but having real estates and factories within the jurisdiction of the Court, no security was furnished by the

Semble The putting in an answer to the appeal before objecting to the want of security for costs

16. ——— **Grounds for ordering security.** Cause being shown on a rule *nisi* for an order for security to be given by the appellant

SECURITY FOR COSTS—*contd.*

2. APPEALS—*contd*

for the costs of an appeal (similar orders having been previously made on the application of other defendants), it appeared that an unusual number of defendants had been joined in the suit, which had been withdrawn on a previous occasion when nearly tried out; and that the plaintiff, who sued as a relator, was poor and resided out of the jurisdiction, and had not paid interlocutory costs, for which an attachment had issued. *Held*, that an appellant will not be ordered to give security for costs previously incurred; that the fact of similar applications having been granted in the suit, the

joining of an unusual number of defendants, are grounds for granting an order for security to be given by an appellant for the costs of an appeal: that a relator suing to enforce a public right must give security for the costs of those against whom he proceeds MUZHUR HOSSAIN *v.* DINOBUNDOO SEIN
Bourke A. O. C. 40

Confirming the judgment in the same case in
Bourke O. C 119

17. ———— *Continuation of order made against plaintiff for security—Civil Procedure Code, 1859, s. 34.* A plaintiff who resided out of India paid a sum of money into Court as security for costs under s 34 of Act VIII of 1859 He subsequently obtained a decree against the de-

FLEMING *v* SHEARMAN . **4 B L. R. O. C. 92**

See In re DITTA HARAKMAN SINGH
3 B. L R. F. B. 45

S C DITTIA HURRUCKMAN SINGH *v.* MODHOOSOODUN PYNE . . . **12 B L R F. B. 16**

18. ———— **Discretion of Court to refuse security**—*Civil Procedure Code (Act XIV of 1882), s. 549* An original Court rejected, as insufficient, security offered for the purpose of conforming to an order of the High Court under s 549, Civil Procedure Code, and refused to receive other security offered in lieu after the time fixed by the order had expired. This was affirmed by the High Court *Held*, that, as the High Court had a discretion to enlarge the time allowed for finding security and to accept other security in lieu of that rejected or to refuse to do either, it had, under these circumstances, judicially exercised that discretion in refusing RAJAB ALI *v.* AMIR HOSSEIN . **I. L. R. 17 Calc. 1**

19. ———— **Extension of time for giving security**—*Civil Procedure Code, 1877, s 549—Procedure.* Where the Appellate Court demands from an appellant security for costs, the Court may extend the time within which it orders such

SECURITY FOR COSTS—*contd.*

2. APPEALS—*contd*

HAIDRI BAI *v.* EAST INDIAN RAILWAY COMPANY
I. L R 1 All. 687

20. ———— *Civil Procedure Code, 1882, s. 549—Application for extension of period for finding security for costs of appeal after*

L R. 1 All. 687, followed. SHRAJUDIN *v.* KRISHNA
I. L. R. 11 Mad. 190

21. ———— *Civil Procedure Code (Act XIV of 1882), s 491—Appeal rejected for want of security—Extension of time for giving security—Discretion of Court.* The proper construction of s. 549 of the Civil Procedure Code is that, where an appellant has been ordered to furnish security within a certain time, and that order has not been complied with, and no application has been made to extend the time within the period allowed, the Court is bound to reject the appeal. BUDRI NARAIN *v.* SHEO KOER
I. L R. 11 Calc. 716

I. L. R. 17 Calc. 512
L. R. 17 I. A. 1

22. ———— *Civil Procedure Code (Act XIV of 1882), s 549—Rejection of appeal—Discretion of Appellate Court to extend*

that this was not a case for interference. MODHUSUDAN DAS *v.* ADHIKARI PRAPANNA
I. L. R. 17 Calc. 516

S.C. MODHUSUDAN DOSS *v* KRISHNA PRAPANNA RAMANUJ DOSS . . . **L. R. 17 I A. 9**

23. ———— *Extension of time for furnishing security—Exceptional circumstances—Civil Procedure Code, 1882, s 549.* The appellant applied for an extension of the time for

SECURITY FOR COSTS—*contd.*

2. APPEALS—*contd.*

(Act XIV of 1882) does not absolutely preclude such an order if the circumstances render it just to make it. The Court cannot lay down a hard-and-fast rule that in no case after the time for giving security has expired can an appellant be allowed further time JUMNABAI *v.* VISSONDAS RUTTONCHUND . . . . I L. R 21 Bom. 576

24. ———— **Agreement to deposit security**—*Failure to make deposit* An order was made by the Court (pursuant to an agreement between the parties after a decree for the plaintiff) that the defendant who had appealed should pay into Court, to the credit of the cause, a certain sum of money for decree, costs, etc, including a sum of money for costs to be incurred on appeal On an application by the plaintiff that the case be struck off for default of deposit, and that the defendant pay costs already incurred at the time of the application, it was ordered that the defendant should deposit a sum to cover costs of the future appeal, and in default that the case should be struck off, although the summons to show cause was not in point of form to that effect ELIAS *v.* CHUCKERBUTTY . . 1 Ind. Jur. N. S 223

25 ———— **Amount of security not fixed**—*Civil Procedure Code, s 549—Security for costs—Dismissal of appeal—Practice* S 549 of the Civil Procedure Code contemplates an order by which some ascertained amount of security is required.

as was contemplated by s. 549 having been made *Held*, also, that the proper course was to have ap-

I. L R. 9 All. 164

26. ———— **Form and contents of order for security for costs**—*Omission to state amount*

SECURITY FOR COSTS—*concld.*

2 APPEALS—*concld.*

—*Practice—Civil Procedure Code, 1882, s. 549.* Where a Court acting under s 549 of the Code

direct the appellant to furnish security within a

this point LEKHA *v.* BHAUNA
I. L. R. 18 All. 101

SECURITY FOR GOOD BEHAVIOUR.

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES
I. L. R. 9 Calc. 878
22 W. R. Cr. 68

See ARREST . I. L. R. 31 Calc. 557

See CRIMINAL PROCEDURE CODE, ss 110, 112, 190, 191 AND 526
I. L. R. 27 All 172; 262; 293
I L. R 28 All. 306; 629

See CRIMINAL PROCEDURE CODE, s 122.
I. L R. 26 All. 189; 371

See REFERENCE TO HIGH COURT—CRIMINAL CASES—SECURITY FOR GOOD BEHAVIOUR.

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY . 3 N W. 126
I. L. R. 1 All. 666
I. L. R. 23 All. 422

1. ———— **Transfer of proceedings**—*Criminal Procedure Code, 1882, ss 110 and 526.* Proceedings under s 110 of the Code of Criminal Procedure cannot be transferred to any Court outside the district within which such proceedings have been lawfully instituted *In the matter of the petition of* AMAR SINGH . I. L. R. 16 All. 9

2. ———— **Discretion of Court, exercise of**—*Criminal Procedure Code, 1872, ss. 505, 506—Deposit of cash in lieu of security bond for good behaviour*

3. ———— **Person of violent or turbulent character**—*Criminal Procedure Code, 1861, s. 297.* S 297 of the Code of Criminal Procedure, 1861, did not refer to persons of a violent or turbulent character. *In re* NARAIN SOOBOODHI
6 W. R. Cr. 6

4. ———— **Person convicted of theft**—*Criminal Procedure Code, 1861, s. 295—Theft.* S. 295 did not apply to persons convicted and punished for theft. QUEEN *v.* KUNEE SONAR
7 W. R. Cr. 57

SECURITY FOR GOOD BEHAVIOUR —*contd.*

5. ——— **Habitual offenders**—*Acts committed by persons in performance of duties as burkandazes in zamindari—Habitual association—Joint trial—Code of Criminal Procedure (Act V of 1898), ss 110, 112, 117, 118, and 537.* Certain burkandazes employed at the kutchery of the Bijni estate, who were alleged to have committed acts of extortion and other acts of oppression in the performance of their duties, were called upon to execute bonds for their good behaviour on the grounds (i) that they habitually commit extortion; (ii) that they habitually commit or attempt to commit or

jointly by the Magistrate under s 117 of the Code of Criminal Procedure, and each of them was ordered

to the first and second grounds, there certainly would be no such connection between them in re-

their own private capacities The object of enabling a Magistrate to take security for good behaviour is for the prevention and not for the punishment of offences HARI TELANG *v* QUEEN-EMPRESS . . . . **I. L. R 27 Calc 781**
HARI TELANG *v* EMPRESS . **4 C W. N. 531**

6. ——— **Jurisdiction of Magistrate**—*Person not residing within his jurisdiction—Reputation—Code of Criminal Procedure (Act V of 1898), s 110* It is only when a person within the limits of a Magistrate's jurisdiction, that is, who is residing within the limits of such jurisdiction, is found to be a person of a description given in s 110 of the Code of Criminal Procedure, that the Magistrate can take action under that section, and it is

SECURITY FOR GOOD BEHAVIOUR —*contd.*

7. ——— **Persons not proved to have committed crime**—*Criminal Procedure Code, 1872, s. 505.* The exercise of the power given by s. 505 of the Criminal Procedure Code was not confined to cases in which positive evidence of the commission of crime is forthcoming against the persons charged. *In re* PEDDA SIVA REDDI
I. L. R. 3 Mad. 238

8. ——— **Absconded offender arrested without summons**—*Criminal Procedure Code, 1861, s. 306.* Where an accused person was arrested as an absconded offender, and, without evidence being gone into on that charge, an inquiry was made into his mode of livelihood, without any summons being issued under s. 306 of the Criminal Procedure Code, such proceedings were held to be irregular QUEEN *v.* HUTTOOA . **3 N. W. 2**

9. ——— **Opportunity to make defence**—*Information of accusation to accused—Criminal Procedure Code (Act X of 1882), ss. 109, 110, 112.* Before a Magistrate can pass an order directing an accused to furnish bail and security for his good behaviour, it is necessary that the accused should be given an opportunity of entering into his defence, and that he should be clearly informed of the accusation which he has to meet QUEEN-EMPRESS *v.* ISWAR CHANDAR SUR
I L. R. 11 Calc. 13

10. ——— **Right to be heard by pleader**—*Accused person liable to imprisonment in default of giving security—Notice—Code of Criminal Procedure (Act V of 1898), ss 110, 123, and 340.* Where a reference is made to the Sessions Judge under s 123 of the Code of Criminal Proce-

11. ——— **Requisites for order**—*Evidence satisfying Magistrate of bad character of accused—Criminal Procedure Code, 1861, s. 296.* To justify a Magistrate in taking action under

QUEEN *v* BUDLA . . . . **2 N. W. 455**

12 ——— **Information on which Magistrate may act**—*Information showing that a breach of the peace is imminent—Order to furnish security for good behaviour for three years—Arrest of accused—Inquiry as to truth of information—Proof of information—Statements of persons not called as witnesses—Criminal Procedure Code, 1882, ss 112, 114, 117.* Conversations out of Court with persons, however respectable, are not legal or proper material upon which Magistrate should adopt proceedings under s. 107 or s 110 of the Criminal Procedure Code. The information to be

SECURITY FOR GOOD BEHAVIOUR —*contd.*

required by a Magistrate, before issuing an order under s. 112, may to some extent be of a hearsay and general description; but when the party to whom the order is directed appears in Court in obedience thereto, the inquiry must be conducted on the lines laid down in s. 117. It is not because a man has a bad character that he is therefore necessarily liable to be called upon for sureties of the peace or for good behaviour. There must be satisfactory evidence in the one case that he has done something, or taken some step, that indicates an intention to break the peace or that is likely to occasion a breach of the peace, and in the other, that he is within the category of persons mentioned in s. 110, the determination of which question must always be guided by the considerations pointed out in *Empress* v *Nawab, I L R 2 All 835*. A Magistrate is not competent, upon information that suggests the likelihood of a breach of the peace, to resort to s. 110 of the Criminal Procedure Code, and it is altogether *ultra vires* for him to demand security for three years in such a case. In ordering the arrest of a person under s 114 of the Criminal Procedure Code, the Magistrate must act on recorded information; it is not enough for him to express a belief that such a course is necessary. Not only must he have "reason to fear the commission of a breach of the peace," but "that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person." EMPRESS *v* BABUA . . . . . I. L. R. 6 All. 132

13. ———————— *Criminal Procedure Code, 1861, s 306—Information of police.* In an inquiry under s 306 of the Code of Criminal Procedure as to proceedings against persons required to give security for good behaviour, a Magistrate had no power to use the information which the police may have obtained as evidence in the case. QUEEN *v* KOMUL KISHEN 11 W. R. Cr 35

14. ———————— "Show cause"—*Criminal Procedure Code, ss 107, 112, 117, 118, 239—Burden of proof—Joint inquiry—Opposing factions dealt with in one proceeding—Nature and quantum of evidence necessary before passing order for security.* Upon general ...

case shall be tried separately from the cases of

SECURITY FOR GOOD BEHAVIOUR —*contd.*

Weekly Notes (1884) 54, referred to. An order passed by a Magistrate under ss. 107 and 112 of the Criminal Procedure Code, requiring any person to "show cause" why he should not be ordered to ...

stances justifying the action of the Magistrate in calling upon persons to furnish security. *Dunne* v *Hem Chunder Choudhry, 4 B L R F B 46,* and *Queen* v *Nirrunjun Singh, 3 N. W. 431,* referred to. Where, according to the nature of the information received by the Magistrate, there were two opposing parties inclined to commit a breach of the peace.—*Held,* applying by analogy the principles relating to the trial of members of opposing factions engaged in a riot, that the Magistrate acted irregularly in taking steps against both parties jointly and in holding the inquiry in a single proceeding. Such a procedure is not *ipso facto* null and void, but only where the accused have been prejudiced by it. *Empress* v. *Lachan, All Weekly Notes (1881) 28,* and *Hossein Buksh* v *Empress, I L R 6 Calc 96,* referred to. In proceedings instituted under s 107 of the Criminal Procedure Code against more persons than one, it is essential for the prosecution to establish what each individual so implicated has ...

Nathu, I. L R 6 All 214, referred to. Although in an inquiry under s 117 the nature or quantum of evidence need not be so conclusive as is necessary in trials for offences, the Magistrate should not ...

and such an order cannot be passed against any

I. L. R. 9 All. 452

SECURITY FOR GOOD BEHAVIOUR —*contd.*

15. ———— **Ground for ordering security**—*Criminal Procedure Code, 1872, s 505—Evidence of character.* Act X of 1872, s. 505, enabled the Magistrate to require security for good behaviour, whenever it appeared to him, from the evidence as to general character adduced before him that any person was by repute a robber, housebreaker or thief, or a receiver of stolen property, knowing the same to have been stolen, or of notoriously bad livelihood or was a dangerous character. But when the evidence was entirely in a person's favour, and showed him to be of excellent character and in every respect contrary to the sort of person against whom the section was directed, to apply its provisions to him on a week and unsup- [illegible]

16. ———— **Evidence of general bad character**—*Criminal Procedure Code, 1872, s 505* *P* was convicted by a Magistrate of the first class of dishonestly receiving stolen property. He confessed on his trial that he had twice previously been convicted of theft *Held*, with some hesita- [illegible]

17. ———— **Evidence of bad character**—*Criminal Procedure Code, 1861, ss. 296, 297.* Previous convictions for a simple breach of the peace were not sufficient to justify a Magistrate in demanding security under s. 296 of Act XXV of 1861. Nor was repute that a person was one of the leaders of a gang of petty bullies and extortioners sufficient to justify a conviction under s. 297 of the same Act, unless in addition it was shown that he was of a character so desperate and dangerous as to render his release, without security for one year, hazardous to the community. QUEEN *v* MISREE LALL

4 N. W. 117

18. ———— **Record of previous convictions**—*Criminal Procedure Code, 1882, ss. 110, 117, and 118.* The object of taking security for good behaviour from a person is solely to secure his good behaviour in future The mere record of previous [illegible]

for past offences. *In re* RAJA VALAD HUSSEIN SAHEB . . . . I. L. R. 10 Bom. 174

19. ———————— *Criminal Procedure Code (Act X of 1882), ss 110, 112* The mere fact that a person from whom security is required [illegible]

complained against has done some act or resumed avocations indicating on his part an intention to return to his former course of life. *In the matter of the petition of* HAIDAR ALI

I. L. R. 12 Calc. 520

20. ———— **Person guilty only of acts of violence**—*Criminal Procedure Code, 1872, s 506.* [illegible]

Magistrate did not show that a person was "by habit a robber, house-breaker, or thief, or a receiver of stolen property, knowing the same to have been stolen," but showed only that he had been guilty of acts of violence —*Held*, that the Magistrate could not, under s 506 of Act X of 1872, order such person to furnish security. Observations regarding the evidence on which the procedure of s 506 should be enforced EMPRESS *v* NAWAB

I. L. R. 2 All. 835

21. ———— **Person convicted and punished for theft**—*Form of order—Code of Criminal Procedure (Act X of 1872), ss 504, 505.* An accused person was convicted of theft and sentenced [illegible]

TAMIZ MANDAL *v.* UMID KARIGAR

I. L. R. 9 Calc. 215

22. [illegible] securi[illegible] —*Powe*[illegible] *trate.* [illegible] of 1872, [illegible] decide [illegible]

s. 504 the Sessions Judge was *functus officio.* QUEEN *v* GUNGARAM POTDAR . 24 W. R. Cr. 10

23. ———— **Form of order**—*Criminal Procedure Code, 1872, s. 297—Sureties—Order for* [illegible]

SECURITY FOR GOOD BEHAVIOUR —*contd.*

called upon to provide security, not that a deposit be made in cash. QUEEN v. SHEO BUKSH
2 N. W. 295

24. ———— *Order for deposit in cash—Security-bond* An order requiring persons to deposit cash in lieu of entering into a bond as security for their future good behaviour is bad in law. EMPRESS v. KALA CHAND DASS
I. L. R 6 Calc. 14 : 6 C. L. R. 128

(*Contra*) QUEEN v KRISTENDRO ROY
7 W. R Cr. 30

25. ———— Statement of grounds for

security. A person from whom security for good behaviour is demanded should have a fair chance afforded him to comply with the required conditions of security. EMPRESS v DEDAR SIRCAR
I. L. R. 2 Calc. 384 : 1 C. L. R. 95

26. ———— Order for surety to pledge rights in land—*Illegal order* An order by a Magistrate requiring security for good behaviour which directed that the surety should pledge all his proprietary rights in land worth R200 was *held* to be illegal QUEEN v GANNI . 7 N. W. 249

27. ———— Reference to Sessions Judge for confirmation of order when person is

28. ———— Order with arbitrary condition imposed—*Criminal Procedure Code,*

29. ———— No conditions and limitations can be imposed upon persons ordered to

SECURITY FOR GOOD BEHAVIOUR —*contd.*

give security under s. 118 of the Code. *In the matter of* JHOJHA SINGH v. QUEEN-EMPRESS
I. L. R. 24 Calc. 155

30. ———— Ground for refusing surety —*Criminal Procedure Code* (*Act V of 1898*), *s. 123, cl.* (*2*)—*Pleader, whether he may be heard in a reference under that section.* A Sessions Judge is bound to hear a pleader who may appeal on behalf of a person in a case referred to him under s 123, cl. (2), of the Criminal Procedure Code *Jhoja Singh* v. *Queen-Empress, I. L R 23 Calc 493,* referred to. A Magistrate cannot refuse to accept a surety on the ground that he lives at a distance from the accused ABINASH MALAKAR v. EMPRESS
4 C. W. N. 797

31. ———— Object of demanding security—*Criminal Procedure Code* (*Act X of 1882*), *ss. 110, et seq*—*Discretion of Magistrate in accepting or refusing sureties tendered* The object of requiring securities to be of good behaviour is not to obtain money for the Crown by the forfeiture of recognizances, but to insure that the particular accused person shall be of good behaviour for the time mentioned in the order It is therefore reason-

Narain Sooboddhee, 22 W R Cr. 37, not followed QUEEN-EMPRESS v ROHIM BAKHSH
I. L. R 20 All. 206

32. ———— Order for security and imprisonment in default—*Illegal order—Criminal Procedure Code, 18 1, ss 296, 301.* Where a Magistrate required security from persons for their good behaviour, under s. 296 of the Criminal Procedure Code, and in default sentenced them to six months' rigorous imprisonment.—*Held*, that the order was illegal, s 301 requiring that they should be committed to prison until they furnish the security

4 Mad. Ap. 47

33. ———— *Criminal Procedure Code* (*Act X of 1882*), *s. 118—High Court's power of interference when the amount of security is excessive—Magistrate's discretion, exercise of.* A Magistrate ordered the accused to execute a bond for R500 for his good behaviour for one year and to furnish two sureties for the like amount. The accused failed to furnish the required security, and was sent to prison. The High Court, being of opinion that the amount of the required security was excessive and that the Magistrate had not exercised a proper discretion in the matter, interfered in the exercise of its revisional jurisdiction, and reduced the amount QUEEN-EMPRESS v. RAMA . . . . I. L. R. 16 Bom. 372

SECURITY FOR GOOD BEHAVIOUR —*contd.*

34. ——— **Power of Magistrate to cancel security-bond once accepted**—*Criminal Procedure Code (Act X of 1882), ss. 109, 122, 125.* When a surety offered by a person for good behaviour has once been accepted, a Magistrate has no power subsequently to cancel the security-bond, though he might be of opinion that such surety is an unfit person. EMPRESS *v.* RAM LALL ACHARJEA
1 C. W. N. 394

35. ——— **Second order for security without further proof**—*Criminal Procedure Code, 1861, Ch. XIX* Where a person is confined,

re JUSWUNT SINGH
1 Ind. Jur. N. S. 301 : 6 W. R. Cr. 18

See MAHOMED ABDUL BARI *v* EMPRESS
4 C W. N. 121

36. ——— **Further proceedings under s. 110 of Code of Criminal Procedure**—*Fresh information—Accused person—"Discharge"—Criminal Procedure Code, s 437.* A further inquiry cannot be made into the case of a person against whom proceedings under s. 110 of the Code of Cri-

has been discharged; for the terms "accused person" and "discharge" in s. 437 of the Code clearly refer to a person accused of an offence who has been discharged from a charge of that offence within the terms of Ch XIX of the Code QUEEN-EMPRESS *v* IMAN MUNDAL I. L. R 27 Calc. 662

37. ——— **Form of security-bond**—*Criminal Procedure Code, 861, ss 305, 306—Forfeiture of bond* Where sureties who were required to show cause, under s 305 of the Code of Criminal Procedure, why the bond executed by them should not be put in force, failed to establish by evidence the statements which they made, it was *held* that

upon two pieces of paper instead of one *In the matter of the petition of* BRINDABUN CHUNDER DASS. *In the matter of the petition of* TARINEE CHURN MOZOOMDAR . 19 W. R. Cr. 29

38. ——— **Procedure**—*Power of Sessions Judge after acquittal—Information to Magistrate as to taking security from accused* If a Sessions Judge be of opinion that a person acquitted by him

SECURITY FOR GOOD BEHAVIOUR —*contd.*

the party in custody to the Magistrate REG. *v.* BYHA VALAD SURJIM . . 1 Bom. 91

39. ——— *Suspicion—Production of witnesses—Bail* A person against whom proceedings for bad livelihood have been taken is

to procure their attendance He should be admitted to bail A Magistrate is not competent to refuse bail unless the law sanctions such refusal. *In the matter of* KOOKOR SINGH . 1 C. L R 130

40. ——— *Criminal Proce-* … *itnesses* … obtain … of the … of the witness must be taken in the presence of the accused person, who should be permitted to cross-examine them. QUEEN *v.* SHUNKUR . 2 N. W. 406

QUEEN *v.* NURSINGH NARAIN
2 B. L. R. A. Cr. 7 note
10 W. R. Cr. 1

MAGHAN MIRA *v* CHAMMAN TELI
2 B L. R. A. Cr. 7 : 10 W. R. 46

41. ——— *Opportunity to accused of cross-examining witnesses and calling witnesses* In an inquiry under Ch. XIX of the

42 ——— *Evidence—Previous trial for dacoity—Criminal Procedure Code, 1861, s. 296.* Where a person was adjudicated to

13 W. R. Cr. 24

43. ——— *Criminal Procedure Code, 1882, ss 118 and 123—Power of Sessions Judge to remand—Taking further evidence—Conditions and limitations imposed upon persons required to give security.* Under s 123 of

EMPRESS . . . I. L. R. 24 Calc. 155

SECURITY FOR GOOD BEHAVIOUR
—*contd.*

44. ———————— *Criminal Procedure Code, 1882, ss. 110 and 117—Transfer of criminal case—Criminal Procedure Code, s. 526.* Where a Magistrate instituting proceedings against a person under s. 110 of the Code of Criminal Procedure has "acted" within the meaning of s 117 of the Code, no order can be made subsequently under s. 526 of the Code transferring the case from his Court. *In the matter of the petition of* GURDAR SINGH . . . . I. L. R. 19 All. 291

45. ———————— *Sentence of imprisonment—Criminal Procedure Code, 1861, s 296—Illegal direction* A direction annexed to a sentence of imprisonment, under s 448 of the Penal Code, that the convict be brought up at the expiration of the sentence, in order that he may give security for good behaviour for the period of one year, reversed, as not being authorised by s 296 of the Criminal Procedure Code REG. v KRISHNAJI BAPUJI GAIKAVAD . . 3 Bom Cr. 39

46. ———————— *Criminal Procedure Code, 1882, ss 118, 126, 514, Sch V, form No XLVI—Security for good behaviour—Conviction of principal—Forefeiture of bond—Mode of proving conviction* Where a person has given a security-bond under s 118 of the Code of Criminal Procedure for the good behaviour of another, and the principal during the term of which the bond is in force is convicted of an offence punishable with imprisonment, the production of the conviction, and, if necessary, of proof of identity of the principle is sufficient evidence upon which the Magistrate is authorized to issue notice to the surety under s 514 of the Code to show cause why the penalty of the bond should not be paid In such a case it is for the surety to show what cause he can It is not incumbent on the Magistrate to re-summon the witnesses on whose evidence the principal was convicted and practically to re-try the case against the principal QUEEN-EMPRESS *v.* MAN MOHAN LAL
I. L. R. 21 All. 86

47. ———— Bad livelihood—*Code of Criminal Procedure (Act V of 1898), s 109—"Ostensible means of subsistence," proof of—"Doing no work," if sufficient—"Previous conviction" how far relevant —Procedure* The fact that a man does no work, or that he was once before convicted for bad livelihood,

5 C. W. N. 28

48. ———————— *Criminal Procedure Code (Act V of 1898), ss 1 (2) (a), 4 (p), (s), 55 (b), 109 (b)—Arrest by Inspector of Police in Calcutta, if legal—Applicability of the Criminal Procedure Code to Police in Calcutta—Police-station—Magistrates' duty to go on with case, although arrest illegal.* Inspector Hamilton of the Colootolah *Thana* in Calcutta, arrested the accused under s. 55 (b) of the Criminal Procedure Code, and placed him on his

SECURITY FOR GOOD BEHAVIOUR
—*contd.*

the Code whenever they had credible information that the accused had no ostensible means of liveli-

Mad 124, approved *Held,* also, that, s 55 having been expressly made applicable to the police in Calcutta, the arrest of the accused by the Inspector was legal. The Criminal Procedure Code does not apply to the Police in Calcutta unless expressly made applicable to them [s 1, sub-s (2)] Cls (*p*) and (*s*) of s 4, Code of Criminal Procedure, do not apply to the Police in Calcutta SOLICITOR TO THE GOVERNMENT OF INDIA *v* MADHO DHOBI (1903)
7 C. W. N. 661

49. ———— Character of proceedings—*Discharge of persons called upon to furnish security for good behaviour* Proceedings under s. 110 of the Code of Criminal Procedure cannot be regarded as on a complaint, nor can they be regarded as a case in which any accused person has been discharged IMAN MANDAL *v* EMPRESS (1900)
6 C. W. N. 163

50. ———— Delegation of inquiry—

Criminal Procedure, to delegate to another officer the inquiry into the sufficiency of the security tendered, but such inquiry must be made by the Court by which the original order was passed *Queen-Empress* v. *Pirthi Pal Singh, All Weekly Notes (1898) 154,* followed. EMPEROR *v* TOTA (1903)
I. L. R. 25 All. 272

51. ———— Evidence of repute—*Criminal Procedure Code (Act V of 1898), ss 110, cl. (f), 117—Repute, admissibility of evidence of—Evidence of repute is not admissible in cases coming under cl. (f) of s 110 of the Code of Criminal Procedure.* Where the imputations were that the petitioners had for some time past made themselves very

SECURITY FOR GOOD BEHAVIOUR —*contd.*

to the community. AKHOY KUMAR CHATTERJEE v. QUEEN-EMPRESS (1900) . 5 C. W. N. 249

52. ——— **Grounds for refusing to accept surety**—*Criminal Procedure Code (Act V of 1898), ss. 110, 122—Tender of surety—Consideration of a question by High Court outside rule.* Case in which the High Court pointed out to the Magistrate below what are not valid grounds for refusing a surety under s. 122, Criminal Procedure Code, although no rule was issued on the subject Where a Magistrate refused to accept sureties tendered by a person bound to be of good behaviour, on such grounds as that they were unfit to control the defendant, that they were not residents of the village, and in one case that two persons were members of the same firm :—*Held*, that these were not valid grounds for refusing to accept a surety under s 122, Criminal Procedure Code The question is not whether a surety can supervise a person for whom he stands surety, but whether he is a person of sufficient substance to warrant his being accepted. *Abinash Malakar v The Empress, 4 C. W. N. 797*, approved. RAM PERSHAD v KING-EMPEROR (1902) . . . 6 C. W. N. 593

53. ——— *Criminal Procedure Code, s 122—Sureties offered refused on the ground of their relationship to the ...*

tion in the persons tendered as sureties. EMPEROR v SHIB SINGH (1902) . I. L. R. 25 All. 131

54. ——— **Habitual offenders**—*Thief—Habitual thieves and dacoits—Desperate and dangerous characters—Evidence—Specific acts—General repute—Criminal Procedure Code (Act V of 1898), ss. 110 and 117* A charge under cl. (*f*), s. 110 of the Criminal Procedure Code, cannot be proved by general reputation, but must be proved by ...

personal knowledge of or acquaintance with him Such evidence is not only such as could not safely be acted upon, but is also likely to work serious prejudice KALAI HALDAR v EMPEROR (1901) I. L. R. 29 Calc. 779

55. ——— *Proceedings instituted by Magistrate on his own knowledge or suspicion—Transfer, right of accused to a—Criminal Procedure Code (Act V of 1898), ss. 110, 117 and 191.* Where a Magistrate has framed a proceeding under s 110 of the Criminal Procedure Code against a party, and has proceeded in some measure, if not mainly, on his own knowledge of the character of that party, such Magistrate is not a proper person to proceed with the trial under s 117 of the Code and inquire into the truth of the information upon which action has been taken ALIMUDDIN HOWLADAR v. EMPEROR (1902) . I. L. R. 29 Calc. 392 s.c. 6 C. W. N. 595

56. ——— **Jurisdiction of Magistrate** —*Criminal Procedure Code (Act V of 1898), s 110 —Magistrate, jurisdiction of ...*

residing within such limits is of such bad repute that a Magistrate is competent to take action under that section KITABDI v. QUEEN-EMPRESS (1900) 5 C. W. N. 29

57. ——— *Surety bond—Acceptance by Subordinate Magistrate of bond—Cancellation of such bond by District Magistrate—Jurisdiction—Criminal Procedure Code (Act V of 1898), ss 110 and 125* Where the security bond of the petitioner, who had been bound over to be of good behaviour, and the surety bonds of his sureties, had been accepted by the Sub-divisional Magistrate, and the District Magistrate, on receiving a police report stating that one of the sureties "was not at all a man of substance to stand surety for R100—he cannot be entrusted to stand surety of a bad character," cancelled the security bond of the petitioner under s 125 of the Code of Criminal Procedure : *Held*, that the order of the District Magistrate was made without jurisdiction. PANCHOO GAZI v EMPEROR (1901) . I. L. R. 29 Calc. 455 s.c. 6 C. W. N. 291

58. ——— **"Offences involving a breach of the peace," meaning of**—*Immoral and indecent acts—Criminal Procedure Code (Act V of 1898), ss 106 and 110, cl (e)* The words "offences involving a breach of the peace," in s. 110, cl. (*e*), ...

attempting to seduce women and behaving indecently and immodestly towards them, was bound

59. ——— **Reference to Sessions Judge**—*Criminal Procedure Code, ss 123 and 340—*

SECURITY FOR GOOD BEHAVIOUR —*contd.*

Reference to the Sessions Judge—Notice to be given of proceedings before the Judge to the persons required to find security Where, under s. 123 of the Code of Criminal Procedure, reference is made to the Sessions Judge, in the case of a person called upon by a Magistrate to find security for a term exceeding one year, it is expedient, and highly desirable for the ends of justice, that a date should

60. ———— Residence of sureties—*Criminal Procedure Code, ss 110, et seq —Power of Court to assign geographical limits within which the sureties required must reside* *Held*, that a Court, in ordering security for good behaviour to be given with sureties, is competent to assign some geographical limits within which the sureties required must reside *Queen-Empress v Rahim Bakhsh, I L R 20 All 206*, referred to EMPEROR *v* NABBU KHAN (1902) . I. L. R 24 All 471

61. ———— Revival of proceedings—*Criminal Procedure Code, ss. 110, et seq , and 437—Power of District Magistrate to re-open proceedings on the same record, after the discharge of the person called upon to show cause by a Magistrate of the first class* *Held*, that it is competent to the Magistrate of the District, in the case of a person who has been called upon, under s 110 of the Code of Criminal Procedure, by a Magistrate of the first class, to show cause why he should not furnish security for

21 All 107, *Queen-Empress v Ratti, All. Weekly*

I. L. R. 24 All 148

62. ———— Term—*Criminal Procedure Code (Act V of 1898), ss 112, 118, 144, 145—Notice to give security for three months—Order to give security for twelve months—Validity—Discretion to proceed under s 107 or ss 144 and 145* Where a notice is issued under s 112 of the Code of Criminal Procedure to a defendant, to show cause why he should not give security to be of good behaviour for three months, the Magistrate has no power to order security to be given for a longer

SECURITY FOR GOOD BEHAVIOUR —*contd*

proceed either under s 107 or under ss. 144 and 145 of the Code *Dolegobind Chowdry v. Dhanu Khan, I L R 25 Calc. 559*, distinguished. BELAGAL RAMACHARLU *v* EMPEROR (1902)

I. L R 26 Mad. 471

63. ———— Previous acquittal for dacoity—*Criminal Procedure Code (Act V of 1898), s 110—Proceeding to bind down on failure of prosecution, if legal* Where a person has been tried for dacoity and acquitted, he ought not to be proceeded against under s 110, Code of Criminal Procedure, on matters deposed to and disbelieved at the trial for dacoity. A person acquitted of dacoity cannot be bound over under s. 110, Code of Criminal Procedure, on the evidence merely of persons stating that they began to suspect him since the dacoity case KISMAT AKANDA *v* EMPEROR (1906) . . . 11 C. W. N. 129

64. ———— Indefinite charge—*Criminal*

upon the mere statements of witnesses that they suspect or are under the impression that the persons proceeded against are thieves or dacoits, when no fact is mentioned to indicate that there was sufficient reason for their suspicion ALEP PRAMANIK *v* KING-EMPEROR (1906) 11 C. W. N. 413

65. ———— General repute, evidence of, admissibility of—*Criminal Procedure Code (Act V of 1898), s 110, cls. (d) and (f)—Evidence if must be of neighbours—Evidence of misconduct committed long ago, value of—Joinder of charges in a proceeding under s. 110—S. 257 (1), Criminal Procedure Code, sufficient compliance with* In s. 110, cl. (*f*), Criminal Procedure Code, a man of desperate and dangerous character means a man who

by acts causing danger to the person and properties of other persons, is not sufficient to bring his case within cl (*f*) of s. 110, Criminal Procedure Code. The law as to the joinder of charges against a person accused of definite offences has no application to an inquiry under s. 110, cl (*d*). *Subramania Ayyer v. King-Emperor, I. L. R. 25 Mad. 61*, referred to and distinguished. On an enquiry whether the defendant is a habitual offender, evidence of acts of misconduct committed by him years ago is admissible in evidence as indicating the formation of the habit, but such evidence unless supplemented by evidence of misconduct by

SECURITY FOR GOOD BEHAVIOUR —contd.

the defendant within a year or so before the institution of the proceeding under s. 110, Criminal Procedure Code, *cannot justify the making of the* order under s 118, Criminal Procedure Code.

conclusion that the application was for no other purpose than that of vexation or delay or defeating the ends of justice, although he does not say expressly that the application was for that purpose. WAHID ALI KHAN *v.* THE EMPEROR (1907)
11 C. W. N. 789

66. ——— *Order embodying substance of information—Transfer—Refusal to recall prosecution witnesses for cross-examination—Limitation of time for examination of defence witnesses—Restriction of counsel's address—Right to cross-examine witnesses called by the Court—Evidence of general repute—Association with bad characters—Criminal Procedure Code (Act V of 1898), ss 110, 112, 117, 192, 256, 257, 528, 529 (f), 540.* The set-

mation as required by the former section. It is not

there was no power under the section to transfer such cases the whole proceedings would not, by reason of s 529 (*f*), be void *Akbar Ali Khan* v. *Domilal, 4 C. W N 821,* followed S 256 of the Code does not apply to an enquiry under s 117 The prosecutor and the accused are both equally entitled to a full cross-examination of witnesses called by the Court under s 540 on matters relevant to the enquiry. The Court cannot restrict the cross-examination of such witnesses by either party to the subjects on which it had examined them

association with bad characters, who were always suspected of being concerned in dacoities and many

of whom were during the period of association bound down under s. 110 of the Code or convicted *of dacoty and theft at various times and especially* in most cases shortly before, and near the place of,

67. ——— **Imprisonment on failure to find security**—*Act IX of 1894, s. 3 (3)—Security for good behaviour—"Sentence"* *Held,* that where a person is ordered by a Magistrate to be "detained in prison" pending the orders of the Sessions Judge under s 123 of the Code of Criminal Procedure, such person must be considered as a person undergoing a sentence of imprisonment and not merely as an under-trial prisoner detained in custody. *Held,* also, that an order for imprison

I. L. R. 30 All. 334

68. ——— Fitness of surety—*Criminal Procedure Code, ss 122 and 513—Discretion of Magistrate* GEIDT, J.—The unfitness of a surety for good behaviour referred to in s. 122, Criminal Procedure Code, though it may not exclude the idea of pecuniary unfitness, is more concerned with the idea of moral unfitness WOODROFFE, J.—Under s. 122, Criminal Procedure Code,

The Emperor, 4 C W N. 797, referred to and distinguished JALIL *v.* EMPEROR.
13 C. W. N. 80

SECURITY FOR KEEPING THE PEACE.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss. 106, 107, 125

See CRIMINAL PROCEDURE CODE, ss. 107, 118 AND 406 . **I. L. R. 26 All. 623**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 125 . **I. L. R. 34 Calc. 1**

See UNLAWFUL ASSEMBLY.
11 C W. N. 176

SECURITY FOR KEEPING THE PEACE—*contd.*

1. ———— Appellate jurisdiction—*Bond, cancellation of, before actual execution—Criminal Procedure Code (Act V of 1898), ss 107, 125—Appeal—Revision* S 125 of the Criminal Procedure Code does not confer upon a District Magis

but it confers only an original jurisdiction After a bond to keep the peace has been executed, a District Magistrate may hold, for sufficient reasons, that it is no longer necessary and cancel it, but he has no power to declare that it was never necessary. There is no appeal from an order requiring security to keep the peace BARKA CHANDRA DEY v JANMEJOY DUTT (1905)

I. L R. 32 Calc. 948

2. ———— Discretion of Magistrates—*Dispute relating to possession of land—Institution of proceedings—Criminal Procedure Code (Act V of 1898), ss 107, 144, 145* Where a dispute relating to possession of land is likely to cause a breach of the peace, a Magistrate has a discretion to proceed either under s 107 or under ss 144 and 145 of the Criminal Procedure Code *Saroda Prosad Singh* v *Emperor, 7 C W N 142*, not followed. *King-Emperor* v *Basiruddin Mollah, 7 C. W. N 746*, and *Belagal Ramacharlu* v *Emperor, I L R 26 Mad 471*, followed SHEORAJ ROY v. CHATTER ROY (1905)

I L R 32 Calc. 966

3. ———— Sanction for prosecution—*Whether a sanction granted to a particular person could be availed of by some other person—Criminal Procedure Code (Act V of 1898), s 195* A sanction for prosecution expressly given to a particular applicant cannot be availed of by some other person against that person's wish and without his authority *Giridhari Mondul* v. *Uchit Jha, I. L. R. 8 Calc. 435*; *Bapuram Surma* v *Gouri Nath Dutt, I. L R 20 Calc 474*; *In re Banarsi Das, I. L. R 18 All 213*, *Kali Kinkar Sett* v. *Nritya Gopal Roy, 8 C. W N 883*, and *Durga Das Rukhit* v. *Queen-Empress, I. L. R 27 Calc 820*, referred to. JOGENDRA NATH MOOKERJEE v SARAT CHANDRA BANERJEE (1905)

I. L R 32 Calc. 351

4. ———— Sentence, enhancement of, on appeal—*Criminal Procedure Code, s. 106—Maintaining a sentence in its entirety though acquitting on some of several charges is enhancement—Appellate Court cannot make an order for security when original conviction not by one of the Courts*

alone was maintained An order for security under s. 106 of the Code of Criminal Procedure cannot be made by the Appellate Court unless the conviction

I. L. R 30 Mad. 48

5. ———— Which party should be bound down—*Security to keep the peace—Wrongful act—Ascertainment of the rights of the parties—Criminal Procedure Code (Act V of 1898), s. 107—Riparian right—Right to khuntagari* The

denied by the opposite party, and is not quite patent, the Magistrate should always endeavour

Magistracy should in any way encourage the

6. ———— Order binding down persons convicted of rioting—*Criminal Procedure Code (Act V of 1898), s 106—Land dispute—Propriety—Indian Penal Code (Act XLV of 1860),*

that would have the effect of preventing the accused from resisting any further attempt by the complainant to take possession of the land NAHAR KHAN v. EMPEROR (1907) . . 11 C. W. N. 840

7. ———— Initiation of proceeding, under s. 107, ground for—*Criminal Procedure Code (Act V of 1898), ss 107, 112, 144, 526—Dispute regarding property—Bona fide dispute—Order requiring security from one party if proper—Special constables, appointment of defendants as—Reasonable apprehension of failure of justice—Transfer—Indefinite order under s. 144.* Where two parties had both applied to the Land Registration Court for registration of their names as proprietor

SECURITY FOR KEEPING THE PEACE—*contd.*

of an estate, and pending these proceedings, a Magistrate instituted proceeding under s 107, Code of Criminal Procedure, against one of the disputing parties and it was contended on their behalf that there being a *bonâ fide* dispute between the parties as to title and possession, the proceeding under s 107, Code of Criminal Procedure, taken against one party alone to the exclusion of the other would prejudice the former in the land registration proceedings:—*Held*, that such a consideration was

to be decided in the proceeding, but no objection could on that account be taken to the initiation of proceeding under s. 107, Code of Criminal Procedure, against one or the other party, if on the facts presented before the Magistrate at the time of its initiation it appeared that such party were out of possession and were seeking to obtain possession by unlawful means which were likely to cause a breach of the peace Where some of the party against whom proceeding under s 107, Code of Criminal Procedure, was instituted were further appointed special constables although the

tial trial. The High Court, therefore, transferred the case from the Magistrate's file The Magistrate having allowed bail to the petitioners on condition of their undertaking that no attempt would be made by them or their agents to realise rent by

8. ——— Order for security cannot

to and doubted DORASAMI NAIDU *v.* EMPEROR (1906) . . . I. L. R. 30 Mad. 182

9. ——— Order passed on consent of a party to be bound down without evidence taken—*Criminal Procedure Code (Act V of 1898), ss. 107, 117.* The proceeding under s. 107 of the Criminal Procedure Code is a precautionary measure and not a trial for an offence, and in such a proceeding no one should be bound down, unless it is shown that he is about to commit a breach of the peace. Where, therefore, a person, called upon to show cause why he should not be bound down under the section, appeared before the Magistrate and agreed to be bound down, whereupon the Magistrate directed him to execute a bond without taking any evidence at all:—*Held*, that the order was illegal. RAM CHANDRA HALDAR *v* EMPEROR (1908)

I. L. R. 35 Calc. 674

10. ——— Joint inquiry against several persons—*Necessity of specific findings against each—Criminal Procedure Code (Act V of 1898), ss 107, 118.* Where a joint inquiry has been held against several persons, who were called upon to furnish security to keep the peace under s. 107 of the Criminal Procedure Code, there must be a specific finding against each person of acts rendering him individually liable under the section before an order can be passed binding him down. AJODHYA PRASAD SINGH *v* EMPEROR (1908)

I. L. R. 35 Calc. 929

11. ——— Unlawful assembly—Crimi-

SECURITY FOR PAST LOAN.

See BANK OF BENGAL . 7 B. L. R. 653

SEDITION.

See CONFISCATION.

I. L. R. 34 Calc. 986

See CRIMINAL PROCEDURE CODE, 1898, ss 225, 233 TO 237.

I. L. R. 33 Bom. 77

See PENAL CODE, ss. 124A, 153A.

I. L. R. 33 Bom. 77

1. ——— "Swaraj"—*Incitment to secure "swaraj"—Security for good behaviour—Seditious language at a public meeting—Criminal Procedure Code (Act V of 1898), s. 108—Indian Penal Code (Act XLV of 1860), s. 124A.* The term "*swaraj*" does not necessarily mean government of the country to the exclusion of the present Govern-

offence of sedition under s. 124A of the Penal Code, and is consequently not within the purview of s. 108 of the Criminal Procedure Code BENI BHUSHAN ROY *v.* EMPEROR (1907)

I. L. R. 34 Calc. 991

SEDITION—*contd*

2. ———— **Government authority for prosecution—Sufficiency of authority**—*Complaint—Regularity of proceedings—Criminal Procedure Code (Act V of 1898), ss 4 (h), 196, 200—Presumption of regularity of official acts—Evidence Act (I of 1872), s 114—Re-publication of seditious articles—Penal Code (Act XLV of 1860), ss 124A, 499, Exception (4)—Printer, liability of—Act XXV of 1869, s 7* Orders under s. 196 of the Criminal Procedure Code should be expressed with sufficient particularity and with strict adherence to the language of the section. But the real question in such cases is whether the prosecution was instituted under the authority of Government An order purported to accord sanction to prosecute the editor, manager and the printer of a newspaper under [illegible]

Presidency Magistrate against the accused He [illegible]

Procedure Code was not a complaint within s 4 [illegible]

That the presumption under s 114 of the Evidence [illegible]

exhibit by the prosecution and used and the case against the editor of that paper on his trial for sedition, was not a report of the proceedings of a Court of Justice, and was not justifiable under the [illegible]

I. L. R. 36 Calc. 141

3. ———— **Reasonable criticism of Government**—*Incitement to insurrection—Penal Code (Act XLV of 1860), s. 124A—Admissibility of seditious articles not forming the subject of the charge—Liability of printer for seditious matter in a newspaper—Act XXV of 1867, s 7* A reasonable criticism of the action of Government in a particu- [illegible]

lished in the same newspaper, not forming the subject of the charges, on which the prisoner is being tried at the time, are admissible to show the intention of the person, who printed or published the latter. S 7 of Act XXV of 1867 makes the printer or publisher responsible for everything appearing in the newspaper, whoever the author of the seditious articles may be, unless he can prove absence from the office of the paper in good faith and without knowledge that during his absence seditious matter would be published It is not absence in good faith for the printer to go away, but with the full knowledge of what is going to happen in his absence and for the purpose of shirking his liability *Queen-Empress* v *Bal Gangadhar Tilak, I. L R 22 Bom 112,* dissented from. *Ramasami* v *Lokunada, I. L R 9 Mad 387,* approved of EMPEROR *v* PHANENDRA NATH MITTER (1908) . . I. L. R. 35 Calc. 945

SELF-ACQUIRED PROPERTY.

See HINDU LAW—JOINT FAMILY
I. L. R. 29 All. 244

See HINDU LAW—JOINT FAMILY—NATURE OF, AND INTEREST IN, PROPERTY

SELF-ACQUISITION.

See HINDU LAW—JOINT FAMILY.
I. L. R. 32 Bom. 512

See SELF-ACQUIRED PROPERTY

See SEPARATE ACQUISITION.

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SENTENCE—*contd*

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10. POWER OF HIGH COURT AND APPELLATE COURTS AS TO SENTENCES—
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    - (b) ENHANCEMENT . . . 11664
    - (c) MITIGATION . . . 11666
    - (d) REVERSAL . . . 11666

11. FORFEITURE OF PROPERTY . 11667

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5 Bom. Cr. 22; 24
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I. L. R. 4 Bom. 239

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I. L. R. 1 Mad 54

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4 Mad Ap. 2
5 Mad Ap. 1
I. L. R. 18 Bom. 751
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——— of death, confirmation of—

See CRIMINAL PROCEDURE CODES, s. 376 (1872, s. 288) . I. L. R. 1 Bom. 639
10 W. R. Cr. 57
2 C. W. N. 49

——— powers of High Court as to sentences—

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ss. 8, 16 . I. L. R. 28 Calc. 423

SENTENCE—*contd*

I. GENERAL CASES.

1. ———— **Obligation to pass sentence on conviction**—*Duty of Magistrate* Where a Magistrate convicts a person of an offence, he is bound to pass some sentence, if only a nominal one. ANONYMOUS . . . **4 Mad. Ap 66**

2 ———— The law gives no discretion to a Court which convicts of an offence to award or not the punishment provided for that offence in the Penal Code DEWAN SINGH *v.* QUEEN-EMPRESS . . **I L. R. 22 Calc. 805**

3 ———— **Principals and abettors**—*Abetment of same offence committed as principal* Persons punished as principals cannot also be punished for abetment of the same offence QUEEN *v* JEETOO CHOWDRY . . **4 W R. Cr. 23**

QUEEN *v.* RAMNARAIN JOSH . **4 W R. Cr 37**

4. ———— *Registration Act, 1866, s. 94, Abetment of offence under* Under s 94, Act XX of 1866, an abettor could be punished more severely than his principal could be QUEEN *v* GOPAL PROSAUD SEIN . . **8 W. R Cr 16**

5. ———— **Ground for passing lighter sentence**—*Difference between opinions of Judge and jury* A difference of opinion between the Judge and the jury is no ground for the Judge passing a lighter sentence than he would otherwise have done. *Per* JACKSON, *J* QUEEN *v* GHOLAM MUSTUFFA . . . . **3 W R. Cr. 29**

6 ———— **Ground for mitigation of sentence**—*False evidence* Discussion as to the extent of punishment to be passed on certain

DHURRANI DUTT RAI . . **8 W. R Cr. 7**

8. ———— **False evidence**—*Simple misstatement.* A deliberate misstatement made in a Court of Justice, whether it tends to endanger the life and property of others or to defeat and impede the progress of justice, is not an offence which should be lightly passed over; but for a simple misstatement from which no such inferences can be drawn, a comparatively light sentence will suffice, particularly where the prisoner pleads guilty, and throws himself on the mercy of the Court. QUEEN *v* GURJOON AHEER . . **7 W. R Cr. 37**

9. ———— **Voluntarily causing hurt**—*Sentence by Subordinate Magistrate—Causing*

SENTENCE—*contd.*

I. GENERAL CASES—*contd.*

grievous hurt. Where a District Magistrate annulled a conviction passed by a Subordinate Magistrate (first class) of voluntarily causing hurt by means

Subordinate Magistrate REG *v.* HANMAPA BIN MALAPA . . . . **7 Bom. Cr. 37**

10. ———— **Taking illegal gratification**—*Order to refund money.* In a conviction of taking illegal gratification, a simple order to refund the money taken is not a sufficient punishment. *In the matter of* MUTTY LALL CHUTTOPADHYA **16 W. R. Cr. 74**

12. ———— **Measure of punishment**—*Murder—Severity of sentence, mitigation of.* Where a prisoner convicted of murder against the opinion of the assessors was sentenced to transportation for life, the High Court reduced the sentence to ten years' rigorous imprisonment, remarking on the severity of the Penal Code and on the necessity of administering it so as to make it apply to the various gradations and decrees of crime in this country QUEEN *v* HOSSEIN ALLY **7 W. R. Cr. 47**

13. ———— *Rape—Circumstances for consideration* The measure of punishment in a case of rape should not depend on the social position of the party injured, but on the greater or less atrocity of the crime, the conduct of the criminal, and the defenceless and unprotected state of the injured females. QUEEN *v.* JHANTAH NOSHYO . . . . **6 W. R. Cr. 59**

14. ———— *Rioting with*

15. ———— *Rioting and unlawful assembly—Affray.* Where the evidence in a case failed to establish anything like an unlawful

SENTENCE—*contd.*

1. GENERAL CASES—*contd.*

16. ———— **Sentence on alternative finding**—*Penal Code, s 72.* An alternative finding is perfectly legal. The sentence should be as provided by s. 72, Penal Code QUEEN *v.* TARINEE MYTEE . . . . **7 W R. Cr. 13**

17. ———— **Contemporaneous sentences.** Contemporaneous sentences are not justified by the Penal Code. QUEEN *v.* MOHESH CHUNDER SIRCAR . . . . **3 W. R. Cr. 13**

18. ———— *Sentence under Penal Code and under special law.* A sentence under the Penal Code and also under a special law in respect of one and the same offence is illegal. QUEEN *v* HUSSUN ALI . . **5 N. W. 49**

19. ———— *Simultaneous conviction for offence, and order for security for good behaviour* When a conviction of an offence is contemporaneous with an order for taking security for good behaviour, the sentence for the substantive offence is to be first carried out, and the person to be bound then brought up for the purpose of being bound QUEEN *v.* SHONA DAGEE

24 W. R. Cr. 13

20. ———— **Sentence running from period prior to conviction**—*Illegal sentence* A Sessions Judge has no power to declare that a sentence shall run from a period prior to the conviction. QUEEN *v* BUL SINGH . . . **4 N. W. 8**

21. ———— **Commencement of sentence where appeal is brought**—*Date of committal to jail* Where on the appeal of Government an order of acquittal is set aside and sentence passed, that sentence will commence to run from the date of the committal of the accused to jail, and not from the date of their arrest or of the sentence on the appeal. EMPRESS *v* MAHUDDI . **6 C. L. R. 349**

22. ———— **Sentence to commence at future date**—*Conviction, and admission to bail to give means of appeal.* Where a Magistrate, after sentencing two prisoners to separate terms of imprisonment, admitted them to bail, in order that they might have the means of appealing:—*Held, that such admission to bail did not make the previous sentence one to commence at a future time,* and consequently illegal The case of *Kishen Chunder Bhuttacharjee, 3 B. L. R A Cr. 50: 12 W R Cr 47,* distinguished *In the matter of* OKHOY KUMAR . . . . **7 C. L. R. 393**

23. ———— **Sentence imposed in British India postponed till expiry of a sentence imposed in Mysore**—*Criminal Procedure Code, 1882, s 11—Power of Magistrate.* It is competent to a Magistrate in British India to pass a sentence which should take effect after the expiration of a sentence in Mysore. QUEEN-EMPRESS *v* VENKATARAM JETTI . **I. L. R. 20 Mad. 444**

24. ———— **Order for punishment on contingent failure to perform work**—*Act XIII of 1859, s 2* An order of a Magistrate passed under s. 2 of Act XIII of 1859, "that the prisoner should work for a certain period, and in case he failed to do so should suffer rigorous imprisonment for one month," annulled as to the latter part, the Magistrate having no power to make such an order until the failure had occurred and been proved before him. REG. *v* JOMA BIN BALU

4 Bom. Cr. 37

25. ———— **Sentence under repealed Act**—*Cattle Trespass Acts, III of 1857 and I of 1871.—Conviction under wrong Act* Where a [illegible]

26. ———— **Sentence of penal servitude.** The punishment of penal servitude is only applicable to Europeans and Americans QUEEN-EMPRESS *v* DUMA BAIDYA

I. L. R. 19 Mad. 483

27. ———— **Passing sentence before judgment**—*Criminal Procedure Code (Act X of 1882), ss. 366, 367.* A sentence which has been passed or a direction that an accused be set at liberty which has been given at a sessions trial before the judgment required by s 367 of the Code of Criminal Procedure, 1882, has been written, is illegal. QUEEN-EMPRESS *v* HARGOBIND SINGH

I. L. R. 14 All. 242

[illegible]

I. L. R. 20 Calc. 48[illegible]

2. CAPITAL SENTENCE.

1. ———— **Sentence on conviction of murder**—*Sentence of death or transportation.* On a conviction for murder, the only punishments that can legally be awarded are death or transportation for life. QUEEN *v.* BANI DOSS

14 W. R. Cr. 2

QUEEN *v.* JAMAL . . **16 W. R. Cr. 75**

2. ———— *Discretion of* [illegible] *after conviction of murder,* [illegible]

I. L. R. 23 Calc. 805

SENTENCE—*contd.*

2. CAPITAL SENTENCE—*concld*

3. ———————— *Duty of Magistrates.* Judges must not shrink from doing their duty, and they are bound to pass a capital sentence in a case of murder when they believe the evidence. QUEEN v SHIB NARAIN PALODHEE **7 W. R. Cr. 33**

4. ——— **Justification for sentence of death**—*Convict undergoing transportation.* The fact that except death no punishment more severe than that which the prisoner is undergoing at the time of the commission of the offence can be inflicted, is not of itself sufficient to justify the Court in condemning the convict to death QUEEN v NGA SHOAY-DE **19 W. R. Cr 68**

5. ———— **Conviction of person under transportation of murder**—*Penal Code, s 303* Where a person under sentence of transportation for life on a conviction for murder is found guilty of murder on a subsequent and different charge, the only sentence that can be passed on him under s 303 of the Penal Code is death QUEEN v. DOORJODHUN SHAMONTO *alias* DEEJOBOR **19 W. R. Cr 45**

6. ———— **Pregnancy of accused convicted of murder**—*Suspension of sentence* Capital sentence should be pronounced on a conviction for murder even if the accused be pregnant, although the execution of the sentence should be deferred till after delivery. QUEEN v PANHEE AUBUT . . **15 W. R. Cr 66**

7. ———————————— *Suspension of sentence* When a prisoner was pregnant, the sentence of death passed upon her was ordered not to be carried out until after her delivery QUEEN v GHUPBHURNEE . . . **W. R. 1864, Cr. 1**

QUEEN v TEPOO . . . **3 W. R. Cr. 15**

Since expressly provided for by s 306, Criminal Procedure Code, 1872, and s 382 of Act X of 1882.

3. CUMULATIVE SENTENCES.

1. ———— **Sentencing twice for same offence**—*Conviction for two offences, one of which is integral portion of another.* The conviction of pri- [illegible]

2. ———— **Cases where same acts are the basis of two charges and convictions**—*Sentence on each charge.* Where substantially only one offence has been committed, and the acts which are the basis of a prisoner's conviction on one charge are the same as the acts which are the basis of his conviction on another charge, cumulative sentences on each charge should not be passed. QUEEN v RADHAKANTH PAUL . **9 W. R. Cr. 12**

QUEEN v. CHUNDER KANT LAHOREE **12 W. R. Cr. 2**

SENTENCE—*contd.*

3. CUMULATIVE SENTENCES—*contd.*

3. ——— **Conviction on several charges forming substantially one offence**—*Criminal Procedure Code, 1861, s 46.* Where a person, though charged under different sections of the Penal Code, was convicted of what was substantially but a single offence —*Held,* that it was not lawful for the Magistrate who tried him to pass a sentence of imprisonment as for separate offences, under s 46 of the Code of Criminal Procedure, exceeding in the aggregate the punishment which it was competent for the Court to inflict on conviction of a single offence REG v GANU LADU **2 Bom. 132 : 2nd Ed 126**

4. ——— ——— ——— *Improper sentence* Where a person, though charged under two heads, was found guilty of what was substantially but one offence —*Held,* that it was improper for the Sessions Judge to record a conviction under two sections of the Penal Code, and thereupon to award a punishment of two years' imprisonment in excess of what the law prescribed for the offence committed REG v ZORA KARUBEG . **4 Bom. Cr. 12**

5. **Acts constituting offence founded on one continuous transaction**—*Sentence for principal offence.* Where the acts constituting the offence are founded on one single continuous transaction, sentence should only be passed for the principal offence ANONYMOUS **6 Mad. Ap 47**

6. ——— **Act coupled with intention**—*Same act constituting a less grave offence.* Where the act of an accused person, coupled with his in- [illegible]

punishments for the same act, distinguished REG. v DOD BASAYA . . . **11 Bom 13**

7. ——— **Conviction of separate offences**—*Criminal Procedure Code, 1861, s. 46*—*Separate sentences to take effect successively* Where prisoners are convicted of separate offences, a separate sentence should be passed in each case, with a direction that the imprisonment in the second case should commence on the expiration of that in the first and so on. ANONYMOUS **4 Mad. Ap, 27**

8. ———————— *Separate sentence to take effect successively.* In a case of several offences under one section of the Penal Code, the proper way is to try the accused (under separate charges) for each of the several distinct [illegible] under the section, which have been clearly [illegible] against them. On conviction on each of [illegible]

[illegible]

SENTENCE—*contd.*

3. CUMULATIVE SENTENCES—*contd.*

9. ———————— *Maximum term of punishment—Joinder of charges.* Where a person who is accused of several offences of the same kind is tried for each of such offences separately by a Magistrate, the aggregate punishment which such Magistrate can inflict on him in respect of such offences is not limited to twice the amount which he is by his ordinary jurisdiction competent to inflict, but such Magistrate can inflict on him for each offence the punishment which he is by his ordinary jurisdiction competent to inflict *In the matter of* DAULATIA . . . **I. L. R. 3 All. 305**

10. ———— **Conviction of several instances of same offence**—*Aggregate sentence for purpose of appeal—Separate sentence on each offence.* For purposes of appeal, the whole punishment awarded to one person on one trial for several instances of the same offence is to be regarded as one sentence. *Semble* That where a person is tried at the same time for several instances of the same offence, it is not necessary that more than a single sentence should be passed But if a separate sen-

11. ———— **Simultaneous convictions**—*Sentence for purposes of appeal—Criminal Procedure Code, 1872, s 314.* The aggregate of the sentences passed under s. 314 of the Code of Criminal Procedure in a case of simultaneous convictions for several offences must be considered a single sentence for the purposes of confirmation or appeal REG. *v* RAMA BHIVGOWDA

I. L R. 1 Bom. 223

12. ———— **Separate sentences**—*Abetment of abduction and wrongful confinement—Penal Code, ss 343, 498.* The prisoners having been sentenced for abetment of abduction of a woman under ss. 109 and 498 of the Penal Code, and for wrongful confinement of her under s 343 —*Held,* that both sentences could not stand, and that, as the essence of the case was abduction, the prisoners, as abettors therein, should be punished for it alone QUEEN *v.* ISHWAR CHANDRA JOGEE

W. R. 1864 Cr 21

13. ———————— *Abduction of child to get property from its person—Theft after preparation to cause death—Penal Code, ss 369, 382*

8 W. R. Cr. 84

14. ———————— *Penal Code, s. 369—Abduction with intent to take moveable property—Second punishment for theft.* A prisoner tried, convicted, and punished under s. 369 of the Penal Code of abducting a child with intent dishonestly to take moveable property, cannot also be punished for the theft of a part of the moveable property which he intended dishonestly to take through means of the abduction; and the second punishment for a theft is by the present Code of Criminal Procedure illegal. QUEEN *v.* NOUJAN. NOUJAN *v.* QUEEN . . . . . . **7 Mad. 375**

15. ———————— *Penal Code, ss. 71, 183 and 353—Resisting taking of property by public servant—Using criminal force to deter public servant from doing his duty* *Held,* on the facts of this case, that a party (*A*) who objected to accom-

sentences for each offence was not prevented by s.71 of that Code. QUEEN *v.* JOYAH MOHUN CHUNDER

14 W. R. Cr. 19

16. ———————— *Threatening witnesses—Sentence for each offence.* An accused who threatened three witnesses was convicted and sen-

17. ———————— *Culpable homicide and being member of unlawful assembly.* The prisoner was convicted and sentenced separately for culpable homicide not amounting to murder and for being a member of an unlawful assembly. The two offences, however, being held to be one (the latter being only part of the evidence of the former), the conviction and sentence for the second offence were quashed QUEEN *v.* RUBBEEOOLAH

7 W. R. Cr. 13

18. ———————— *Dacoity with murder—Penal Code, s. 396.* If a person concerned in a dacoity unintentionally commits murder, he is liable to punishment under s 396 of the Penal Code. But he cannot be separately convicted of murder under s. 302 and of committing dacoity under s. 395 QUEEN *v.* RUGHOO

W. R. 1864, Cr. 30

19. ———————— *Dacoity and receiving stolen property.* A person convicted of and sentenced for dacoity cannot also be convicted of

SENTENCE—*contd*

3 CUMULATIVE SENTENCES—*contd.*

and sentenced for receiving or retaining the stolen property thereby acquired (*dissentiente* LOCH, *J*). BHYRUB SEAL *v* QUEEN. QUEEN *v* BHYRUB SEAL W. R. 1864, Cr. 27

QUEEN *v*. ABOOL HOSSEIN . 1 W. R. Cr. 48

20. ———— *Rescuing from lawful custody and using criminal force—Penal Code, ss. 224, 225, and 353.* Where substantially but one offence has been committed, and the acts which are the basis of one charge are the same

—*Held*, that the prisoners had only done one act and were guilty of only one offence, and should have been found guilty under ss 224 and 225 of "escape" and "rescuing" respectively, and sentenced accordingly QUEEN *v*. KALISANKAR SANDYAL . . . 3 B. L R. A. Cr. 14

QUEEN *v* DINA SHEIKH.
3 B. L. R. A. Cr 15 note; 10 W. R. Cr. 63

So where prisoners were accused of rioting and using criminal force, it was *held* only one offence. *In the matter of* NILRUTTON SEIN 16 W. R. Cr. 45

21. ———— *Making false charge—Giving false evidence—Separate offences.*

22. ———— *Penal Code, ss.*

EMPRESS *v*. PIR MAHOMED I. L. R. 10 Bom. 254

23. ———— *Conviction of several offences* Two prisoners, having been convicted of forgery and other offences, were sentenced

SENTENCE—*contd.*

3 CUMULATIVE SENTENCES—*contd.*

2 Bom. 414; 2nd Ed. 391

REG. *v*. MURAR TRIKAM . 5 Bom. Cr. 3

24. ———— *Distinct offences—Simultaneous sentence.* Three prisoners were charged with five distinct offences of house-breaking by night, and were sentenced to two years' rigorous imprisonment in each case. *Held*, that the Magistrate had power only to pass sentence of four years' imprisonment upon each prisoner, but according to the sentence all the punishments inflicted would be going on simultaneously. ANONYMOUS . . . . 5 Mad. Ap. 42

25. ———— *Criminal Procedure Code, s. 35—"Distinct offences"—Penal Code, ss. 75, 411*

accused for trial to the Court of Session. QUEEN-EMPRESS *v*. KHALAK . I. L R. 11 All. 393

Under s 457 of the Penal Code QUEEN *v*. CHYTUN BOWRA . . 5 W. R. Cr. 49

JOGEEN PULLEE *v*. NOBO PULLEE 6 W. R. Cr. 49

In re MUSSAHUB DAOUDH . 6 W. R. Cr. 92

27. ———— *House-breaking*

cient, he need not award any additional sentence for the second. QUEEN *v* TINCOUREE W. R. 1864, Cr. 31

28. ———— *House-breaking and theft—Joinder of charges—Limit of conviction—Criminal Procedure Code (Act X of 1872), ss. 452, 454, 455. Held*, that, where in the course of one and the same transaction an accused person appears to have committed several acts, directed to

form of charge and to designate not only the principal, but the subsidiary, crimes alleged to have

SENTENCE—*contd.*

3. *CUMULATIVE SENTENCES—contd.*

been committed, yet in the interests of simplicity and convenience it is best to concentrate the conviction and sentence on the gravest offence proved. Where therefore a person who broke into a house by night and committed theft therein was charged and tried for offences under ss. 380 and 457 of the Penal Code, and was convicted of both those

EMPRESS *v.* AJUDHIA . I. L. R. 2 All. 644

29. ——— *Offence made up*

sion under s. 380 of the Penal Code. REG. *v.* ARJUN . . . . . . 1 Bom. 87

30. ——— *Conviction of several offences—House-breaking to commit theft—Compound offence.* It is competent to a Magistrate to pass a separate sentence in respect of each

such aggregate punishment does not exceed the jurisdiction of the Court passing the sentences. REG. *v.* ANVARKHAN VALAD GULKHAN 9 Bom. 172

31. ——— *House-breaking and theft—Penal Code, ss 380 and 457—Simultaneous convictions for separate offences.* In a case of conviction of house-breaking by night, in order to commit theft, under s 457, and theft, under s 380 of the Penal Code, there may either be one sentence for both offences, or separate sentences for each offence, provided that the total punishment awarded does not exceed that which may be given for the graver offence. REG *v* TUKAYA BIN TAMANA . . . I. L. R. 1 Bom 214

32. ——— *Criminal Procedure Code, ss. 35, 235—Penal Code, ss 379, 380, 454—House-breaking in order to the commission of theft—Theft—Separate convictions and sentences.* Under ss 35 and 235 of the Criminal Procedure Code, a Magistrate may legally pass a separate sentence of two years' rigorous imprisonment and fine under each of the ss 379 or 380 and 344 of the

three times previously convicted :—*Held*, that the better course would have been to commit him to the Court of Session under ss 454 and 75 of the Code.

SENTENCE—*contd.*

3. *CUMULATIVE SENTENCES—contd.*

But a Sessions Judge trying such a case under s. 379 and s 454 would under no circumstances be justified in passing a sentence of ten years' imprisonment under the latter part of s. 454 and of four years' imprisonment under s 380 The latter portions of ss. 454 and 457 were framed to include the cases of house-trespassers and house-breakers who had not only intended to commit, but had actually committed, theft *Queen-Empress* v. *Ajudhia, I. L R. 2 All 644,* and *Queen-Empress* v. *Sakharam Bhan, I. L. R 10 Bom 493,* referred to QUEEN-EMPRESS *v* ZOR SINGH . I. L. R. 10 All. 146

33. ——— *Criminal Procedure Code, s 35—Penal Code, ss 71, 72, 352, 426, 457—Separate convictions for different offences in the same transaction.* An accused person was convicted under s. 457 of the Penal Code of house-breaking by night in order to commit an offence (mischief and assault), and also under ss 426 and 352 for the offences of mischief and assault and

34. ——— *Criminal Procedure Code (Act X of 1882), ss 35 and 235—Penal Code (Act XLV of 1860), ss. 71, 380, 457—Simul-*

prisoner was sentenced to two years' rigorous im-

SENTENCE—*contd.*

3. CUMULATIVE SENTENCES—*contd.*

s. 35 of the Criminal Procedure Code (Act X of 1882). QUEEN-EMPRESS *v.* SAKHARAM BHAU
I. L. R. 10 Bom. 493

35. ——— *Lurking house-trespass and theft—Penal Code, ss 380 and 454.* Discussion as to whether cumulative punishment under ss 454 and 380 is legal for lurking house-trespass and theft QUEEN *v.* MINA NUGGERBHATIN
3 W. R. Cr. 19

36. ——— *Penal Code (Act XLV of 1860), s 71—Criminal Procedure Code (Act V of 1898), s 35—Conviction of several offences at one trial* Where a person commits house-breaking [illegible]

[illegible]

in question and not a separate one for each offence. If in such a case two sentences are passed, and the aggregate of these does not exceed the punishment provided by law for any one of the offences, or the jurisdiction of the Court, that would be an irregularity [illegible] inter- [illegible] UEEN- [illegible] v [illegible]
I. L. R. [illegible] Bom. 706

37. ——— *House-trespass and grievous hurt* The prisoner entered a house for the purpose of committing an assault, and in carrying out that intention, caused grievous hurt In convicting and punishing him for the substantive offence (grievous hurt) —*Held*, that it was not necessary to pass a separate sentence for the offence of house-trespass QUEEN *v* BASSOO RANNAH . . . 2 W R Cr 29

38. ——— *Kidnapping—Taking property from child—Penal Code, ss 363, 369* The offence described in s 363 of the Penal Code is included in that described in s 369, the kidnapping and the intention of dishonestly taking property from the kidnapped child being included in the latter section QUEEN *v* SHAMA SHEIKH
8 W R. Cr. 35

39. ——— *Kidnapping—* [illegible]

40. ——— *Rioting—Unlawful as*[illegible] of " riot [illegible] assembly [illegible] and to [illegible] Code wc [illegible] KHALIF[illegible]

41. ——— *Joining unlawful assembly and rioting with deadly weapon—Penal Code, ss. 144, 148* There is nothing illegal in sentencing a prisoner for both offences of joining an unlawful assembly armed with a deadly weapon (s.144), and rioting armed with a deadly weapon, though the former is almost merged in the latter offence SREEKISHEN *v* JUGLAL . 9 W. R. Cr. 5

42. ——— *Rioting armed with deadly weapon—Causing hurt by shooting.* Where prisoners are charged both with rioting, being armed with deadly weapons, and with causing hurt by shooting, and their conviction of the latter offence rests solely on the fact of their belonging to a party by one of whom (not one of the prisoners) fire-arms were used, it is wrong to pass a cumulative sentence, and to punish the prisoner both for the rioting and for the causing hurt. The punishment should be for either one or other of those offences. QUEEN *v* DURZOOLLA . . 9 W. R. Cr. 33

43. ——— *Rioting with deadly weapon—Grievous hurt—Penal Code, ss 148, 149, and 324.* The offence of rioting, armed with deadly weapons, and stabbing a person on whose premises the riot takes place, are distinct offences and punishable as separate offences under ss 148, 149, and 324 of the Penal Code, s 149 being read as a proviso to s 148 QUEEN *v.* CALLACHAND
7 W. R Cr. 60

44 ——— *Conviction of rioting and causing hurt by dangerous weapons—Distinct offences—Separate charges—Penal Code, ss 71, 148, 149, 324—Act X of 1882 (Criminal Procedure Code), ss 35, 235—Act X of 1872 (Criminal Procedure Code), ss 314, 454—Act VIII of 1882 s 4* The offences of rioting armed with a deadly weapon and voluntarily causing hurt with a dangerous weapon to two persons are distinct offences, and a person charged with such offences can be convicted and sentenced in respect of the rioting and of the hurt caused to each of the persons injured *A* and *B* were charged with rioting armed with deadly weapons under s. 148 of the Penal Code and they were also charged under s 324, coupled with s 149, with causing hurt by a dangerous weapon to *X*, and *B* was further charged under s 324 with causing a like hurt to *Y*, *A* being also charged under s. 324, coupled with s 149, in respect of the hurt caused by *B* to *Y*. *A* and *B* were convicted on all charges, and separate sentences, to take effect in succession, were awarded in respect of each offence charged. The offences under s 324 were committed during the riot. *Held*, that the several acts with regard to which the prisoners were charged did not fall within the provisions of s 71 of the Penal Code, inasmuch as it [illegible]

passed were strictly legal. LOKE NATH SIRCAR *v.* QUEEN-EMPRESS . . I. L. R. 11 Calc. 349

45. ——— *Separate convictions for more than one offence where acts combined form one offence—Penal Code (Act XLV of 1860), ss. 143, 147, 324, 353—Act VIII of 1882, s. 4—*

SENTENCE—*contd.*

3. CUMULATIVE SENTENCES—*contd.*

Criminal Procedure Code (Act X of 1882), s. 235. Four persons were charged with being members of an unlawful assembly consisting of themselves and others, the common object of which assembly was resisting the execution of a legal process, namely, the arrest of a judgment-debtor by a Civil Court peon, who went with a warrant for his arrest accompanied by other persons, *A* and *B*, for the purpose of identifying him, and with using force or violence in prosecution of the common object, such force or violence consisting of an assault on the Civil Court peon, and another by means of a dangerous weapon on *A*. The Deputy Magistrate convicted all the accused of offences under ss.147 and 353 of the Penal Code, and sentenced them to six months' rigorous imprisonment under the former section and two months' rigorous imprisonment under the latter He further convicted one of the accused of an offence under s 324 in respect of the assault on *A*, and sentenced him to one month's rigorous imprisonment in respect of that offence, and directed that the sentences were to take effect one on the expiry on the other. *Held*, that the offence of rioting was completed by the assault on *A*, and that the assault on the peon was a further offence under the first sub-section of s 235 of the Code of Criminal Procedure *Held*, further, that, even if *A* had not been assaulted, the conviction and sentences passed for rioting and the assault on the peon were legal, inasmuch as the acts of the accused, taken separately, constituted offences under ss 143 and 353 of the Penal Code, and combined, an offence under s. 147 ; and under s. 235, sub-s. (3), of the Code of Criminal Procedure, the accused might be charged with and tried at one trial for the offence under s 147, and those under ss 143 and 353, and therefore also separately convicted and sentenced for each such offence, provided the punishment did not exceed the limit imposed by s. 71 of the Penal Code as amended by s. 4 of Act VIII of 1882, which limit had not been exceeded in the present case. *In the matter of* CHANDRA KANT BHATTACHARJEE CHANDRA KANT BHATTACHARJEE *v.* QUEEN-EMPRESS

I. L. R. 12 Calc. 495

46. ———————— *Penal Code (Act*

s. 353, Penal Code, for actually committing an offence under that section, and a further sentence under s 353 read with s. 149 for committing the

7. ———————— *Penal Code Amendment Act (VIII of 1882), s. 4—Offence made up of several offences—Rioting—Grievous hurt—Criminal Procedure Code, 1882, s. 235—Penal Code, ss. 146, 147, 149, 325.* A member of

I. L. R. 6 All. 121

48. ———————— *Separate charge—Criminal Procedure Code (Act X of 1872), s. 454, illus. (f)—Penal Code (Act XLV of 1860), ss. 147, 148, and 324.* Under s 454 of the Criminal Procedure Code, the collective punishment awarded under ss. 147, 148, and 324 of the Penal Code must not exceed that which may be awarded for the graver offence. *Quære* Whether separate convictions under ss 147 and 324 of the Penal Code are legal. *In the matter of the petition of* JUBDUR KAZI. EMPRESS *v.* JUBDUR KAZI . I. L. R. 6 Calc. 718

S C. *In re* JUBDUR KAZI . 8 C. L. R. 390

49. ———————— *Rioting—Grievous hurt—Criminal Procedure Code, 1882, s. 235—Penal Code, ss 146, 147, 149, 325.* Three persons

under s. 325 *Held, by* PETHERAM, C.J., and STRAIGHT and TYRRELL, *JJ.*, that inasmuch as the evidence upon the record showed that the three prisoners had committed individual acts of violence with their own hands, which constituted distinct

Per BRODHURST, *J*, that the evidence showed that only one of the three prisoners had caused grievous

SENTENCE—*contd.*

3. CUMULATIVE SENTENCES—*contd.*

obtained under the provisions of s 149 of the Penal Code. QUEEN-EMPRESS *v.* RAM SARUP
I L R. 7 All 757

50. ——————— *Criminal Procedure Code, 1882, s 35 and s. 235—Convictions of rioting and causing grievous hurt—Offences distinct—Penal Code (Act VIII of 1882), s 4—Penal*

graph of s 235 of the Criminal Procedure Code, a person accused of rioting and of voluntarily causing grievous hurt may be charged with and tried for each offence at one trial, and under s 35 a separate sentence may be passed in respect of each. *Queen-Empress* v. *Ram Partab, I L R 6 All 121*, dissented from. QUEEN-EMPRESS *v* DUNGAR SINGH
I L R 7 All 29

51 ——————— *Penal Code, s 71, —Criminal Procedure Code, ss. 39, 235—Rioting, grievous hurt, and hurt—Punishment for more than one of several offences* On the 8th August 1884 a Magistrate of the second class began an in-

September the case for the prosecution having closed, the Magistrate framed charges against each of the accused under ss 323 and 325 of the Penal Code, recorded the statements of the accused and the evidence for the defence, and on the 10th September convicted the accused of all the charges, passing upon each of them, in respect of each charge, sentences which he could pass as a Magistrate of the first class, but could not have passed as a Magistrate of the second class On appeal, the Sessions Judge, on the ground that the prisoners had committed the offence described in s 148 of the Penal Code, held that the sentences passed by the Magistrate were illegal, as being inconsistent with the provisions of s 71, paragraphs 2 and 4; and he accordingly reduced the sentences of im-

under the circumstances, have been legal, and that a

... referred to. QUEEN-EMPRESS *v* PERSHAD **I. L R 7 All. 414**

52. ——————— *Penal Code, s. 71 and ss 147, 149, and 325—Rioting—Grievous hurt committed in the course of riot and in prosecution of the common object—Distinct offences—Separate sentences—Act VIII of 1882, s 4—Criminal Procedure Code, s. 235* S 149 of the Penal Code creates no offence, but was intended to make it clear that

... and other members of the assembly, as to whom it did not appear whether or not any of them personally used force or violence, were convicted of rioting under s 147 and grievous hurt under s 325 of the Penal Code, and were each sentenced to separate terms of imprisonment for each offence. The highest aggregate punishment, which was

punishment of seven years' rigorous imprisonment which could have been awarded for the offence punishable under s. 325. *Held*, also, that the riot could not in any of the cases be considered a part of the offence under s 325, that s. 71 did not apply, and that the sentences were legal *Queen-Empress* v *Ram Partab, I. L. R. 6 All. 121*, dissented from. *Queen-Empress* v. *Dungar Singh, I. L. R 7 All 29;*

Chandra Kant Bhattacharjee v. *Queen-Empress, I. L R 12 Calc 498;* and *Reg* v. *Tukaya bin Tamana, I L R 1 Bom. 214*, referred to QUEEN-EMPRESS *v* BISHESHAR . **I. L. R 9 All. 645**

53 ——————— *Separate sentences for rioting and grievous hurt—Penal Code, ss. 71 (para 1), 144, 147, 148, 324—Act VIII of 1882, s 4—Criminal Procedure Code (Act X of 1882), s. 35* *Per curiam* (TOTTENHAM, J., dissenting). Separate sentences passed upon persons for the offences of rioting and grievous hurt are not legal where it is found that such persons individually did not commit any act which amounted to voluntarily causing hurt, but were guilty of that offence under s 149 of the Penal Code. *Empress*

v. *Ram Partab, I. L. R 6 All. 121,* approved. *Loke Nath Sirkar* v. *Queen-Empress, I. L R. 11 Calc. 349,* overruled. NILMONEY PODDAR *v.* QUEEN-EMPRESS . . I. L. R. 16 Calc. 442

54. ———— Separate sentences should not be passed for rioting and assaulting a public servant in execution of his duty when practically the offence of assaulting the public servant was the common object of the unlawful assembly, the members of which committed such rioting. *Nilmoney Poddar* v. *Queen-Empress, I. L. R. 16 Calc. 422,* followed. HRIDOY MONDAL *v* JAGANANDA DAS . . 4 C. W. N. 245

55. ———— *Rioting—Distinct*

ment under ss. 147 and 323 of the Penal Code. *Held,* that the sentences were legal. During the course of a riot, in which X was attacked and beaten

sections The other three were convicted under s 147 and also under s 325 read with s 109 Separate sentences were passed on K, and also on the other three for each of the offences *Held,* that the sentences on K were legal, but that, as there was nothing to show that the other three had abetted the particular blow which caused the grievous hurt, although they had each of them assaulted X, the conviction of them under s 325 read with s. 109 could not be supported *In the matter of the petition of* MOHUR MIR *v.* QUEEN-EMPRESS *In the matter of the petition of* KALI ROY *v.* QUEEN-EMPRESS . . . I. L. R 16 Calc 725

56. ———— *Rioting and theft—Common object of unlawful assembly being theft—Separate sentences, legality of—Penal Code (Act XLV of 1860), ss. 71, 147, 149, 379.* When persons are charged with rioting and theft and the

s. 71 of the Indian Penal Code, it is improper to pass separate sentences upon accused persons both for rioting and theft, when the former offence is but an element of the latter, and that they are under that section liable to punishment only in

respect of one or other of those offences. *Nilmoney Poddar* v. *Queen-Empress, I. L. R. 16 Calc. 442,* followed MITHOO SINGH *v.* GOPAL LAL . 3 C. W. N. 761

57. ———— *Rioting armed with deadly weapons—Separate and distinct offences—Causing hurt and grievous hurt—Resistance and obstruction to Police—Penal Code, ss 71, 148—152, 332, 333.* Eight persons, who were charged with a number of others, were tried on various charges consisting of rioting armed with deadly weapons (s 148, Penal Code), assaulting or obstructing a

were convicted of the offence charged under s. 148, and each was sentenced to the maximum punishment allowed under the section, *viz*, three years' rigorous imprisonment Seven out of the eight were convicted of offences under s. 152, and sentenced each to an additional term of two years'

suppressing the riot, and each sentenced to a fur-

SENTENCE—*contd.*

3. CUMULATIVE SENTENCES—*contd.*

sentences passed under s 148 and ss. 332 and 333 were not illegal, there being nothing in s 71 of the Penal Code which limits the amount of punishment that may be imposed for these offences. FERASAT v. QUEEN-EMPRESS . I. L. R. 19 Calc. 105

58. ——— *Penal Code, ss.*

is illegal to pass two sentences, one for riot and one for hurt. But in such a case the two sentences

7 *All.* 757, approved. QUEEN-EMPRESS v. BANA PUNJA . . . I. L. R. 17 Bom. 260

59. ——— *Personating public servant—Extortion—Conviction for each offence proved necessary—Separate sentences—Sentence necessary upon each conviction—Penal Code (Act XLV of 1860), ss 71, 170, 383—Criminal Procedure Code, ss 35, 235* Where more than one offence is proved in respect of which the accused has

Criminal Procedure Code, sentences of imprison-

I. L. R. 10 All. 58

60. ——— *Receiving stolen property and assisting in concealment of it—Penal*

SENTENCE—*contd*

3. CUMULATIVE SENTENCES—*concld.*

the Criminal Procedure Code being adopted. ANONYMOUS . . . 4 Mad. Ap. 14

61 ——— *Theft from two persons in same room.* Where the accused stole property at night belonging to two different persons from the same room of a house, it was *held* that he could not be sentenced separately as for two offences of theft. QUEEN v. MONDEAH

11 W. R. Cr. 38

62. ——— *Theft—Receiving stolen property* A person convicted of robbery of theft cannot be also convicted of dishonestly receiving in respect of the same property QUEEN v MUDDUN ALLY . . . 1 W. R. Cr 27

QUEEN v SREEMUNT ADUP . 2 W. R. Cr. 63

QUEEN v. SEEBCHURN HAREE 11 W. R. Cr. 12

QUEEN v. SHEEB CHUNDER HAREE

11 W. R. Cr. 12 note

63 ——— *Theft and mischief—Double sentence* A double sentence for theft and mischief is illegal and improper. BICHUK AHEER v. AUHUCK BHOONEEA . 6 W. R. Cr 5

64. ——— *Mischief and theft—House-breaking and theft* Separate convictions and sentences under ss 429 and 379 and under ss 457 and 380 of the Penal Code were set aside; and the convictions under s 429 in the former case, and under s 457 in the latter, allowed to stand QUEEN v. SAHRAE . 8 W. R. Cr. 31

65. ——— *Criminal trespass—Mischief—Criminal Procedure Code, 1872,*

not, under cl. iii of s 454 of Act X of 1872, receive a punishment more severe than might have been awarded for either of such offences. The provisions of that law do not in such a case prohibit the Court from passing sentence in respect of each offence established. EMPRESS v. BUDH SINGH

I. L. R. 2 All 101

66. ——— *Separate offences—Penal Code, ss 143, 253* A cumulative sentence

4. FINE.

1. ——— **Specific fine on each prisoner**—*Trial of several prisoners. A sentence of* fine must impose a specific fine on each prisoner. ANONYMOUS . . . 5 Mad. Ap. 5

2. ——— **Wrongful confinement**—*Penal Code, s. 344.* **Fine** alone is not a legal sentence for a prisoner convicted under s. 344 of the Penal Code. REG. v. BAHIRAJI BIN KRISHNAJI

1 Bom. 39

SENTENCE—*contd*

4 FINE—*concld.*

3. ———— **Separate offences**—*Alternative sentence allowed only in one.* Where a conviction has been had under two sections of the Penal Code, in one of which only an alternative sentence of imprisonment of fine is allowed, a sentence of fine cannot be passed. QUEEN *v.* BHOOBAN MOHUN

11 W. R Cr. 39

4. ———— **Offence under Act XIX of 1838, s. 13**—*Omission of owner of harbour craft to produce certificate of registry.* The Legislature when it enacted in s 13 of Act XIX of 1838 that persons who committed certain acts should be "subject to a fine of ten times the fee" or "subject to a fine of ten rupees," intended that the penalties so specified should be inflicted in full The owner of a harbour craft having been fined R2 for omission to produce a certificate of registry when de-

[illegible]

5. ———— **Theft in dwelling-house**—*Penal Code, s 380—Imprisonment* On conviction for theft in a dwelling under s. 380 of the Penal Code, fine cannot be substituted in lieu of imprisonment, though it may be added to imprisonment. DULLOO *v* ZAINAH BEBEE . **16 W. R. Cr. 17**

6. ———— **Offence under Act XVIII of 1854 (Railways Act), s. 34**—*Imprisonment.* S 34 of Act XVIII of 1854 prescribes the mode in which fines levied under that Act are to be recovered. It is only on the return of the warrant of distress unsatisfied, or on the Magistrate being otherwise satisfied that no sufficient distress exists, that imprisonment can be imposed ANONYMOUS

6 Mad. Ap 37

7. ———— **Transportation with fine**—*Levy of portion of fine* When a fine is imposed in addition to transportation, and the whole or part of the fine is levied, it is the duty of the Sessions Judges to inform the authorities at Port Blair of the fact. ANONYMOUS . . **5 Mad. Ap 44**

8. ———— **Imposition of additional fine under Court Fees Act (VII of 1870), s. 31** An Assistant Magistrate, having convicted the accused persons, sentenced them to pay a fine,

[illegible]

I. L. R. [illegible] Mad. 155

5 IMPRISONMENT.

(*a*) IMPRISONMENT GENERALLY.

1. ———— **False statement on oath to public servant**—*Penal Code, s. 181—Illegal sentence.* A sentence under s. 181 of the Penal Code which awards no term of imprisonment is illegal. ANONYMOUS . . . **4 Mad. Ap. 18**

2. ———— **Accumulation of sentences**

[illegible]

ference only to sentences passed simultaneously, or passed upon charges tried simultaneously QUEEN *v* PURAN . . . . . **7 W. R. Cr. 1**

3. ———— **Concurrent sentences**—*Criminal Procedure Code, 1882, s. 35* Under s. 35 of the Criminal Procedure Code, sentences of imprisonment cannot be passed so as to run concurrently. QUEEN-EMPRESS *v.* WAZIR JAN

I. L R. 10 All. 58

4. ———— *Criminal Procedure Code (Act X of 1882), s 35—Sentence—Concurrent sentences of imprisonment—Penal Code (Act XLV of 1860), s. 409.* Sentences of imprisonment passed for distinct offences to run concurrently are not warranted by law. *Queen-Empress v Wazir Jan, I. L. R 10 All 58,* referred to DAITARI DAS *v.* QUEEN-EMPRESS . **I. L. R. 25 Calc. 557**

5. ———— *Criminal Procedure Code (Act X of 1882), ss. 35 and 397—Con-*

[illegible]

6. ———— **Criminal Procedure Code, 1872, s. 309**—*Penal Code, s 65.* S 309 of the Criminal Procedure Code did not extend the period of imprisonment which might be awarded by a Magistrate under s. 65 of the Penal Code; it only regulated the proceedings of Magistrates whose powers were limited. EMPRESS *v* DARBA

I. L. R 1 All. 461

7. ———— **Commencement of sentence of imprisonment**—*Postponement of sentence—Criminal Procedure Code (Act XXV of 1861), ss 46, 47, 48, and 421* A sentence of imprisonment ought to commence from the time that the sentence is passed, unless there is some lawful reason for ordering it to commence at some future period. Except as in the cases provided for by ss. 46, 47, and 48 of the Criminal Procedure Code, a Magistrate

[illegible]

SENTENCE—*contd.*

5. IMPRISONMENT—*contd.*

(*a*) IMPRISONMENT GENERALLY—*contd*

s.c. *In the matter of* KISHEN SOONDER BHUTTACHARJEE . . . 12 W. R. Cr. 47

8. ———— **Imprisonment in lieu of whipping**—*Criminal Procedure Code, s 395—Infliction of fine in lieu of whipping* A Court [illegible]

either to remit the whipping altogether, or to sentence the offender, in lieu of such whipping or of so much of the sentence of whipping as was not carried out, to imprisonment, etc The word "imprisonment" in s. 395 of the Criminal Procedure Code means a substantive sentence of imprisonment, and not imprisonment, for default in payment of a fine QUEEN-EMPRESS *v.* SHEODIN I L. R. 11 All 308

9. ———— **Confirmation of sentence—**—*Criminal Procedure Code, 1872, s 36* S 36 of the Criminal Procedure Code, as regards the necessity for confirmation of the sentence by the Sessions Judge, referred to cases in which the sentence [illegible]

10 ———— **Attempt to commit offence**—*Penal Code, s 511* The term of imprisonment [illegible] ence for the judicial pro- alf of seven

9 W. R. Cr. 59

11 ———— **Offence under Act XIII of 1859, s 2**—*Form of sentence* A sentence of imprisonment should not be announced beforehand in the order directing performance of the contract in a case under Act XIII of 1859, s 2, but should follow on a complaint of non-compliance ANONYMOUS . . . . . 6 Mad. Ap. 24

Procedure *In the matter of* BUHRAM KHAN 10 W. R. Cr 47

13 ———— **Dacoity**—*Penal Code, s 395.* A sentence of fourteen years' imprisonment cannot be passed for dacoity under s 395 of the Penal Code. QUEEN *v.* HAROO RUJWAR 13 W. R. Cr 27

14 ———— **Disobedience to order of public servant**—*Rigorous imprisonment—Penal*

SENTENCE—*contd*

5. IMPRISONMENT—*contd.*

(*a*) IMPRISONMENT GENERALLY—*contd.*

section, in which case alone the infliction of rigorous imprisonment was authorised REG *v.* RATANRAV BIN MAHADEVRAV CHAVAN . 3 Bom. Cr 32

15 ———— **Giving false evidence**—*Penal Code, s 193—Duty of Court* Under s 193 of the Penal Code it is obligatory upon the Court in every case of conviction under that section to pass some sentence of imprisonment EMPRESS *v* KHODAI SINGH . . . 3 C L. R. 527

16 ———— **False evidence to procure** [illegible]

17 ———— **Deliberately fabricating** [illegible]

18 ———— **Grievous hurt**—*Penal Code,* [illegible]

2 W. R Cr 32

QUEEN *v* MENAZOODIN . 2 W R Cr 33

19 ———— **House-breaking**—*Whipping—Rigorous imprisonment—Commutation of punishment* Upon conviction of the offence of house-breaking, the accused was sentenced by the Deputy Magistrate to six months' rigorous imprisonment and to be whipped. On appeal, the Judge found that, as this was the first offence, the additional punishment of whipping was illegal, and, setting

20 ———— **Offence under Madras Police Act, 1859, s. 48**—*Rigorous imprisonment—Measure of sentence.* A sentence of rigorous imprisonment under conviction for an offence under s. 48, Act XXIV of 1859, was illegal. ANONYMOUS . . . 5 Mad. Ap. 35

SENTENCE—*contd.*

5 IMPRISONMENT—*contd.*

(*a*) IMPRISONMENT GENERALLY—*contd.*

21. ———— Offence under Registration Act (VIII of 1871), s. 80—*General Clauses Consolidation Act* (*I of 1868*), *s. 2, cl 18—Rigorous and simple imprisonment. Held*, that under Act I of 1868, s 2, cl. 18, the Sessions Judge should have specified in his warrant whether the imprisonment awarded to a person convicted under s. 80, Act VIII of 1871, should be simple or rigorous, but that as he had omitted this at the proper time, simple imprisonment should now be set forth in the sentence and warrant. LEGAL REMEMBRANCER *v.* RADHOO CHURN ASH. GOVERNMENT *v* RADHOO CHURN ASH **18 W. R. Cr. 3**

22. ———— Indefinite period of im-

23. ———— Imprisonment in default of giving security for good behaviour—*Criminal Procedure Code, 1861, s 296* Where a prisoner, in addition to a sentence passed upon him, is required to furnish security for his good behaviour, under s 296 of the Criminal Procedure Code, for a period of one year, his imprisonment in default of providing such security must commence to run from the date of the order to furnish security, and cannot be directed to run from the expiry of the sentence passed upon the prisoner. QUEEN *v* TORAL GUJAR . . . **3 N.W. 126**

24. ———— Receiving stolen property—*Criminal Procedure Code, 1872, s 505—Addition to sentence of order for security for good behaviour. P* was convicted by a Magistrate of the first class of dishonestly receiving stolen property. He confessed on his trial that he had twice previously been convicted of theft He was sentenced to be whipped, to be rigorously imprisoned, and on the expiration of the term of imprisonment to furnish security for good behaviour. *Held*, that the order requiring security should not have formed part of the sentence for the offence of which *P* was convict-

brought up for the purpose of being bound EMPRESS *v* PARTAB . . **I. L. R 1 All. 666**

25. ———— Addition to sentence of further imprisonment in default of engagement to keep the peace—*Criminal Procedure Code, 1869, s 280* The prisoner was convicted of an offence punishable under s. 307 of the Penal Code In addition to the sentence passed upon him under that section, the Sessions Judge directed, under s 280 of the Code of Criminal Procedure, that at the expiration of the term of imprisonment imposed, the prisoner do execute a formal engagement in a sum of R100 for keeping the peace towards the prosecutor for a period of one year, and in default to undergo simple imprisonment for that period. The High Court set aside so much of the sentence as directed the imprisonment of the prisoner in default of entering into the required engagement. QUEEN *v.* SELLAM . . . . . **6 Mad 25**

26. ———— Imprisonment for allow-

months—Act I of 1868, s. 2, cl 18—"Imprisonment" Where a claim for accumulated arrears of maintenance for several months arising under several breaches of an order of maintenance is dealt

imprisonment, as if the warrant only related to a

rant and one punishment, and not a cumulative warrant and cumulative punishment Also *per* STRAIGHT, *J.*—With reference to s 2, cl (18), of the General Clauses Act (I of 1868), "imprisonment" in s 488 of the Criminal Procedure Code may be either simple or rigorous. *Per* OLDFIELD, *J*—A claim for accumulated arrears of maintenance arising under several breaches of order may be dealt with in one proceeding, and arrears levied under a single warrant QUEEN-EMPRESS *v.* NARAIN . . . . **I L R 9 All. 240**

27. ———— Imprisonment in default of giving security for good behaviour—

SENTENCE—*contd.*

5. IMPRISONMENT—*cont'd.*

(*a*) IMPRISONMENT GENERALLY—*concld*

directed to be given. KING-EMPEROR *v* KAREM-UD-DIN BEG (1901) . I L R 23 All 422

(*b*) IMPRISONMENT AND FINE

28 ———— **Case under s 21, Cattle Trespass Act, 1871**—*Sentence of fine or imprisonment—Default in payment of compensation* It is not lawful to pass a sentence of fine or imprisonment in default of payment of the compensation awarded in a matter under s. 21 of the Cattle Trespass Act, 1871 *In the matter of* KETABDI MUNDUL . . . . . 2 C L R 507

29 ——— **Contempt of Court**—*Imprisonment added to fine—Trial of case of con-*

was committed, and, not in any other capacity, and is bound to take cognizance of the contempt on the day on which it was committed. In such a case imprisonment cannot be added to fine as a punishment In a case in which it was dealt with in a summary manner, the offence must under s 163 be tried by an officer other than the person before whom the contempt was committed QUEEN *v*. CHUNDER SEEKUR ROY . 12 W R Cr. 18

30. — **Making false charge**—*Penal Code, s 211—Imprisonment with or without fine.* A prisoner convicted under the second clause of s. 211 of the Penal Code should be sentenced to imprisonment, with or without fine, and not to fine alone REG *v* RAMA BIN RABHAJI . 1 Bom 34

31 ——— **Conviction under Military Cantonment Act (Bom Act III of 1867)**—*Simultaneous sentence of fine and imprisonment.* In cases of convictions under ss 11 and 12 of the Military Cantonment Act (Bom. Act III of 1867), a simultaneous sentence of fine and imprisonment in default of the payment of the fine can only be awarded, under s. 14 of the Act, in the event of no property sufficient for the payment of the fine being found. REG. *v.* LADU . . 7 Bom Cr 87

32 ———— **Conviction under s 48, Act XXIV of 1859**—*Mad Act V of 1865—Procedure to enforce fine* Persons convicted under s. 48 of the Police Act (XXIV of 1859) are not liable t [illegible] paymer [illegible] the fin [illegible] 1865.

ANONYMOUS . . . 7 Mad Ap. 22

33. ———— **Attempt to commit suicide**—*Penal Code, s 309* A prisoner found guilty, under s. 309 of the Penal Code, of an attempt to commit suicide, must be sentenced to some imprisonment, and not merely to payment of a fine. REG. *v.* CHANVIOVA . . . 1 Bom 4

SENTENCE—*contd.*

5 IMPRISONMENT—*cont'd.*

(*c*) IMPRISONMENT IN DEFAULT OF FINE.

34. ———— **Additional imprisonment**—*Rigorous imprisonment* Additional imprisonment in default of payment of fine for the offence of dacoity must be rigorous. QUEEN *v* SRIMONTO KOTAL . . . . 7 W. R Cr 31

35 ——— **Limitation of imprisonment in summary trials**—*Fine—Criminal Procedure Code, 1882, ss 32, 33, 262—Penal Code, s. 67—Act VIII of 1882* In cases of simple imprisonment ordered as a process for enforcement of payment of fine, the rule of s 262 of the Criminal Procedure Code limiting the period of imprisonment in summary trials does not apply, as that section only refers to substantive sentences of imprisonment EMPRESS *v* ASGHAR ALI

I L R 6 All 61

36 ———— **Presidency Magistrates' Act, 1877, s 167**—*Award of substantive sentence of imprisonment.* The words "to imprisonment for a term exceeding six months or to fine exceeding R200" in s 167 of the Presidency Magistrates' Act (IV of 1877) are confined in their meaning to substantive sentences, and cannot be extended to include an award of imprisonment in default of payment of fine, the operation of which is contingent only on the fine not being paid *In the matter of* JOTHARAM DAVAY . I L R 2 Mad 30

37 ———— **Committing affray**—*Penal Code, s 160—Criminal Procedure Code, 1872, s. 309.* Prisoners were convicted of having committed an offence punishable under s. 160 of the Penal Code, and were sentenced to pay a fine of [illegible]

Code (Act X of 1872), the sentence was legal. REG. *v.* MUHAMMAD SAIB . I. L R 1 Mad 277

38 ———— **Criminal Procedure Code, s 33**—*Penal Code, s. 65.* S 33 of the Code of Criminal Procedure, 1882, does not authorize a Magistrate to pass a sentence in default of payment of fine in excess of the term prescribed by s. 65 of the Indian Penal Code. *Reg.* v. *Muhammad Saib, I. L. R. 1 Mad 277*, was overruled in 1881. QUEEN-EMPRESS *v.* VENKATESAGADU

I L R 10 Mad 165

ANONYMOUS . I L R 10 Mad. 166 note

39 ——— **Assault**—*Penal Code, ss. 65* [illegible]

40 ———— **Sentence under Bom. Act VII of 1867, s. 31**—*Simple imprisonment.* Imprisonment in default of payment of a fine

SENTENCE—*contd*

5. IMPRISONMENT—*contd.*

(c) IMPRISONMENT IN DEFAULT OF FINE—*contd.*

inflicted under Act (Bombay) VII of 1867, s. 31, ought to be simple, not rigorous. REG. *v.* BECHAR KHUSHAL . . . . . 5 Bom. Cr 43

41 ———— **Conviction under Cattle Trespass Act (III of 1857)**—*Fine and im-prisonment* Certain ...

i

5 Mad. Ap. 21

But *see* ANONYMOUS . . 7 Mad Ap 22

42 ———— **Contempt of Court**—*Criminal Procedure Code, 1861, s 163—Power of Magistrate.* The Magistrate convicted the defendant of contempt of Court under s. 163 of the Code of Criminal Procedure, and sentenced him to pay a fine of R10, or in default two days' imprisonment *Held,* that the Magistrate had not exceeded his powers. ANONYMOUS . . . . 6 Mad. Ap. 16

43. ———— **Offence under Income Tax Act (IX of 1869)**—*Power of Magistrate.* A Magistrate has no power under s 25 Act IX of 1869 ...

14 W R Cr. 70

44. ———— **Offence under Income Tax Acts (IX of 1869 and XXIII of 1869)**—*General Clauses Consolidation Act (I of 1868), s. 5.* The Income Tax Act (Act IX of 1869, supplemented by Act XXIII of 1869) having been passed subsequently to the General Clauses Act (I of 1868), s. 5 of the latter authorised the award of imprisonment in default of payment of the fine imposed under s 25 of the former. REG *v.* SANGAPA BIN BASHIAPA . . . 7 Bom. Cr 76

45. ———— **Offences under Madras Abkari Act (III of 1864), ss 21, 22, 30, 32**—*Penal Code, s. 64.* Prisoners were sentenced to fines under ss 21 and 22 of Ma...

... procedure is laid down for the levy of the penalty, s. 64 of the Penal Code had no application. ANONYMOUS . 6 Mad Ap 40

46 ———— **Offence under License Acts (XXI of 1867, s 15, and XXIX of 1867, s 3)**—*Power of Magistrate* Where a Magistrate sentenced a person, who had neglected to take out a license, under Act XXI of 1867, s. 15, and Act XXIX of 1867, s. 3, to pay a fine of R10, and in default of payment to suffer seven days' simple imprisonment, the High Court reversed so much of the sentence as awarded imprisonment, as the trying Magistrate had under the Act no power to make such an order. REG. *v.* CHENAPPA VALAD NAGAPPA . . . . . 5 Bom Cr. 44

47. ———— **Neglect to comply with order for maintenance**—*Criminal Procedure Code, 1882, s. 488—Subsequent offer to pay, effect of, on sentence* A ...

ed ur

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48. ———— **Committing public nuisance**—*Penal Code, s. 290.* The sentence of imprisonment passed in default of the payment of a fine inflicted under s 290 of the Penal Code (for committing a public nuisance) should be one of simple, not rigorous, imprisonment REG. *v* SANTU BIN LAKHAPPA KORE . . . 5 Bom Cr. 45

49 ———— *Penal Code, s. 290.* A sentence of rigorous imprisonment ... fault of p... under s. 2... YELLAMA...

(*Contra*) *see* REG. *v.* SANTU BIN LAKHAPPA KORE 5 Bom Cr 45

50 ———— **Salt Act (XVII of 1840), breach of**—*Mad Reg. I of 1805.* A sentence of imprisonment in default of payment of a fine imposed under the provisions of Act XVII of 1840 is illegal. QUEEN *v* AMIRTAM

I. L R 4 Mad 335

51 ———— *Substantive sentence*—*Mad. Reg. I of 1805* Act XVII of 1840 authorizes a substantive sentence of imprisonment. ANONYMOUS CASE . I. L R 4 Mad 335 note

52 ———— **Offence under Salt Revenue Act (XXXI of 1850)**—*Criminal Procedure Code, 1861, ss 21 and 45—Penal Code, s 65.* S. 45 of the Criminal Procedure Code made applicable the provisions of s. 65 of the Penal Code not only to offences falling under that Code as defined in its 40th section, but to every case in which a Magistrate had jurisdiction under s 21 of the Criminal Procedure Code. Imprisonment for one month awarded in default of payment of a fine under s 3 of the Salt Revenue Act (XXXI of 1850) was accordingly reduced to three weeks' simple imprisonment REG. *v.* VITHOBA BIN SOMA

5 Bom. Cr. 61

53 ———— **Non payment of taxes**—*Bombay District Municipal Act (Bom. Act VI of 1873), s. 84, as amended by Bombay District Municipal Act (Bom. Act II of 1884), s. 49—Penal Code (Act XLV of 1860), s. 40 and s. 64—Penalty, "Fine"—Imprisonment in default of*

SENTENCE—*contd.*

5. IMPRISONMENT—*contd*

(c) Imprisonment in Default of Fine—*contd*

[illegible]

under s. 84 of the Municipal Act as amended by Bombay Act II of 1884 *In re* Lakmia
I. L R 18 Bom 400

54 ——— Excess charge and fare, non-payment of—*Railway Act (IX of 1890)*, [illegible]

[illegible] to in the se[illegible]n is not a fine, though it may be recovered as such. Queen-Empress *v* Kuirapa
I L R 18 Bom 440

55 ——— Penal Code (Act XLV of 1860), ss 40 and 64—*Madras Towns Nuisances Act (Mad Act III of 1889), ss 3 and 11—Magistrate, jurisdiction of* Where a conviction has taken place under the Towns Nuisances Act (Madras), 1889, s 8, a Magistrate has jurisdiction to impose a fine and also to pronounce a sentence of imprisonment in default of payment of the fine Queen-Empress *v* Rappel . I L R 18 Mad 490

56 ——— ss 65, 67—*Imprisonment in default of fine—Madras Towns Nuisances Act (Mad Act III of 1889), s 3, cl 10.* An accused having been convicted of an offence under s 3, cl. 10, of the Towns Nuisances Act (Madras), 1889, and sentenced to pay a fine of R8 and in default of payment to undergo simple imprisonment for a week —*Held,* (i) that s 67 of the Indian Penal Code refers solely to cases in which the offence is punishable with fine only · has no application to offences punishable either with imprisonment or with fine, but not with both , such sentences are governed by s 65 of the Indian Penal Code ; and (ii) that the sentence of imprisonment in default should not exceed one-fourth of the maximum term of imprisonment provided for the offence Queen-Empress *v.* Yakoob Sahib
I L R 22 Mad 233

57 ——— Sentence, powers of Appellate Court in respect of—*Magistrate, jurisdiction of—Criminal Procedure Code, 1882, s 423* [illegible]

[illegible] imprisonment to one of three months' rigorous imprisonment, but imposed a fine of R10, or in default a further term of six weeks' rigorous imprisonment :—*Held,* that, as the latter sentence might involve an enhancement of the former, such sentence was in excess of the powers of the Magistrate having regard to s 423 of the Code of Criminal Procedure Queen-Empress *v* Ishri
I. L. R. 17 All. 67

58 ——— *Powers of Appellate Court as to alteration of sentence—Alteration so as to enhance sentence—Criminal Procedure Code, 1882, s 423.* The accused was convicted of criminal breach of trust and sentenced to nine months' rigorous imprisonment On appeal, the conviction was upheld, but the sentence was altered to one of six months' rigorous imprisonment and a fine of R1,000, or, in default of payment, three months' further rigorous imprisonment. The accused applies to the High Court in revision, contending that the alteration of the sentence amounted to an enhancement of the sentence beyond the powers of the Appellate Court under s 423 of the Code of Criminal Procedure (Act X of 1882). *Held,* that there was no enhancement of the sentence *Queen-Empress* v *Ishri, I L R 17 All 67,* distinguished Queen-Empress *v* Chagan Jagannath I L R 23 Bom 439

59. ——— *Criminal Procedure Code (Act V of 1898), s 423—Alteration of sentence on appeal—Effect of alteration—Enhancement of sentence* A sentence of three months' imprisonment was on appeal altered by the Sessions Judge to one month's imprisonment with the fine of R20, or in default of payment to 15 days' rigorous imprisonment. This alteration of sentence was held not to amount to an enhancement of the sentence such as was contrary to the terms of s 423 of the Criminal Procedure Code No general rule can be laid down to determine what is or is not an enhancement of sentence when only a portion of a sentence is altered to a punishment of a lesser decree of severity. In each case the Court has to consider what is the effect of the alteration *Queen-Empress v. Chagan Jagannath, I. L R 23 Bom 439,* dissented from. Rakhal Raja *v* Khirode Pershad Dutt . . I L R 27 Calc 175

60 ——— Under s 388 (2) of [illegible]

6 SENTENCE AFTER PREVIOUS CONVICTION.

1 ——— Penal Code, s 75—*Receiving stolen property acquired by dacoity* Where [illegible]

SENTENCE—*contd.*

6. SENTENCE AFTER PREVIOUS CONVICTION—*contd.*

ciently punished by a sentence of seven years' transportation; a sentence of transportation for life is too severe. It is not the intention of the Legislature that a previous conviction should so enormously enhance the heinousness of petty offences. *In the matter of* SHAMJEE NASHYO . 1 C. L. R. 481

2. ———— *Previous convictions of offence before Penal Code came into operation.* *Held*, by the majority of the Court [illegible]

REG. *v.* KUSHYA BIN YESU . 4 Bom. Cr 11

3 ———— *Previous conviction not under Penal Code.* An accused person can only be punished under s. 75 of the Penal Code where the previous conviction has been under that Code. BUDHUN RUJWAR *v.* EMPRESS 10 C L R 392

4 ———— *Evidence of previous conviction.* To warrant a sentence awarding an additional punishment under s. 75 of the Penal Code [illegible]

[illegible] 14 W. R. Cr [illegible]

5 ———— *Amalgamation of sentence—Transportation.* Sentence of transportation for fourteen years under s. 392 of the Penal Code annulled, as the offence for which such sentence was passed was not committed subsequently to any conviction; and s. 75 had therefore been improperly applied. [illegible]

such prisoner is already undergoing imprisonment, and commuting the latter sentence, condemn such prisoner to a longer period of transportation than he is liable to suffer for the crime of which he has last been convicted. REG. *v.* SAKYA VALAD KAVJI 5 Bom. Cr 36

6 ———— *Attempt to commit offence—Penal Code, Ch. XXIII.* S. 75 of the Penal Code is restricted to offences under Chs. XII and XVII of the Penal Code when the term of [illegible]

DAMU HAREE . . . . 21 W. R. Cr. 35

7. ———— *Previous convictions of offence not under Ch. XVII of Penal Code.* An offender is only liable to enhanced punishment, under s. 75 of the Penal Code, for an offence punishable under Ch. XVII, after having been punished with imprisonment for the same offence or for an offence punishable under the same chapter. QUEEN *v.* PUBON . 5 W. R. Cr. 66

8 ———— *Previous offence under Ch. XII or Ch. XVII of the Penal Code.* *Held*, that, where a person commits an offence punishable under Ch. XII or Ch. XVII of the Penal Code punishable with three years' imprisonment, and, previously to his being convicted of such offence, commits another such offence punishable under either of such chapters, he is not subject, on being convicted of the second offence, to the enhanced punishment provided in s. 75 of the Penal Code. EMPRESS *v.* MEGHA . . I. L. R. 1 All. 637

9 ———— *Additional sentence—Sufficiency of sentence.* The object of s. 75 of the Penal Code is to provide for an additional sentence, not a less severe sentence, on a second conviction. Recourse should not be had to that section if the punishment for the offence committed is itself sufficient. SHEO SARAN TATO *v.* EMPRESS I. L. R. 9 Calc. 877

10 ———— *Enhanced punishment—Transportation for seven years—Imprisonment.* The accused having been previously convicted of offences punishable, under Ch. XII or Ch. XVII of the Penal Code with imprisonment for a term of three years or upwards, was subsequently convicted of an offence under one of those chapters punishable with imprisonment which may extend to three years and sentenced to imprisonment for seven years. *Held*, that a sentence of imprisonment for seven years was illegal. Under s. 75 of the Penal Code, the accused might be transported for life, but he could not be imprisoned for a longer period than six years. EMPRESS *v.* MAHADU I. L. R. 6 Bom. 690

11. ———— *Further sentence after actual sentence—Penal Code, s. 46.* Where a first class Subordinate Magistrate sentenced a prisoner to six months' imprisonment under s. 457 of the Penal Code, and finding that the prisoner was liable to enhanced punishment under s. 75 of the Penal Code, sentenced the prisoner to six months' further imprisonment under s. 46 of the Code of Criminal Procedure, the latter sentence was set aside by the High Court. ANONYMOUS 5 Mad. Ap. 3

12 ———— *Prisoner having had several previous convictions.* Where the prisoner had already been several times convicted of similar offences, the Magistrate should have committed him to the Court of Session, with a view to his being punished as after previous conviction under s. 75 of the Penal Code. REG. *v.* GANU LADU . . 2 Bom. 132: 2nd Ed 126

13 ———— *Imprisonment—Power of Magistrate—Counterfeiting marks on documents.* The prisoner was convicted under s. 475

SENTENCE—*contd*

6. SENTENCE AFTER PREVIOUS CONVICTION—*concld*

of the Penal Code, and having been previously convicted of an offence punishable under Ch XVII of the Code, the Magistrate sentenced him to four years' rigorous imprisonment *Held*, that the Magistrate had power to pass sentence of two years' imprisonment only under s. 75, Penal Code ANONYMOUS . . . 6 Mad. Ap. 3

14 ——— *Attempt to commit offence—Penal Code, Ch XVII, s 457—Lurk-* [illegible]

provisions of s 75 of the Penal Code were not applicable to such person EMPRESS *v* RAM DAYAL. I. L R 3 All 773

15 ——— *Conviction of an attempt to commit theft—Previous conviction of theft* (MELVILL, *J. dissentiente*) If a person who has been convicted of an offence punishable, under Ch. XII or Ch. XVII of the Penal Code, with imprisonment for a term of three years or upwards, is convicted of an attempt to commit any such offence, he does not thereby become liable to the enhanced punishment allowed by s. 75 of the Code EMPRESS *v* NANA RAHIM . . I L R 5 Bom 140

16. ——— and ss 179, 511—*Attempt to commit an offence—Enhancement of sentence for previous conviction—Previous conviction* A person who has been convicted of the offence of theft (an offence punishable under Ch XVII of the Penal Code) does not, on being convicted of an attempt to commit the offence of theft, become liable to the enhanced punishment allowed by s. 75 of the Penal Code. QUEEN EMPRESS *v* SRICHARAN BAURI I L R 14 Calc 357

17 ——— and ss 457 and 511—*Attempt to commit house breaking by night after previous conviction* S 75 of Act XLV of 1860 does not apply to the case of an attempt to commit the offence punishable under s 557 of the Code after previous convictions of offences falling within Ch. XII or Ch XVII, such offence being punishable under s. 511 *Sheo Saran Talo* v. *Empress*, *I. L. R 9 Calc 877*, *Empress of India* v. *Ram* [illegible]

18. ——— and s 511—*Attempt to commit an offence after previous conviction* S 75 of the Penal Code does not apply to cases which are confined to s. 511 of that code. The offences which come under s. 511 must be punished entirely irrespective of s. 75 *Queen-Empress* v. *Ajudhia, I. L R. 17 All. 120,* approved. QUEEN-EMPRESS *v* BHAROSA . I L R 17 All. 123

SENTENCE—*contd.*

7. SOLITARY CONFINEMENT.

1. ——— Duration of solitary confinement Solitary confinement must not be imposed for the whole term of a person's imprisonment Under s 74 of the Penal Code it is to be imposed at intervals *In the matter of* NYAN SUK METHER . . 3 B L R. A Cr. 42

2. ——— Summary trial—*Criminal Procedure Code, ss 32 (a), 262.* It is not legal to impose solitary confinement as part of the sentence in a case tried summarily. EMPRESS *v* ANNU KHAN . . . I. L. R. 6 All 83

8 TRANSPORTATION.

1. ——— Measure of punishment—*Murder.* A sentence of transportation other than for life is illegal in the case of a prisoner convicted of murder. QUEEN *v*. BHOOTOO MULLICK 6 W R Cr 8

2 ——— *Reasons for sentence. Criminal Procedure Code* [illegible]

sentence such prisoner to transportation for life instead of capitally, to assign his reasons for so doing QUEEN *v* DABEE . W R 1864 Cr. 25

3. ——— *Unpremeditated murder* Where murder is not premeditated transportation for life is a sufficient punishment. QUEEN *v* RAM CHURN KURMOKAR 24 W. R Cr 12

4. ——— *Penal Code, ss 307 and 394—Attempt to murder—Causing hurt in committing robbery.* Neither under s 307 nor under s 394 of the Penal Code can a prisoner be sentenced to fourteen years' transportation, the punishment awardable under those sections [illegible]

5. ——— [illegible] *with Power in alliance with the Queen* [illegible]

was held to be illegal [illegible] QUEEN *v* [illegible] [illegible] W. R. Cr. 12

6. ——— [illegible] *zard.* A sentence of death [illegible] of transportation for life [illegible] who committed murder [illegible] ceased was a wizard [illegible] ness, and that by killing [illegible] might be saved. QUEEN *v* [illegible] [illegible] W. R. [illegible]

SENTENCE—*contd.*

8 TRANSPORTATION—*contd.*

7. ———————— *Murder by way of retaliation.* The sentence of death reduced to transportation for life in a case of murder committed rather by way of retaliation for injury than under the influence of any worse passion. QUEEN *v.* TONOO . . . . . 6 W R Cr 46

8 ———————— *Reckless assault with deadly weapon* The punishment of transportation for life was inflicted instead of capital punishment in a case where there was no intention to cause death, but a reckless assault with a deadly weapon which inflicted an injury likely in the ordinary course of nature to cause death. QUEEN *v.* KHOAZ SHEIKH . . . 5 W R Cr 20

9 ———— Commutation of capital sentence—*Likelihood of accident at execution.* Where the condition of the convict rendered it likely that, if he were hanged, decapitation would ensue, the sentence of death was commuted to one for transportation for life BOODHOO JOLAHA *v.* EMPRESS . . . . . 2 C L R 215

10 ———————— *Penal Code, s. 59 Measure of punishment—Penal Code, s. 412.* A sentence of transportation under ss 412 and 59 of the Penal Code cannot exceed ten years QUEEN *v.* MOHANUNDO BHUNDARY 5 W. R. Cr. 16

11. ———————— *Measure of punishment—False evidence and forgery.* Under s 59 of the Penal Code, no sentence of transportation for a shorter period than seven years can be passed on any charge. Therefore where a prisoner was convicted on separate charges of giving false evidence in a judicial proceeding under s. 193, and of forgery under s 467, and sentenced to seven years' transportation for the first offence and a further period of transportation for three years for the second offence, the second sentence was quashed as illegal QUEEN *v* GOUR CHUNDER ROY 8 W. R Cr. 2

12 ———————— *Criminal Procedure Code, 1861, s 59—Power to commute punishment after sentence of imprisonment.* Under s. 59 of [illegible]

the imprisonment to transportation, but it cannot commute the sentence after the sentence of imprisonment has been passed. QUEEN *v.* PREM CHUND OUSOWAL . . . . W. R. 1864, Cr 35

13 ———————— *Commutation of sentence after amalgamating two sentences.* To bring s. 59 of the Penal Code into operation, the punishment awarded on one offence alone must be seven years' imprisonment, and cannot be made up by adding two sentences together and then commuting the amalgamated period to transportation QUEEN *v.* MOOTKEE KORA . . 2 W R Cr. 1

QUEEN *v.* TONOORAM . . 3 W R Cr. 44

SENTENCE—*contd.*

8. TRANSPORTATION—*contd.*

QUEEN *v.* SHONAULLAH 5 W. R. Cr 44

14 ———————— *Commutation of sentence—Imprisonment in default of payment of fine.* S 59 of the Penal Code does not authorise the substitution of transportation for the imprisonment to which a Court can sentence an offender in default of payment of fine. KUNHUSSA *v.* QUEEN I L. R. 5 Mad. 28

15. ———————— *Imprisonment—Penal Code, s. 377—Unnatural offence.* When [illegible]

I L R 1 All 43

16 ———————— *Commutation of sentence—Powers under Act XV of 1862, s. 1—Imprisonment or transportation.* An officer who, in the exercise of the powers described in s. 1, Act XV of 1862, had passed a sentence of imprisonment for seven years, had power, under s. 59 of the Penal Code, to commute that sentence into one of transportation for the like period. JACKSON, J., dissented. QUEEN *v* BOODHOOA B L R Sup. Vol 869: 9 W. R. Cr. 6

7 ———————— *Commutation of sentence—Penal Code, ss 376, 511—Attempt at rape.* A was convicted of an attempt to commit rape, and was sentenced by the Judge to rigorous imprisonment for seven years, which he commuted, under [illegible]

than five years, and such sentence could not be commuted, under s. 59, to transportation for a longer term. QUEEN *v.* MERIAM 1 B L R A. Cr 5: 10 W. R Cr. 10

18 ———————— *Commutation of sentence—Imprisonment.* When the law gives the alternative punishments of death, transportation for life, or rigorous imprisonment extending to ten [illegible] transportation ... or to pass a ... fe, he should ... ie term fixed ... it to tran- ... RUGHOO W R. 1864, Cr 30

19 ———— Successive sentences of transportation—*Criminal Procedure Code, 1861, s 46.* A sentence of transportation for two periods, [illegible] one sentence to commence after [illegible] consist of imprisonment. QUEEN *v.* KASSIM ALLY 11 W. R. Cr 10

SENTENCE—*contd.*

9. WHIPPING.

1. ———— **Sentence giving both whipping and imprisonment**—*Power of Magistrate—Act XIII of 1856, s 27.* Act XIII of 1856, s 27, gave a Magistrate power to award either imprisonment or whipping, but not both, and a sentence which gave both was illegal QUEEN *v* FYZO . . . . . Bourke O C 269

2. ———— **Person convicted of two**

the prisoner in the one case to rigorous imprisonment and in the other case to whipping under Act VI of 1864 ANONYMOUS . 5 Mad Ap 18

3. ———— **Imprisonment in lieu of whipping**—*Criminal Procedure Code, s. 395—Court not authorised to inflict fine in lieu of whipping* A Court has no power, under s. 395 of the Criminal Procedure Code, to revise its sentence of whipping by inflicting a fine In cases where the

Procedure Code means a substantive sentence of imprisonment, and not imprisonment for default in payment of a fine QUEEN-EMPRESS *v* SHEODIN I L R 11 All 308

4. ———— **Sentence of imprisonment in lieu of whipping**—*Criminal Procedure Code, 1882, s 395—Powers of Magistrate* Where a prisoner who has been sentenced to whipping is found to be unfit to undergo such sentence, and such sentence is accordingly commuted to one of imprisonment, such substituted term of imprisonment must not bring the total term to which such prisoner is sentenced up to a term in excess of the maximum which the Court passing the sentence is competent to inflict. *Queen-Empress* v. *Sheodin, I. L. R 11 All. 308*, referred to. QUEEN-EMPRESS *v.* RAM BARAN SINGH . I L R. 21 All. 25

5. ———— **Ground for sentence**—

10. POWER OF HIGH COURT AND APPELLATE COURTS AS TO SENTENCES

(*a*) GENERALLY.

1. ———— **Power of High Court to interfere with sentence.** After a sentence has

SENTENCE—*contd*

10. POWER OF HIGH COURT AND APPELLATE COURTS AS TO SENTENCES—*contd*

(*a*) GENERALLY—*concld*

by the Code of Criminal Procedure QUEEN *v.* PUBAN . . 7 W R Cr 1

2 ———— **Consolidation by High Court of sentences passed by lower Court**—*Separate sentence, illegality of* When the circumstances of the case justify, the High Court may substitute one aggregate or consolidated sentence for separate sentences passed by the Court below sufficient to meet the offence of which the accused has been convicted HRIDOY MONDAL *v* JAGANANDA DAS . . 4 C. W N 245

(*b*) ENHANCEMENT

3 ———— **Power to enhance**—*Criminal Procedure Code, 1861, s 419—Sessions Judge.* A Sessions Judge had, under s 419 of the Criminal Procedure Code, 1861, no authority to enhance a sentence on appeal QUEEN *v* BULORAM DOSS 4 W. R. Cr 20

4. ———— *Acquittal by Sessions Judge and Assessors* Where a Sessions

TOYAB SHAIKH . . 1 Ind Jur N S 58

5 ———— *Appellate Court—Criminal Procedure Code, 1872, s 280* S 280

6 ———— *Criminal Procedure Code, 1872, s 18—"Modify"* The word "modify" in s 18, cl 2, of the Code of Criminal Procedure did not include the power to enhance a sentence; consequently where an Assistant Ses-

7 ———— *Criminal Procedure Code, 1872, s. 280—Enhancement without notice.* Where a District Magistrate on appeal made an order under the Code of Criminal Proce-

8 ———— **Exercise of power**—*Criminal Procedure Code, 1872, s. 280.* Circumstances under which the High Court would, on appeal by the prisoner, enhance the punishment under s. 280, Act X of 1872. QUEEN *v* SOFFIRUDDI PALWAR 13 B L. R. Ap 23: 22 W. R. Cr. 5

9. ———— *Criminal Procedure Code, 1872, s. 280 (1861—69, s. 419).* The

SENTENCE—*contd.*

10. POWER OF HIGH COURT AND APPELLATE COURTS AS TO SENTENCES—*contd*

(*b*) Enhancement—*contd.*

High Court on appeal, being of opinion that the case was one where no circumstances of mitigation were set forth, and where, without any sufficient reason, the Judge had awarded a punishment which in ordinary cases would be quite inadequate enhanced the punishment under s 280, Act X of 1872. Queen *v.* Goojree Panday

11 B. L R Ap 3: 20 W. R. Cr. 21

10. ——— *Enhancement of sentence on appeal—Criminal Procedure Code (Act X of 1882), ss. 423, 439.* A head constable was convicted under s 330 of the Penal Code, and at a trial before a Sessions Judge sentenced to four months' simple imprisonment. The prisoner appealed. The High Court, in dismissing the appeal, directed, as a Court of Revision, that the sentence passed should be enhanced. Mether Ali *v.* Queen-Empress . . . **I L R 11 Calc 530**

11 ——— *Criminal Procedure Code, 1872, s. 280—Alteration of conviction from culpable homicide to murder.* Under s 280 of the Code of Criminal Procedure, the High Court altered the conviction in this case from culpable homicide into one for murder, and enhanced the sentence accordingly. Queen *v.* Roheem

21 W. R. Cr. 39

12. ——— *Enhancement*

the sentence passed on all *Held*, that the enhanced sentence passed on the prisoners who did not appear and who did not appeal must be annulled Anonymous . . . . . . **8 Mad Ap 8**

13 ——— *Enhancement of sentence on appeal—Appellate Court.* Where the Magistrate convicted the accused of two distinct

Paramasiva Pillai *v.* Emperor (1906)

I L R. 30 Mad 48

14 ——— *Criminal Procedure Code, s 423—Sentence, enhancement of—No enhancement when aggregate period of imprisonment reduced, although fine imposed in addition* Where the aggregate period of imprisonment awarded on appeal is to any extent less than the period of the original sentence, the fact that a fine is imposed by the Appellate Court is no enhancement of the sentence within the meaning of s. 423 of the Code of Criminal Procedure. Where the Appellate Court reduced a sentence of one month's imprisonment to five days but imposed in addition a fine with two weeks' imprisonment in default: *Held*, that the sentence of the Appellate Court was not illegal. Bhakthavatsalu Naidu *v.* Emperor (1906) . **I L R. 30 Mad. 103**

(*c*) Mitigation

gate a sentence passed by a Magistrate and confirmed or altered on appeal by the Sessions Judge, on the ground that the sentence was excessive. *In the matter of the petition of* Bissumbhur Shaha

B. L. R. Sup. Vol. 484: 6 W. R. Cr. 7

Overruling Queen *v* Ramdhone Mundul

4 W R Cr 15

16 ——— *Criminal Procedure Code, 1861, s. 405.* The High Court (like the Sessions Judge) could not, under s 445, Criminal Procedure Code, 1861, nullify the verdict of a jury by interfering to lessen the punishment. S 405 referred to cases where the offence was proved, but where the punishment inflicted was *held* to be too severe, and not to cases where the conviction itself was considered improper. Queen *v* Bissonath Mitter . . . . . **6 W. R Cr 6**

17 ——— **Exercise of powers**—*Case submitted for consideration of Government.* If there are circumstances which render expedient or advisable a mitigation of the sentence required by the law to be passed in cases of murder, the Judge may record these circumstances and submit them for the consideration of the Government, and the Government might, under s. 54, Criminal Procedure Code, 1861, act as to it seems proper. Queen *v.* Dabee . . . . **W. R 1864 Cr 27**

(*d*) Reversal.

18. ——— **"Reverse," meaning of**—*Criminal Procedure Code (Act XXV of 1861), ss. 419, 426.* The word "reverse" in ss 419 and 426, Code of Criminal Procedure (Act XXV of 1861), ss. 280 and 283 of Act X of 1872, meant to make void, to set aside, or annul, and not merely to change or turn into the contrary. Queen *v.* Elahi Bax

B L R Sup Vol. 459: 5 W. R Cr. 80

19 ——— **Power to reverse sentence**—*Criminal Procedure Code (Act XXV of 1861), s. 426.* *A* was charged with the offence of voluntarily causing hurt to *C*, and *B* was charged with the same offence, and also with the offence of abetting

SENTENCE—*concld*

10. POWER OF HIGH COURT AND APPELLATE COURTS AS TO SENTENCES—*concld.*

(*d*) REVERSAL—*concld*

A. The Magistrate found *A* guilty of the offence, and sentenced him to three months' rigorous imprisonment. The Magistrate also found *B* guilty of abetment of the offence of voluntarily

S C. GOUR MOHUN GHOSE *v.* MOHINDRO NATH CHATTERJEE . . 13 W R. Cr. 78

20 ———————— *Reversal of conviction—Reception of evidence inadmissible—Criminal Procedure Code, 1872, s 280* If in a case tried by a jury the High Court finds that inadmis-

11. FORFEITURE OF PROPERTY

———————— *Penal Code (Act XLV of 1860) s 62—Criminal breach of trust—Sentence. Held,* that the special sentence provided for by s 62 of the Indian Penal Code is a sentence which should only be inflicted in rare cases—those

AMRIT LAL (1906)

SEPARATE ACQUISITION

See HINDU LAW—JOINT FAMILY—

PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY,

NATURE OF, AND INTEREST IN PROPERTY—ACQUIRED PROPERTY.

See SELF-ACQUIRED PROPERTY.

See SELF-ACQUISITION.

SEPARATE CHARGES

See JOINDER OF CHARGES.

SEPARATE OFFENCES.

———— conviction for—

See APPEAL IN CRIMINAL CASE—PRACTICE AND PROCEDURE

I. L. R. 30 Calc. 288

See REVISION—CRIMINAL CASES—SENTENCES . B. L R. Sup. Vol. 488

See SENTENCE—CUMULATIVE SENTENCES

See STOLEN PROPERTY, OFFENCES RELATING TO . . I. L. R. 1 All 379

———— trial of—

See JOINDER OF CHARGES

SEPARATE PROPERTY.

See SEPARATE ACQUISITION

See HINDU LAW—JOINT FAMILY—NATURE OF, AND INTEREST IN, PROPERTY—ACQUIRED PROPERTY.

See HUSBAND AND WIFE.

See SUCCESSION ACT, s. 4

13 B. L. R. 383

SEPARATE SUIT.

See SUIT.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 82 I. L. R 34 Calc. 13

SEPARATION IN ESTATE.

See HINDU LAW . I. L. R. 36 Calc. 481

SEQUESTRATION.

1. ———— Writ of sequestration—*Contempt of decree or order of Court—Rule of Bombay Supreme Court, 389—"Forthwith."* The process of sequestration for contempt of a decree or order of Court, as it existed in the late Supreme Court, will, in a proper case, issue out of the High Court The object of rule 389 of the Supreme Court Rules, which required a party who wished to enforce an

his estate sequestered, was to enable the party making such endorsement to apply *ex parte* for the writ. In the absence of such a memorandum indorsed

order. HARIVALLABHDAS KALLIANDAS *v.* UTAMCHAND MANIKCHAND . 8 Bom. O. C. 135

2 ———————— *Property out of jurisdiction of High Court—Power of High Court.* The High Court will assert its jurisdiction for the purpose of preventing a writ of sequestration issued by it from becoming a mere form, and under proper circumstances will operate in *personam* where the

SEQUESTRATION—*concld.*

property sought to be sequestered is outside its jurisdiction. HARIVALLABHDAS KALLIANDAS *v* UTAMCHAND MANIKCHAND. *In re* GOPALRAV MYRAL . . . . . **8 Bom. O. C. 236**

SERVANT.

See LIMITATION ACT, 1877, SCH. II, ART. 7 (1859, s 1, CL. 2).

See MASTER AND SERVANT.

See PUBILC SERVANT.

———— **custody of—**

See ARMS ACT, 1878, s. 19.
I. L R. 20 Calc. 444
I. L. R. 16 All. 276

See CONTRACT ACT, s. 178
I. L. R. 4 Calc. 497

———— **domestic—**

See ACT XIII OF 1859
2 B. L. R. A. Cr. 32

See WILL—CONSTRUCTION.
8 B. L. R. 244
9 B. L. R. Ap. 4

———— **liability of—**

See BENGAL EXCISE ACT, VII OF 1878, ss. 53, 59 . . **II C. L R. 416**
I. L. R. 6 Calc. 207
I. L. R. 9 Calc. 84
I. L. R. 17 Calc. 567
I. L. R. 29 Calc. 496; 606

See BOMBAY ABKARI ACT, 1876, s. 45
I. L. R. 15 Bom. 45

———— **possession by, of gun—**

See ARMS ACT, s. 19 (*f*).
13 C. W. N. 124

SERVICE INAM.

———— *Lands—Resumption* The combination of an interest in land and an obligation as to service may fall under three heads, *viz* (i) there may be a grant of land burdened with service; (ii) there may be a grant in consideration of past and future service; and (iii) there may be the grant of an office the services attached to which are remunerated by an interest in land In either of the first two classes of grants it may be made a condition that the interest in the land should cease when the [illegible]

[illegible]

I. L. R. 2[illegible] Bom. 5[illegible]

SERVICE OF PROCESS.

See PROCESS.

See SUMMONS, SERVICE OF

SERVICE OF SALE PROCLAMATION.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s 311 . . **12 C. W. N. 757**

SERVICE OF SUMMONS.

See SUMMONS

SERVICE TENURE.

See BENGAL CESS ACT, 1871, s 3
7 C. L. R. 373

See BOMBAY REVENUE JURISDICTION ACT, s 4 . . **I. L. R. 18 Bom. 319**

See GHATWALI TENURE.

See GRANT—CONSTRUCTION OF GRANTS.
4 Bom. A. C. 1
I L. R. 9 Bom. 561
I. L. R. 15 Bom. 222
L. R. 18 I. A. 22
I. L R. 10 Mad. 1

See HEREDITARY OFFICES ACT
I. L R 19 Bom. 250
I. L. R. 20 Bom. 423

See LANDLORD AND TENANT.
I. L. R. 33 Calc. 339

See LEASE . **I. L. R. 32 Calc. 243**

See LIMITATION ACT, 1877, SCH. II, ART 130 (1871, ART. 130)
I. L. R. 1 Bom. 586

See OCCUPANCY RIGHT **8 C. W. N. 860**

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—SUBJECTS OF ACQUISITION.
I. L. R. 4 Calc. 67

See TRANSFER OF PROPERTY ACT, s 106
8 C. W. N. 904

———— **entry in choukidari register—**

See EVIDENCE ACT, s 32 (2)
13 C. W. N. 71

———— **ghatwali tenure—**

See ATTACHMENT—SUBJECTS OF ATTACHMENT—EXPECTANCY.
I. L. R. 28 Calc. 483

1. ———— **Creation of service tenure—** *Long possession—Presumption—Chakeran lands—* [illegible]

[illegible]

MOORSHEDABAD . . . . [illegible]

2. ———— **Performance of services—** [illegible]

[illegible]

SERVICE TENURE—*contd.*

3. ——— **Deshmukh, services of**—*Hereditary offices—Bom Act XI of 1843, s 2.* By s. 2 of Act XI of 1843 hereditary officers are bound to "render the usual services of their respective offices as far as the same may be required by the Collector or other officer under whose control they may be placed by usage or the orders of Government." *Semble* That the "usual services" of a deshmukh consist in making himself thoroughly a[illegible]

formed so much writing business as is necessary for the above purposes, and no more But if by reason of the sub-division of the talukhs his duties in that [illegible] -sonally [illegible] ovide a [illegible] RAN-

8 Bom. A. C. 107

4 ——— **Right of female to inherit service tenure** The law in the Bombay Presidency recognises the right of females to hold majumdari vatans, males being appointed by them to perform the service GOVERNMENT OF BOMBAY *v* DAMODHAR PARMANANDAS . 5 Bom. A C. 202

5. ——— *Hereditary Offices Act (Bom Act XI of 1843)—Right of females to inherit* Since the passing of Act XI of 1843 a female can inherit a majumdari vatan The Col-[illegible]

7. ——— **Power of a vatandar to create a perpetual mutalik**—*Exclusion of successors from entire management of vatan—Kararpatra grant, construction of—Vatan—Sanad, construction of* The creation of a perpetual mutalik, with a certain share of the vatan as vritti on account of mutaliki, is within the powers of a holder of the [illegible]

SERVICE TENURE—*contd*

was a desai and the last proprietor of the deshgati vatan of Tegur, granted to the ancestor of the defendants a kararpatra whereby, in consideration of the services the latter was to render to the former in recovering the vatan, the defendants' ancestor was to enjoy one-third of the vatan as vatani mutalik from generation to generation Subsequently the plaintiff's ancestor granted to the defendants' ancestor a sanad which referred to the kararpatra already [illegible]

From 1850 to 1864 he remained out of possession in consequence of the attachment In 1864 Gov-[illegible]

appointed the defendants' father to manage it, and *the defendants' father continued to manage it till* his death in 1880 On his death, a fresh mookhtearnama was executed to the defendants 1 and 4 by the mother of the plaintiff, who was then a minor. Under that mukhtearnama, the defendants managed the vatan till 1882, in which year the plaintiff, having attained his majority, wished to manage it himself, but was opposed by the defendants The services in connection with the vatan had ceased in 1864 The plaintiff therefore brought the present suit in 1884 to recover the vatan, with mesne profits The defendants set up the kararpatra and the sanad by which they contended they had acquired the hereditary right to keep the whole vatan in their possession and management and to take one-third of the income derived from the same The plaintiff [illegible]

tance awarded the plaintiff's claim On appeal by the defendants to the High Court —*Held*, reversing the decree of the lower Court, that the rights of the defendants under the kararpatra were in force and binding on the plaintiff notwithstanding that the services incidental to the vatan had ceased. That document had been executed not merely to create a permanent office for the services of which a certain share in the vatan was allotted as remuneration, but it proceeded on the special service to be ren-[illegible]

that the sanad purported to exclude the grantor's

SERVICE TENURE—*contd*

successors in the vatan entirely from the management of the vatan, and to vest it in the permanent mutalik, and, whilst leaving them as the absolute owners of the two-thirds, to deprive them of all control over it. This was virtually to attach an incident to the vatan inconsistent with its nature which the plaintiff's ancestor was not competent to do. The parties were entitled to the joint management of the vatan as tenants-in-common in respect of their undivided shares. BHIMAJI BALVANT *v.* GIRIAPA TIMAPA DESAI . I. L. R. 14 Bom 82

8. ———— Appointment of deputy—*Power of holder of tenure.* The holder of an hereditary office, such as a despande vatan, cannot create an hereditary deputy. The appointment of a deputy made by a particular incumbent cannot extend beyond the life of such incumbent. RAVJI RAGHUNATH *v.* MAHADEVRAV VISHVANATH
2 Bom. 237

9. ———— Death of grantee without heirs—*Custom—Reversion of jaghir to grantor.* Where the custom of the country was found to be that on the death of a service tenure-holder without

10. ———— Abandonment of tenure—*Mokuraridar abandoning tenure—Forfeiture of property for rebellion* A mukurandar, having fled and abandoned his tenure appertaining to a rebel's estate which was confiscated by Government, was held not entitled to recover the tenure on the ground that the mokurari was not an absolute tenure, but one on condition of service to be rendered to the former proprietor whose estate has been confiscated for rebellion. NEPAL SINGH *v.* RAM SURUN SINGH
W. R. 1864, 5

11. ———— Alienation by holder—*Crotriyam—Power of holder to alienate* Each holder of a *crotriyam* conferred for lives can only alienate his own life-interest SUNDARAMURTI MUDALI *v.* VALLINAYAKKI AMMAL . . 1 Mad. 465

See VISSAPPA *v.* RAMAJOGI 2 Mad. 341

12. ———— *Interest of one of co-parceners in service tenure—Nature of interest—Act XI of 1843. Held,* that the interest enjoyed by one of a body of co-parceners in possession of land attached by way of emolument to an hereditary office cannot be bequeathed to one or more of the other co parceners, as the estate held by each sharer

3 Bom A. C. 128

13. ———— *Adverse possession against one holder how far a bar against a succeeding holder—Judgment against one holder how far res judicata against succeeding holder—Alienability of lands when services are abolished—Bom. Act II of 1865—Bom Act VII of 1863. Held,* (i) that in the absence of fraud and collusion, adverse possession for twelve years during the lifetime of one holder of service vatan lands is a bar to succeeding holders. (ii) In the absence of fraud and collusion, judgment against one holder of service vatan lands is *res judicata* as regards a succeed-

former restriction has failed or been removed. The

lands become subject to the ordinary law of descent and disposal *Per* WEST, *J*—(i) Lands with respect to which a summary settlement under Bombay Acts II and VII of 1863 has been effected are wholly exempt from official obligation (ii) Where service lands, or what are deemed service lands have been

apart from the law which preserves service lands for the intended uses. The alienation is, of course, subject to the terms on which family property can usually be alienated RADHABAI *v.* ANANTRAV BHAGVANT DESPANDE . I L. R. 9 Bom. 198

See VASANJI HARIBHAI *v.* LALLU AKHU
I. L. R. 9 Bom. 285

14. ———— *Liability to sale in execution of decree—Police jaghir—Public services* A service tenure can be sold in execution of a decree for arrears of its own rent, provided that the service due from the holder be of a private kind

TOON . . . . . W. R.

15. ———— *Vatan—Mortgage of vatan property—Adverse possession—Limitation—Succession to vatan—Entry of vatan in*

SERVICE TENURE—*contd.*

two villages (part of the vatan) to one S (father of the defendants), who was the vatani karkun, for R9,900, which had been advanced by him to *K*, while the vatan was under sequestration Possession was given to *S*, and the village officers were directed to pay him the revenues. Subsequently

sale under the Vatan Act (Bombay Act III of 1874). In 1873 *S* obtained a further decree against *K* for the revenue of two years (1870—72) and for possession as mortgagee He got possession through the Court in 1875 *K* and *P*, who had been on good terms, quarrelled, and on the 16th March 1872 *K* adopted one *B* as a son to her deceased husband

time and until 1880, *P* and *S* were on friendly terms, the two having joint possession of the mortgaged

who in 1881 obtained an order from the Collector directing the village officers to pay the revenues of the two villages to him, and not to the defendants This order was subsequently set aside, and thereupon *P* in August 1887 filed the present suit to have

not vatan; that they were entitled to the villages by reason of adverse possession, that the suit was barred by limitation; and that the plaintiff was estopped from disputing the mortgage, etc *Held* (i), on the evidence, that the property in question was part of a dasai vatan, and as such was held on service tenure. (ii) That the property in question was subject to the rule which was in force in 1865, when the mortgage to *S* was executed, *viz*, that alienation by way of mortgage of any portion of vatan property had no force beyond the life of the vatandar who mortgages it (iii) That the plaintiff having been declared to be the legitimate son of *B D*, he was from the date of his birth in 1848 the rightful vatandar, and *K*, unless she was manager acting on his behalf, was a trespasser. The fact that Government had entered the vatan in her name, and that the "Gordon Settlement" was effected with her, would no

SERVICE TENURE—*contd.*

make her vatandar as long as *B D*'s son (the plaintiff) was alive (iv) That if *K* was a mere trespasser, then the plaintiff's right to recover the lands free from incumbrance, on the ground that he was the vatandar, had been lost by limitation, and the property had become *K*'s by adverse possession The plaintiff, however, as her step-son, was her heir. The mortgage was proved and was binding on him as heir, and as such he had a right to redeem it SWAMIRAO *v.* PADAPA BIN BHUJANGRAV . . . . . I. L. R. 18 Bom. 22

16. ——————— *Vatan service land, alienation of—Gordon Settlement in the Southern Maratha Country—Effect of the application of, to service vatan—Alienability of such vatan where services have been dispensed with—Vatandars (Bombay) Act III of 1874—Bom Reg XVI of 1827—Bom Acts II and VII of 1863* *R* and his sons were members of an undivided family In execution of certain money-decrees passed against *R*, the lands in dispute were sold to various persons from whom they were afterwards bought by the defendant In 1875 *R* died,

nothing except *R*'s life-interest, and that on *R*'s death they (the plaintiffs) became entitled They also contended that, even if the Court should find that the lands were not service vatan lands, they were at all events ancestral property, and that the plaintiff's interests therein were not affected by execution sales under decrees to which they were not parties *Held*, on the evidence affirming the judgment of the Court below, that, with the exception of two fields, none of the lands in question were service vatan lands *Held*, further, that the two fields which were so excepted, and which had been the subject of a "Gordon Settlement" in 1864, remained inalienable vatan lands, although the services in respect of them had been dispensed with. The settlements made under Bombay Acts II and VII of 1863 made the lands thenceforth transferable as the property of the holder *Radhabai* v *Anantrav, I. L R. 9 Bom. 215.* What is termed a

binding legal effect by cls. 2 and 3 of s. 15 of Bombay Act III of 1874 At the time when these settlements were made, lands were alienable by

SERVICE TENURE—*contd.*

the private property of the vatandar with the

in the declaratory Act III of 1874 APPAJI BAPUJI *v.* KESHAV SHAMRAV KESHAV SHAMRAV *v* APPAJI BAPUJI . . . . . I. L. R. 15 Bom. 13

17. ———— **Cessation of services**—*Land held on quit-rent*—*Waiver of performance*—*Lapse of tenure.* As an ordinary rule, if land is given on a quit-rent, or no rent at all, in consideration of service to be performed, the tenure would lapse when those services ceased *Quære* When no service has been required or performed for a long series of years, and the tenure has been allowed to be held at a quit-rent, or no rent at all, whether there has not been such a waiver of service as puts it out of the power of the grantor to resume the tenure, simply on the ground that he has now no need of the service for which the tenure was originally created?

further services? NILMONEY SINGH DEO *v* SHEO TEWARY . . . W. R 1864, 324

18 ———— *Impartible vatan* A cessation (even though sanctioned by the Government) of the performance of the duties attached to an impartible vatan does not alter the nature of the estate and make it partible SAVITRIAVA *v.* ANANDRAV . . . . . 12 Bom. 224

19. ———— *Impartible vatan* —*Discontinuance of services* Discontinuance of services attached to an impartible vatan does not alter the nature of the estate and make it partible RAMRAO TRIMBAK *v* YESHVANTRAO MADHAVRAO I. L. R. 10 Bom. 327

20. ———— *Commutation of services*—*Desaigiri allowance*—*Right to hold as personal gratuity*—*Amin sukhdi*—*Suit to establish right to amin sukhdi* The parties, who were desais of Mahudha, in addition to their "desaigiri" allowance enjoyed an allowance called "amin sukhdi." In 1847 the plaintiff sued the defendant's father and the Collector of Kaira for a share of the allowance; but as the whole of it had been reserved by the Collector to the defendant's father as the officiating desai, the suit was rejected under Act XI of 1843 In 1866 an arrangement was come to, under which a sum of R40-2-0 was to be annually available over and above the remuneration of the officiator On the 9th of July 1867 the defendant received this sum for the first time. In 1873 a new arrangement was effected, under which the service

SERVICE TENURE—*contd.*

establish his right to a share of the moiety of the *amin sukhdi allowance given to the desais by the* Government and to recover his share of the amount received by the defendant The defendant contended that the allowance was impartible and in the

right to hold the moiety exclusively as a personal allowance to himself MANEKLAL AMRATLAL *v* SHIVLAL BHOGILAL . I. L. R. 8 Bom. 426

21. ———— *Long possession* —*Liability for rent* The mere fact of a long prior possession or a service tenure on no rent at all gives the holder no exemption from the payment of rent when the service is no longer required or performed. CHUNDAR NATH ROY *v* BHEEM SARDAR W R. 1864, Act X, 37

22. ———— *Commutation of services for rent.* Where the original donee of a

23. ———— **Resumption of tenure**—*Partition where service lands are all allotted to one co-sharer.* The joint proprietors of a talukh assigned to the defendants a portion of land therein in consideration of chowkidari services rendered by him throughout the area of the talukh. A butwara having been effected, the plaintiff obtained a fourth share within which fell the assigned land. Upon this the plaintiff sued the defendant to take back

defendant's services were required and rendered, the plaintiff could not, in equity or justice, with-

24. ———— *Bom. Act VII of 1863, s. 2*—*Jurisdiction of Civil Courts*—*Resumption of service tenures* Cl. 4 of s. 2 of Bombay Act

SERVICE TENURE—*contd.*

which he sues were service lands. The laying down of general rules by Government as to the resumption of service lands under art 3, cl. 3 of s. 2 of the Act, was not a condition precedent to their protection from suits and actions in respect of such lands. PREMSHANKAR RAGHUNATHJI *v.* GOVERNMENT OF BOMBAY . . . . . 8. Bom. A. C. 195

25. ——————— *Suit for ejectment—Bengal Tenancy Act (VIII of 1885), ss. 89 and 181.* Service tenures are excepted from the operation of s 89 of the Bengal Tenancy Act MOKBUL HOSSAIN *v.* AMEER SHEIKH

I. L. R. 25 Calc. 131

26 ——————— *Resumption by Government of the estates held on political tenure—*

separately with the several Satara jaghirdars in 1820, did not impart any greater fixity of tenure than had previously belonged to the latter under Maratha rule and their jaghirs remained liable to resumption at the will of the Government. The question to whom a saranjam, or jaghir, shall be granted, upon the death of its holder, is one which belongs exclusively to the Government to be determined upon political considerations; and it is not within the competency of any legal tribunal to review the decision. Inam villages and lands, with the mokasa, *included originally in one saranjam granted* under the Maratha rule for the support of troops, remained after 1820, when the rule of the Peshwa

inam lands and the saranjam The whole estate passed to the persons whom the Government at its discretion for political reasons recognised as the grantee, without its being competent to any Court of law to question the decision of the executive authority in the matter SULTAN SANI *v.* AJMODIN SULTAN SANI *v.* BEGUMBI I L. R. 17 Bom 431 L. R. 20 I. A 50

27. ——————— *Bhoomear tenures* Bhoomears are bound to render certain customary services, but their lands are not resumable GOPALNATH TEWAREE *v* BHOOYAH ORANOO 6 W. R 137

28. ——————— *Power of Government to resume majumdari vatans* Government

DAMUDHAR PARMANANDAS . 5 Bom. A C. 202

29. ——————— *Services dispensed with—Right of zamindar to resume.* A zamindar has *primâ facie* a right to resume lands of the zamindar granted subject to a quit-rent to tenants upon condition of their rendering personal services when such services are dispensed with SANNIYASI RAZU *v* ZAMINDAR OF SALUR. PAKIR RAZU *v.* ZAMINDAR OF SALUR . I. L. R. 7 Mad. 268

30. ——————— *Suit for enhancement of rent—Right to resume when services not required—Evidence* R sued S to recover instal-

had assumed the management of the estate of R; that the assessment had accordingly been increased, and that defendant had declined to accept a lease at an enhanced rate and to execute a counterpart S denied that he held on service tenure, and

ced on one occasion without objection from S, there was evidence to warrant the conclusion that the village was neither inam nor granted in perpetuity burdened with a certain service, and that R was entitled to the enhanced rate claimed SITARAMARAZU *v* JAGANADA NARAYANA

I. L R. 3 Mad. 367

31. ——————— *Landlord and tenant—Service tenure with rent—Enhancement of rent—Resumption—Onus probandi* In a suit

dispensed with, and a notice to quit was given to him, the option of holding the estate at an enhanced rent was, however, given to him at the same time. *Held* that the plaintiff was not precluded by any implied contract from increasing the rent; and that the burden or proving the plea that the plaintiff was not entitled to eject lay on the defendants, and had not been discharged MAHADEVI *v* VIKRAMA . . . . I. L R 14 Mad. 365

32 ——————— *Grant of service tenure rent-free—Assessment of rent by settlement officer when service no longer required—Bom. Act VI of 1862* The talukhdari settlement officer hav-

TALUKDARI SETTLEMENT OFFICER

I. L. R. 1 Bom. 586

33 ——————— *Lands held on amaram tenure resumable at will on reasonable notice —What amounts to reasonable notice considered.*

SERVICE TENURE—*contd.*

A village and its hamlets had been given by a plaintiff's ancestors to the ancestors of the defendants on amaram service. Plaintiff now required the defendants to hand over the land, and had served two notices on them to that effect The first of such notices had been served less than three months before the end of a fasli ; in the second, suit was threatened in default of reply within ten days. *Held*, that lands held on amaram tenure are resumable, and that the defendants had no permanent

served were insufficient. NARASAYYA *v.* VENKATAGIRI RAJAH . . I. L. R. 23 Mad. 262

See UNIDE RAJAHA RAJE BOOMARANGE BAHADUR *v* PEMRUASAMY VENKATADRY NAIDOO
7 Moo. I. A. 128

34. ———— *Jagir granted to gorait or village watchman—Resumption by zamindar—Liability to ejectment—Notice to quit* A service tenure created for the performances of services, private or personal, to the zamindar may be resumed by the zamindar when the services are no longer required, or when the grantee of the tenure refuses to perform the services The distinction between a grant of an estate burdened with a certain service and an office the performance of the duties of which is remunerated by the use of certain lands pointed out *Sannayasi* v. *Solur Zamindar, I. L R 7 Mad 268 , Hurrogobind Raha* v *Ramrutno Dey, I. L. R. 4 Calc 67 ; Sreesh Chunder Rae* v. *Madhub Mochee, S D A (1857), p 1772 , Nilmoney Singh Deo* v. *Government, 18 W. R 321 ; Unide Rajaha Raje Bammarauze Bahadur* v. *Pemmasamy Venkatadry Naidoo, 7 Moo. I A 128 , Forbes* v *Meer Mahomed Takee, 13 Moo I. A 438 , Lilanand Singh* v *Munorunjun Singh, 13 B L R 124 L R I A. Sup Vol. 181 ;* and *Mahadeva* v *Vikrama, I L R. 14 Mad 365*

than twelve years before suit and descended from father to son, who was allowed to retain possession without rendering services to the zamindar, and that the zamindar could not prove the terms of the grant *Held*, that the facts found did not legitimately lead to the inference drawn therefrom that the tenure was of a permanent character, but that the defendants could not be ejected without notice RADHA PERSHAD SINGH *v.* BUDHU DASHAD
I L. R. 22 Calc 938

35 ———— *Resumption of service grant* The plaintiff sued for possession of three villages granted by his predecessor to the ancestors of the defendants on the ground that the

SERVICE TENURE—*contd*

36. ———— *Resumption of*

to the grant cannot be resumed when the service is no longer required. But land granted as remuneration for service may be resumed when the service is no longer required, except when there has been a grant of an hereditary office to those who are to perform the service In that case, the land can only be resumed when the need of such service altogether ceases Where the services are still required, and the grantee has a right to the hereditary office, he cannot be deprived of the land on the mere ground that the grantee prefers to appoint some one else to officiate The ancestors of the plaintiff

1863-64 Members of defendants' family officiated as kulkarnis for more than two hundred years. They continued to officiate till 1887. Their services were then dispensed with, and a stranger was appointed kulkarni by the plaintiff. In 1894 the plaintiff sued to recover all the lands. *Held*, (i) that the appointment of the defendants' family as hereditary kulkarni was valid (ii) That the claim to recover possession of part of the lands assigned for the remuneration of the defendants as karkun was time-barred by the defendants' adverse possession since 1863-64 (iii) That the defendants'

services were accepted or were refused, provided they duly discharged the duties of the office should their services be required. BHIMAPAIYA *v* RAMCHANDRA BHIMRAO . I. L. R. 22 Bom. 422

37. ———— *Non-performance of service, effect of—Adverse possession—Limitation, liability to* Where lands are held as remu-

the land free of service KOMARGOWDA *v* BHIMAJI KESHAV . I. L. R. 23 Bom. 602

38. ———— *Non-performance of service—Payment of assessment by mortgagee—Change of title—Redemption.* Plaintiff was the

as no service was rendered, Government appointed another person to perform the service and demanded

SERVICE TENURE—*contd*

payment of the full assessment from defendant. Defendant paid the assessment and continued in possession. But Government did not forfeit the holding

in lieu of service had not the effect of creating any change of title, and that the plaintiff was therefore entitled to redeem BHIMA *v* RAGHAVENDRA-CHARYA . . . **I. L. R. 24 Bom. 482**

39. ——— *Chakeran lands—Chowkidari duties* In a suit for the resumption of

appropriated for the performance of these services, but resumable by him *Held*, by the Privy Council, that the lands in question were to be considered as

talukhdar as, by usage in the zamindari, chowkidars were accustomed to render to the zamindar JOYKISHEN MOOKERJEE *v* COLLECTOR OF EAST BURDWAN . **1 W. R. P. C. 26 10 Moo. I. A. 16**

40. ——— *Resumption of jaghir—Proof of personal services—Grant of sanad*

could not resume the land without proof that the services to be performed by the jagirdar were personal services only to the Rajah NILMONEY SINGH DEO *v* GOVERNMENT . **18 W. R. 321**

S C. in High Court . . **6 W R 121**

41. **Forfeiture of tenure**—*Alienation without grantor's consent* In a suit to obtain khas possession of lands which were found to have been held of plaintiff and his ancestors by defendants and their ancestors upon a service tenure, but

42. ——— *Refusal to per-*

SERVICE TENURE—*contd*

43. ——— *Tenure resumable at will to grantor—Notice to surrender.* Where land held on service tenure is resumable at the will of the grantor, the holder cannot be ejected before a reasonable notice to surrender the land has been given. LAKSHMI *v* CHENDRI . **I. L. R. 8 Mad. 72**

44. ——— *Land tenure—"Mokhassadars"—Distinction between outright grant subject to performance of services, and grant of an*

grant as payment for services in lieu of money, *semble* that he may discontinue the employment and, with it, the remuneration, and resume the

tion that services should be rendered, and that a certain sum should be payable to the *zamindar* in recognition of his ownership, *primâ facie* the ownership would remain with the *zamindar* *Sanniyasi* v *Salur Zamindar, I L R. 7 Mad 268*, and the burden of proving the plea that the plaintiff was not entitled to eject would lie on the person resisting ejectment: *Mahadevi* v *Vikrama, I L R 14*

village had been granted in perpetuity to the *mokhassadars*, and that the present holder of the *zamindari* was not entitled to dispense with the services and resume the lands. *Forbes* v *Meer Muhamed Tuquee, 13 Moo I. A 438 at p. 464*, and *Kooldeep Narain Singh* v *The Government, 14 Moo. I. A. 247*, followed. SOBHANADRI APPA RAO *v.* VANKATANARASIMHA APPA RAO (1902) **I. L. R. 26 Mad. 403**

45. ——— *Grant of land for services—Grant in lieu of wages—Right of grantor to*

SERVICE TENURE—*contd.*

grant in lieu of wages, the grantor has no right to put an end to the tenure, whether the services are performed or not, as long as the grantees are willing and able to perform the services. *Leelanund Singh v. Munoorunjun Singh, L R. I. A. Sup Vol 181 : 13 B L R. 124*, followed. A mokhasah village had been held by the defendants and their ancestors in a yearly quit-rent of R144 from a period antecedent to the introduction of the British Government on conditions of service to provide a specified number of men as custodians of the grantor's property and to attend him on hunting or military expeditions. The services were rendered intermittently and not continuously, and batta was paid to the grantees when actually on duty The quit-rent had never varied for a period of 120 years, and there had been no interference with a devolution of the property from heir to heir nor any instance of resumption during that period *Held*, in a suit for resumption by the zemindar, that he was not entitled to dispense with the services and resume the village at his option. VENKATA NARASIMHA APPA RAO v SOBHANADRI APPA RAO (1905)

I. L. R. 29 Mad. 52
s.c. L R 23 I. A. 46
10 C. W. N. 162

46. ——————— *Occupancy right—Service-tenure—Under-tenants, if can acquire occupancy—Ejectment—Notice to quit* When land was

quit *Ansar Ali Jemadar v C E Grey, 2 C. L J. 403*, referred to MRITUNJOY ROY CHOWDHRY v. KENATULLAH NARYA (1906) . 11 C. W. N. 48

47. ——— Digwari tenure—*Digwar of Ghat Tasra in Jheria—Police duties—Government control—Rights of the zamindar—Right in sub-soil—Mokurari lease of under-ground rights granted by*

ment to the zamindar of a fixed rent only, and on condition of the performance of certain police or public services for the due discharge of which the holder has been responsible to the Government, which alone has exercised the power of appointment to and dismissal from office. His position is analogous to that of the Ghatwals of Birbhum The under-ground rights, including mining rights belong to the Digwar, the right to receive the fixed rent alone being reserved to the zamindar *Sriram Chakrabutty v Kumar Hari Narain Singha, 10 C W. N. 425, s c 3 C L. J. 59*, followed Government has an interest in maintaining intact the mouzahs set apart for the remuneration of the Digwar, and it has all along assumed itself to possess the right to do so. Where therefore the zamindar

SERVICE TENURE—*concld*

instituted a suit against the Digwar with the object of establishing his exclusive right to the sub-soil and minerals. *Held*, that the Government was a necessary party to the suit BROJO NATH BOSE v. DURGA PERSAD SINGH (1907) 12 C. W. N. 193

48. ——————— *Resumption—*

named hold as personal servants of the Rajah. If anything, the presumption would seem to be the

persons held Digwari grants, no such power was given or reserved to the Rajah. The dismissal by Government of the Digwars and the substitution

and police purposes on an amount far beyond the burden which previously rested on the holdings in the shape of supplying patrols, amounted to a continuance in the form imposed by statute of their public duties There was no default. NAM NARAIN SINGH v. TEKAIT GANJHU (1889)

12 C. W. N. 178

SERVICE UNDER EAST INDIA COMPANY.

See DOMICILE . I. L. R. 4 Calc. 106

SESSIONS CASE.

See CRIMINAL PROCEDURE CODE, ss 436, 438 . . I. L. R. 1 All. 413
I. L R. 4 Calc. 16
7 C L R. 168
I. L. R. 2 All. 570
21 W. R. 41

See CRIMINAL PROCEDURE CODE, s. 487.
11 Bom. 98
12 Bom. 1

SESSIONS COURT.

See CRIMINAL PROCEDURE CODE, ss. 226, 227 . . . 8 C. W. N. 784

See CRIMINAL PROCEDURE CODE, ss. 417, 449 . . I. L. R. 29 Bom. 575

SESSIONS COURT—*concld.*

——— commitment to—

See COMMITMENT.

See CRIMINAL PROCEEDINGS.
I. L. R. 3 All. 258
B L. R. Sup. Vol. 750
I. L. R 8 Bom. 312
I. L. R. 16 Bom. 200
I. L. R. 17 Mad. 402

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.

——— finding of, if binds Civil Court—

See EVIDENCE . 13 C. W. N. 501

SESSIONS JUDGE.

See CHARGE TO JURY.

See FALSE EVIDENCE—GENERAL CASES
5 C. W. N. 615, 630

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES
I. L. R. 26 Mad. 139

See SESSIONS JUDGE, JURISDICTION OF.

——— case heard by—

See CRIMINAL PROCEEDINGS
I. L. R. 6 Calc. 96
I. L. R. 20 Mad. 445
I. L. R. 22 Mad. 15
I. L. R. 17 All. 36

See REFERENCE TO HIGH COURT—CRIMINAL CASES . . 7 N. W. 211
14 W. R. Cr. 25
20 W. R. Cr. 50
I. L. R. 2 All. 771
6 C. L. R. 245
I. L. R 8 Calc. 785
I. L. R. 9 All. 362
I. L. R. 10 All. 146
I. L. R. 23 Bom. 696
I. L. R. 27 Calc. 295
4 C. W. N. 683
I. L. R 23 Calc. 149; 250

See VERDICT OF JURY—GENERAL CASES

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

——— duty of—

See JUDGMENT—CRIMINAL CASESS.
7 C. W. N. 30

See PLEADER—APPOINTMENT AND APPEARANCE . I. L. R. 23 Calc. 493

See PRACTICE—CRIMINAL CASES—RULE TO SHOW CAUSE.

See REFERENCE TO HIGH COURT—CRIMINAL CASES . 7 C. W. N. 345
10 W. R. Cr. 50
I. L. R. 13 Mad. 343
I. L. R. 25 Calc. 555
4 C. W. N. 683

SESSIONS JUDGE—*concld.*

——— duty of—*concld.*

See REVISION—CRIMINAL CASES—DISCHARGE OF ACCUSED. . 7 C. W. N. 77

See VERDICT OF JURY—GENERAL CASES.
I. L. R 29 Bom. 735
7 C. W. N. 135

——— powers of—

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE . 6 C. W. N. 72

See CRIMINAL PROCEDURE CODE, ss. 447, 449 . . I. L. R. 29 Bom. 575

See REMAND . I. L. R. 32 Calc. 1069

——— Obligation to form independent opinion on case—*Opinion of committing Magistrate, reference to, by Sessions Judge in his judgment* On a case the decision of which is vested by law in him sitting with assessors, a Sessions Judge is bound to form his own opinion, aided by the [illegible]

SESSIONS JUDGE, JURISDICTION OF.

See BAIL . . I. L. R. 1 All. 151
1 B. L. R. A. Cr. 7
24 W. R. Cr. 7, 8

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE 25 W. R. Cr. 8
7 C. L. R. 143
I. L. R. 8 All. 665
I. L. R 12 All. 551

See CHARGE—FORM OF CHARGE.
I. L. R. 28 Calc. 434

See COMMITMENT . 2 W. R. Cr. 44
I. L. R. 13 Calc. 121
I. L. R. 10 Bom. 319
I. L. R. 8 All. 14
I. L. R 15 All. 205
I. L. R. 23 Calc. 350

See CRIMINAL PROCEDURE CODE, ss 436, 438.

See CRIMINAL PROCEDURE CODE, s 437.
I. L. R. 12 Calc. 522
I. L. R. 9 All. 52
I. L. R. 12 All. 434
I. L. R. 14 Mad. 334
I. L. R 22 Calc. 573
I. L. R. 27 Calc. 658

See CRIMINAL PROCEDURE CODE, s. 437.
I. L. R. 14 All. 354

See CRIMINAL PROCEEDINGS.
I. L. R. 17 All. 36

See DISCHARGE OF ACCUSED.
I. L. R. 24 Mad. 136

SESSIONS JUDGE, JURISDICTION OF —*contd*

See HIGH COURT, JURISDICTION OF.
I. L. R. 34 Calc. 42

See MAGISTRATE—RE-TRIAL OF CASES.
I. L. R. 29 Calc. 412

See OFFENCE RELATING TO DOCUMENTS.
I. L. R. 12 Mad. 54

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—

LIKELIHOOD OF BREACH OF THE PEACE **I. L. R. 28 Calc. 416**

DECISION OF MAGISTRATE AS TO POSSESSION . **5 C. W. N. 71**

See REFORMATORY SCHOOLS ACT, 1897.
4 C. W. N. 225

See REGISTRATION ACT 1877, s 83 (1866, *s.* 95) . **6 B. L. R. 692 ; 693 note.**

See REVISION—CRIMINAL CASES—ACQUITTALS . **7 C. W. N. 711**

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION
8 Bom. Cr. 126
I. L. R. 2 Bom. 384
I. L. R. 2 All. 205
I. L. R. 10 All. 582

See SECURITY FOR GOOD BEHAVIOUR.
24 W. R. Cr. 10
I. L. R. 20 Calc. 155

See SESSIONS JUDGE.

1. ———— Offence under Bom. Reg. XVII of 1827, s 16—*Criminal Procedure Code, 1869* An offence under s 16, Regulation XVII of 1827, being punishable by imprisonment for seven years was triable exclusively by a Court of Session under the provisions of the schedule of the Code of Criminal Procedure Amendment Act (VIII of 1869). REG *v* AJAM DULLA . . **8 Bom. Cr 115**

2. ———— Offence under Opium Regulation—*Bom Reg XXI of 1827 s 7—Criminal Procedure Code, 1861, ss 21 and 407* Although the effect of s 21 of the Code of Criminal Procedure, ...

DADABHAI . . . . . . **9 Bom. 166**

3. ———— Offence under s. 26, Railways Act (XVIII of 1854)—*Order for fresh trial.* ...

that in so doing the Sessions Judge acted without jurisdiction. ANONYMOUS . **6 Mad. Ap. 41**

4. ———— Offence under Registration Act (XX of 1866), s. 95—*Abetment of false personation of witness before Registrar.* The Sessions Judge had ...

6 B. L. R. F. B 692 : 15 W R. Cr. 58

5. ———— Order of Magistrate attaching land—*Criminal Procedure Code, 1861, s. 319.* A Sessions Judge had no power to interfere with an order of a Magistrate attaching disputed land under s 319 of the Code of Criminal Procedure, 1861. HURRONATH CHOWDHRY *v.* RAJENDER CHUNDER ROY . . . . . . **15 W. R Cr. 1**

6. ———— *Criminal Procedure Code, 1861, s 319—Appeal from Magistrate. Held*, that the Sessions Judge had no jurisdiction to hear an appeal from the order of a Magistrate, under s 319, Ch XXII of the Criminal Procedure Code, 1861, and that the object of the chapter was to prevent breaches of the peace likely to be occasioned and not the adjudication of title *In the matter of the petition of* DUTT RAM MISR
1 Agra Cr. 29

7. ———— Appeals from sentences of Justice of the Peace acting under Act I of 1859. The Sessions Court has jurisdiction to hear appeals from the sentences of a Justice of the Peace acting under the Merchant Seamen's Act (I of 1859) *In the matter of the petition of* EVANS
2 Mad. 473

8. ———— Offence under Penal Code, s. 409, and under s. 29, Act V of 1861—*Power of Sessions Judge after acquittal on former charge.* Where an accused was charged before the Sessions Judge under both s 409, Penal Code, and under the special law, s 29, Act V of 1861, and was acquitted under the former section, it was *held* that the Sessions Judge could not convict under the latter law, as the Magistrate alone had jurisdiction to convict under that law. QUEEN *v.* BHOOBUN SINGH. BHOOBUN SINGH *v.* QUEEN
9 W. R. Cr. 36

9. ———— Power of Sessions Judge to add charge and try it—*Addition of charge triable by any Magistrate—Criminal Procedure Code, 1882, s. 28* Subject to the other provisions of the Criminal Procedure Code, s. 28 gives power to the High Court and the Court of Session to try any offence under the Penal Code ; and the provision ...

abetment of the offence At the trial the Sessions Judge added a charge against all the accused of causing hurt to *C*, and convicted them upon both the original charges and the added charge The assault upon *C* took place either at the same time as or immediately after the attack which resulted in the death of *J. Held*, that the Sessions Judge had

SESSIONS JUDGE, JURISDICTION OF —*contd.*

power, under s. 28 of the Code, to try the charge, assuming that he had power to add it QUEEN-EMPRESS *v* KHARGA . I. L. R. 8 All. 665

10. ———————— *Criminal Procedure Code, 1872, s. 231—Conviction on fresh charge in support of which there was no evidence before Magistrate.* R, having been committed by a Magistrate for trial by a Sessions Court on a charge, under s 202 of the Penal Code, of having intentionally omitted to give information which he was legally bound to give respecting a murder, pleaded

body of the murdered person, required *R* to plead to the charge, and, having tendered a pardon to and examined *C* as a witness, convicted and sentenced *R* to two years' rigorous imprisonment *Held*, that, as there was no evidence before the

med udge lded the that *C*, the proper course would have been to have adjourned the trial, sent the record to the Magistrate, and suggested an inquiry as to whether there was ground for a more serious charge against *R* *Semble* The object of restricting a Sessions Court from taking cognizance of any offence (except as provided in ss 455, 472, 474 of the Criminal Procedure Code), unless the accused person has been committed by a Magis-

v QUEEN . . . . I L R. 3 Mad 351

11. ———— **Trial without committal by Magistrate**—*Witness sent up with conditional pardon—Criminal Procedure Code, 1861, ss 359, 439* *Held*, that a Sessions Judge acted

19 W. R. Cr. 43

12. ———— **Order for re-trial on appeal**

SESSIONS JUDGE, JURISDICTION OF —*contd*

a re-trial of a case which is before it on appeal *In the matter of* SHER MAHOMED . 2 C. L. R. 511

13. ——— **Power to give judgment on evidence partly recorded by predecessor—**

self does not extend to a Sessions Judge. TARADA BALADU *v* QUEEN . I. L. R. 3 Mad. 112

QUEEN *v* RUGOONATH DASS . 23 W. R. Cr. 59

14. ——— **Power in regular appeal—** *Insufficient evidence—Acquittal* If the evidence which comes before a Sessions Judge in a regular appeal from a Magistrate's order is not sufficient to reasonably satisfy him that the prisoners have been rightly convicted, he ought to acquit them. *In the matter of the petition of* KHERAJ MULLAH. KHERAJ MULLAH *v* JANAB MULLAH

11 B. L. R. 33 : 20 W. R Cr. 13

15. ——— **Power to suspend sentence.** A Sessions Judge has no authority to suspend his own sentence ANONYMOUS . 4 Mad. Ap. 2

16. ———————— A Sessions Judge has no power to suspend a sentence in any case unless there is an appeal: ANONYMOUS

5 Mad. Ap. 1

He should state distinctly whether he agrees with the verdict of the jury or not QUEEN *v.* CHAND BAGDEE . . 7 W. R. Cr. 6

17 ———— **Power to prevent prisoner from appealing**—*Right to appeal* It is not the province of the Sessions Judge to decide whether a prisoner has a right of appeal or not; he is bound to allow a prisoner, whose conviction he has confirmed, to execute a vakalatnama to appeal QUEEN *v.* VAIYAPURI GAUNDAN . 1 Mad. 4

18. ——— **Mitigation of sentence without appeal.** *Held*, that a Sessions Judge has no power to mitigate a sentence passed upon a prisoner who has not appealed to him REG *v* MULIYA NANA . . . . 5 Bom. Cr. 24

19. ———— **Power to sentence on appeal from decision of Magistrate**—*Commutation of sentence* A Sessions Judge cannot, on appeal from a Magistrate's decision, inflict a term of imprisonment in commutation of a fine longer than that which the Magistrate himself could have inflicted. REG. *v.* HARI BIN VITHOJI . 1 Bom. 139

20. ———— **Alteration of sentence in appeal**—*Enhancement of sentence—Appellate Court's power to alter a sentence of fine into one of imprisonment—Criminal Procedure Code, 1882,*

QUEEN-EMPRESS *v.* LACHMI KANT

I. L. R. 18 All. 301

SESSIONS JUDGE, JURISDICTION OF —*contd.*

21. ———— **Power to pass sentence of death**—*Affray with murder—Offence before Penal Code came into operation.* In a case of affray attended with murder, in which the offence was committed before the Penal Code came into force, it was *held* that a Sessions Judge had himself power, under s. 4, Act XVII of 1862, to pass sentence of death, instead of referring the matter for confirmation of the High Court. QUEEN *v.* BUSTI SINGH . **14 W. R. Cr. 78**

22. ———— **Amendment of sentence**—*Alteration of conviction—Criminal Procedure Code, 1861, s. 22.* *Held* that an order of a Sessions Judge, by which he altered a conviction by the Assistant Sessions Judge of "dacoity" to one of "robbery," was illegal, not being an amendment of a sentence or order within the meaning of s. 22 of the Criminal Procedure Code. *Held* further that if the accused were, in the opinion of the Sessions Judge, improperly convicted of "dacoity," he ought to have declined to confirm the sentence, and to have left them to be charged with and tried for "robbery." REG. *v.* THOMSIT . **5 Bom. Cr. 22**

23. ———— **Concurrent jurisdiction with Magistrate**—*Criminal Procedure Code, 1861, s. 434—Reference to High Court.* A full-power Magistrate was not immediately subordinate to the Sessions Court, and therefore a Sessions Judge had no concurrent jurisdiction with the Magistrate of the district under s. 434 of the Code of Criminal Procedure. His proper course, if he thinks that an illegal sentence or order has been passed by a full-power Magistrate, is to make a report to the High Court, which will then, if it thinks fit, call for the proceedings. REG. *v.* SHIVAYYA . **7 Bom. Cr. 79**

24. ———— **Power to call for and refer to the High Court proceedings of Magistrate**—*Criminal Procedure Code, 1869, s. 23.* *Held* that under the provisions of s. 23 of the Code of Criminal Procedure, 1869, a full-power Magistrate was, for the purposes of s. 434, immediately subordinate to the Magistrate of the district, and not to the Court of Session. The Sessions Judge therefore had no power to call for, or refer to the High Court, proceedings in a case before a full-power Magistrate. REG. *v.* KESHAVSHET . **8 Bom. Cr. 74**

25. ———— **Power to refer to High Court**—*Irregularity, reference to High Court.* Where an appeal is preferred to a Sessions Judge from the order of a Magistrate which he considers illegal, the Sessions Judge should himself deal with the case, instead of referring it to the High Court. QUEEN *v.* NESSIRUDDEEN SHAIKH

11 W. R. Cr. 24

26. ———— **Power to call for report from Magistrate**—*Power to call for record and proceedings.* A Sessions Judge ought not to call upon a Joint Magistrate of the district in any case in which he [illegible] [illegible] such Sessions Judge to call for the record and proceedings, e.g. in the case of a prisoner tried by a Subordinate Magistrate who has appealed to the District Magistrate. In trials by the Magistrate of the district, or full-power Magistrate, in which the Sessions Judge can call for the record and proceedings, he has power also to call for a report. REG. *v.* GIRDHAR DHARAMDAS . **6 Bom. Cr. 33**

27. ———— **Power to call for and examine record**—*Absence of order by Magistrate.* There was no provision in the Criminal Procedure Code, 1861, which made it lawful for a Court of Session to call for and examine the record of a case tried by a Subordinate Magistrate where no sentence or order had been passed thereon by the immediately subordinate Court of the Magistrate. REG. *v.* BHASKAR KHAFKAR . **3 Bom. Cr. 1**

28. ———— **Trial in case committed by Magistrate**—*Objection that case was tried without complaint.* A Court of Session cannot treat as a nullity the commitment of a full-power Magistrate, on the ground that he investigated the case, and committed the prisoner, without a formal complaint being made to him, but should proceed with the trial in the usual course. REG. *v.* RANCHODDAS NATHUBHAI . **4 Bom. Cr. 35**

29. ———— ———— *Objection to irregularity of proceedings.* The fact of a commitment being made by a Joint Magistrate, who is an officer exercising the powers of a Magistrate, was sufficient, under s. 359, Code of Criminal Procedure, to enable the Sessions Judge to proceed with the trial, and it lay with the party impugning the correctness of the proceedings to show that there was no jurisdiction. QUEEN *v.* KOWTSOODDEE SIRKHAR . **13 W. R. Cr. 17**

30. ———— **Power to quash sentence of Assistant Sessions Judge**—*Sentence submitted for confirmation.* *Held*, that a Sessions Judge had no power to quash a sentence passed by an Assistant Judge, and by him submitted for confirmation, and to direct a new sentence to be passed, even supposing the sentence of the Assistant Sessions Judge to be illegal. REG. *v.* MURAN TRIKAM

5 Bom. Cr. 3

31. ———— **Power to quash commitment for illegality**—*Duty to report proceedings to High Court.* The Criminal Procedure Code, 1861, did not authorize the Sessions Judge to quash a commitment on the ground of illegality. If the Sessions Judge is of opinion that the order of commitment should be annulled as illegal, he should move the High Court to annul the same under s. 404 of the Criminal Procedure Code. QUEEN *v.* MATA DEEN

4 N. W. 6

32. ———— **Power to annul conviction and sentence**—*Offence beyond jurisdiction of subordinate Court.* It is only when a Court subordinate to a Court of Session convicts a person of an offence not triable by such Court that the Court of Session can annul the conviction and sentence. If the prisoner is guilty of an offence beyond the jurisdiction of the subordinate Court, the Court of Session should refer the case to the High Court. QUEEN *v.* JUMAIKA DOBEY . **4 W. R. Cr. 11**

SESSIONS JUDGE, JURISDICTION OF
—contd.

33. ———— **Power to quash proceedings**

5 Bom. Cr. 15

REG *v.* GOPAL LAKSHUMAN . 5 Bom. Cr. 25

34. ———— **Power to quash illegal conviction**—*Giving false evidence in judicial proceeding* The offence of giving false evidence

35. ———— **Power to annul conviction and order commitment**—*Offences triable by Magistrate—Criminal Procedure Code (Act VIII of 1869), s 435* The Sessions Judge had no jurisdiction to annul a conviction and order a commitment for an offence triable by a Magistrate. S 435, Act VIII of 1869, related to offences triable by the Sessions Judge *In the case of* WAZIR SINGH

3 B. L. R. A. C. 65 . 12 W. R. Cr 46

QUEEN *v.* JEETUN KHAN . 11 W. R. Cr. 45

36. ———— *Illegal conviction by Magistrate—Criminal Procedure Code, 1861, s 435* Where the Sessions Judge was of opinion that a Subordinate Magistrate had convicted the defendant of an offence which the Subordinate Magistrate had no power to try, the Sessions Judge might, under s 435 of the Code of Criminal Procedure, 1861, annul the conviction and direct the committal of the accused for trial ANONYMOUS

5 Mad. Ap. 32

37. ———— **Order to cancel proceedings of Divisional Magistrate**—*Proceedings reviewing the calendars of Subordinate Magistrate*

ANONYMOUS . . . . . 7 Mad. Ap. 27

38. ———— **Power to direct Magistrate to commit to Sessions**—*Conviction by Magistrate without jurisdiction* Where a Magis-

of summarily:—*Held,* that such Sessions Judge

W. 255

39. ———— **Power to reverse order of Magistrate as to stolen property.** A Deputy

and directed the money to be made over to the prosecutor. *Held,* that the order of the Sessions Judge was made without jurisdiction QUEEN *v.* SHIB CHUNDER RAI . . . 9 W. R. Cr. 57

40. ———— **Conviction on confession before Magistrate after plea of not guilty** A Sessions Judge, after a prisoner upon his trial has pleaded what in effect amounts to a plea of not guilty, is not justified in convicting the prisoner solely upon a confession made before the committing Magistrate QUEEN *v* HURSOOKH . 2 N. W. 479

41. ———— **Power to interfere with order of acquittal**—*Acquittal by Magistrate—Criminal Procedure Code, 1861, s 435* After an accused person had been acquitted under s. 255 of the Code of Criminal Procedure, it was not competent to the Sessions Judge to interfere under s. 435 of the same Act REG *v.* VENKU NARSA

9 Bom. 170

42. ———— **Power to order commitment**—*Cases exclusively triable by Court of Session.* The Court of Session can only order the commitment of an accused person in cases exclusively triable by it QUEEN *v* SEETUL PERSHAD

5 N. W. 168

43. ———— *Power to commit to itself cases not triable exclusively by Court of Session—Criminal Procedure Code (Act X of 1872), ss 231, 471, and 472* A Court of Session had no power to commit to itself for trial a case not triable exclusively by such Sessions Court The words "commit the case itself" in s 471 of the Code of Criminal Procedure cannot (when read in connection with s. 231) be held to empower a Sessions Court to commit such a case to itself. *In the matter of* EMPRESS *v* FUTTEH JYA KHAN

I. L R 4 Calc. 570

S C *In re* FATA IYAH KHAN . 3 C. L. R. 599

44. ———— *Criminal Procedure Code, 1861, s 435* Where a Judge, under

commitment, but that the order was not, therefore, invalid QUEEN *v* GHASEE . . 4 N. W. 50

45. ———— *False evidence.*

3 B. L. R. A. Cr. 35

46. ———— *Criminal Procedure Code, 1872, s 472. L* made a complaint against *S* by petition, in which he only charged *S*

SESSIONS JUDGE, JURISDICTION OF *—contd.*

years' imprisonment The Magistrate inquired into the charges against *S* under ss. 193 and 218 of the Penal Code, and directed his discharge. *L* then applied to the Court of Session to direct *S* to be

commitment was not bad by reason that an offence under s. 193 of the Penal Code is not exclusively triable by a Court of Session. *Held*, also, *per* SPANKIE, *J.*, that the Court of Session was competent, notwithstanding that *L* had only charged *S* with offences under ss 193 and 218 of the Penal Code, to charge *L* with offences under ss. 195 and 211, if such offences had come under its cognizance EMPRESS *v.* LACHMAN SINGH . **I. L. R. 2 All. 398**

47. ——— *Criminal Procedure Code, 1861, s 435 and s 359.* A Sessions Judge was competent, under s 435, Code of Criminal Procedure, to order the committal of a person ac-

48. ——— *Person discharged by Magistrate* A Sessions Judge has discretion to order the commitment to the Court of Session of any accused person discharged by the Magistrate The non-exercise of such discretion cannot be interfered with by the High Court QUEEN *v.* SHEETARAM CHOWDHRY

2 W. R. Cr. 44

49. ——— *Discharge of accused on inquiry before Magistrate—Further in-*

3 N. W. 90

50. ——— *"Acquittal and release" of accused by Magistrate—Criminal Procedure Code, 1861, s 435* Where a Magistrate

nal Procedure, to order a commitment of such accused person QUEEN *v.* NEETIE DULAL

8 W. R. Cr. 41

51. ——— *Discharge by Magistrate—Criminal Procedure Code, 1861, s 435* A Sessions Judge might, under s. 435 of the Code of Criminal Procedure, after a Magistrate has discharged an accused person, order the Magistrate to commit the accused person to the Sessions. *In the matter of the petition of* MUSMUD ALI CHOWDHRY *alias* MOOCHEE MEAH . . **7 W. R. Cr. 38**

SESSIONS JUDGE, JURISDICTION OF *—contd*

52. ——— *Conviction under Penal Code, ss. 323, 352.* A Sessions Judge has no authority to interfere and direct a committal in the case of a conviction for assault under s 352 or of hurt under s. 323 of the Penal Code, both of them being offences triable by the subordinate Court. QUEEN *v.* RAMTOHUL SINGH . **5 W. R. Cr. 12**

53. ——— **Power of Joint Sessions Judge**—*Criminal Procedure Code (Act X of 1872, s 17, and Act X of 1882, ss. 9 and 195, and Ch XXXII)—Discharge by a Magistrate—Power*

a committal, or dispose of the application as he might think fit *In the matter of the petition of* MUSA ASMAL . . . **I. L. R. 9 Bom. 164**

54. ——— *Applications under Criminal Procedure Code, 1882, Ch XXXII—Sessions Judge, power of, to direct disposal by Joint Sessions Judge of such applications as cases transferred—Criminal Procedure Code, 1882, s 193, and Ch. XXXII.* Applications under Ch. XXXII of the Code of Criminal Procedure (Act X of 1882) cannot be referred to a Joint Sessions

Procedure Code, and s. 193, cl. 2, contemplating only cases for trial REFERENCE BY THE SESSIONS JUDGE OF SURAT . . **I. L. R. 9 Bom. 352**

55. ——— *Criminal Procedure Code, s. 289—"No evidence"—Acquittal of accused without taking opinions of assessors* The words "there is no evidence" in s. 289 of the Code of Criminal Procedure, 1882, cannot be extended to

of s. 537 of the Code of Criminal Procedure. *In the matter of the petition of Narain Dass, I. L. R. 1 All.*

SESSIONS JUDGE, JURISDICTION OF
—contd.

610, referred to. QUEEN-EMPRESS *v.* MANNA LALL . . . . I. L. R. 10 All. 414

56. ———————— *Sanction to prosecute by District Judge—Trial by same Judge as Sessions Judge—Criminal Procedure Code (Act X of 1882), ss. 195, 487—Penal Code, s 196* A Sessions Judge is not debarred by s. 487 of the Criminal Procedure Code from trying a person for an offence punishable under s 196 of the Penal Code when he has as District Judge given sanction for the prosecution under the provisions of s 195 of the Code of Criminal Procedure *Madhub Chunder Mozumdar v Nowdeep Chunder Pundit, I. L. R 16 Calc 121,* overruled. *Empress* v. *D'Silva, I. L R 6 Bom 479* referred to QUEEN-EMPRESS *v.* SARAT CHANDRA RAKHIT **I. L. R. 16 Calc. 766**

57. ———————— *Criminal Procedure Code, ss. 193, 287, 288—Cancellation of conditional pardon to prisoner—Approver, trial of—Proof of confessional statements of accused* Several persons were charged with dacoity While the case was pending, two of the accused made confessional statements; afterwards a conditional pardon was tendered to them, and they were examined as witnesses by the Magistrate and subsequently on behalf of the prosecution in the Sessions Court, to which the other accused were committed for trial. They there denied that they had been taken as approvers, whereupon the Sessions Judge placed them in the dock, called on them to plead, and permitted the depositions made by them before the Magistrate, but not their confessional statements, to be read to the jury *Held,* that the trial of the the two persons, who had not been committed to the Sessions Court, was *ultra vires.* The proper course was to have treated the evidence given by them before the committing Magistrate as evidence in the case under s 288 of the Code, and to have allowed the other accused to cross-examine them *Per curiam* The Sessions Judge committed an irregularity in refusing to place on the record the confessional statements of persons whom he treated as accused QUEEN-EMPRESS *v* RAMA TEVAN **I. L. R. 15 Mad. 352**

58. ———————— *Conditional pardon to prisoner—Withdrawal of pardon and trial of person pardoned conditionally—Approver, trial of, jointly with other accused—Power of Sessions*

an approver, in which capacity she gave evidence against *J.* *J* was then committed to the Court of Sessions to take his trial, *U* being sent up as an approver In the Sessions Court *U* resiled from her deposition before the committing Magistrate, and was then and there treated as an accused person, and placed on her trial with the other accused and the deposition aforesaid was put in as evidence. Both accused were convicted mainly on their confessions, *J* of murder and *U* of abetment of murder *Held,* that the conviction of *U* was bad, the Court of Sessions having had no jurisdiction to try her, as she was never committed to that Court by any competent Magistrate. QUEEN-EMPRESS *v* JAGAT CHANDRA MALI . **I. L. R. 22 Calc. 50**

59. ———————— *Powers of Sessions Judge on revision—Further enquiry, power of Sessions Judge to direct—Criminal Procedure Code (Act X of 1882), ss 423, 435, 436, 439.* A complaint was made before a Magistrate, which involved a charge of dacoity against the accused person and others The Magistrate, in dealing with the case, proceeded under s 209 of the Code of Criminal Procedure, and, finding no case of dacoity *primâ facie* established, proceeded to frame charges under s 254 of the Code charging the accused with offences under ss 380 and 448 of the Penal

[illegible]

proper inquiry had not been made and all evidence available not taken, and that, had this been other-

[illegible]

mentioned in s 436, but he was not competent [illegible]

[illegible]

MANDAL . . . . I. L. R. 20 C[illegible]

60.———————— *[illegible] power to review his order in [illegible] to revoke sanction.* A Sessions Judge [illegible] refused to revoke a sanction granted [illegible] nate Court under s. 195 of the Crim[illegible]

SESSIONS JUDGE, JURISDICTION OF —*contd.*

v. Ganesh Ramkrishna . I. L. R. 23 Bom. 50

61. ———————— *Appeal from a conviction by a Magistrate, other than a Presidency Magistrate, where accused pleads guilty—Power of Sessions Court.* The accused pleaded guilty to a charge of kidnapping from lawful custody, and was thereupon convicted by a Magistrate of the first class and sentenced to four months' rigorous imprisonment and a fine of R20. The accused appealed, and in appeal denied that he had committed the offence.

therefore referred the case to the High Court. *Held,*

of the sentence. Queen-Empress v. Kalu Dosan I. L. R. 22 Bom. 759

62. ———————— *Criminal Procedure Code (Act V of 1898), ss 195, 476—Order by Deputy Magistrate sanctioning prosecution—Complaint by Deputy Magistrate—Jurisdiction of*

power to interfere. Queen-Empress v. Ankanna I. L. R. 23 Mad. 205

63. ———————— *Criminal Procedure Code (Act V of 1898), s. 436—Fresh inquiry after improper discharge of accused persons—Jurisdiction of Sessions Judge after acquittal.* Charges under ss. 304 and 147 of the Penal Code were brought by the police against certain accused in the Court of a Deputy Magistrate, who took all the evidence for the prosecution, but went on furlough without passing any order of committal or otherwise. His successor, considering the evidence

SESSIONS JUDGE, JURISDICTION OF —*concld.*

insufficient to support the charges, altered them to charges under ss. 325 and 147 of the Penal Code, and after hearing evidence for the defence acquitted the accused. The Sessions Judge, considering the alteration in the charges improper at such a stage, ordered a fresh inquiry into the offence. *Held,* that the Sessions Judge had exercised jurisdiction not conferred upon him by law, and that his order for a fresh inquiry must be set aside *Baijnath Pandey v. Gauri Kanta Mandal, I. L. R. 20 Calc 633,* approved of Queen-Empress v Hanumantha Reddi . . I. L. R. 23 Mad. 225

64. ———————— **Evidence recorded partly by another Judge**—*Criminal Procedure Code (Act V of 1898), s 350—Sessions Judge—Magistrate—Trial—Consent of the prisoner—Jurisdiction.* Under the Code of Criminal Procedure (Act V of 1898),

Procedure Code applies solely to Magistrates. King-Emperor v Sakharam Panduram (1901) I. L. R. 26 Bom. 50

65. ———————— **Order for re-trial on appeal**—*Criminal Procedure Code (Act V of 1898), ss 423 (b), 232—Re-trial, power of Sessions Court to order—Defective framing of charges—Prejudice—Penal Code (Act XLV of 1860), ss 154, 155.* There is nothing in the language of s 423 (b), Code of Criminal Procedure, to limit the power of an Appellate Court to direct a re-trial to cases in which the trying Magistrate had no jurisdiction Apart from the general power given to an Appellate Court to order re-trial, under s 423 (b), Code of Criminal Procedure, a Sessions Judge is empowered by s. 232, Code of Criminal Procedure, to direct a re-trial to be had upon a charge, framed in whatever manner he thinks fit, on the ground that the accused had been misled in his defence by the absence of a charge or a defect in the charge. Certain owners of land were convicted under s. 154 or s. 155 of the Indian Penal Code, for acts or omissions on the part of their agents. The charges framed by the Magistrate against them, however, referred only to the knowledge and belief and acts and omission of the accused themselves.

a new trial upon charges so amended as to have reference to the acts and omissions of the agents. *Held,* that the order for re-trial was legally made by the Sessions Judge. Sarat Chandra Shah Chowdhry v. Emperor (1902) 7 C. W. N. 301

66. ———————— **Powers on revision**—*Conviction of offence without charge—Order of Appellate Court for re trial—Criminal Procedure Code (Act V of 1898), ss. 232, 243.* Where an accused was charged under s. 471 of the Penal Code with dishonestly using as genuine a false document, and the Magistrate convicted him under s. 500 of that Code of defamation,

SESSIONS JUDGE, JURISDICTION OF —*concld.*

I. L. R. 28 Calc. [illegible]
s.c. 5 C. W. N. 819

67. ——— Qualification—*Criminal Pro-* [illegible]

Code from trying the case, or hearing an appeal when the case has been tried by a lower Court; *nor does this make him "personally interested"* [illegible]

[illegible] C. W. N. [illegible]

SET-OFF.

See Civil Procedure Code (Act XIV of 1882), s. 13, Expl. II
I. L. R 35 Calc 979

See Civil Procedure Code, 1882, ss 111, 216 . . 8 C. W. N. 118, 174
I. L R 27 All. 145

See Civil Procedure Code, 1882, s 211
10 C. W. N 199

See Compensation—Civil Cases
I. L. R. 18 Bom. 717

See Contribution . 12 C. W. N. 80

See Evidence—Civil Cases—Secondary Evidence—Unstamped or Unregistered Documents . 5 B. L. R. Ap. 1

See Mesne Profits—Assessment in Execution, and Suits for Mesne Profits . . I. L. R. 25 All. 266

See Pleader, Remuneration of.
I. L. R. 29 All. 649

See Pre-emption.
I L. R. 33 Calc. 676

See Road Cess Act.
I. L. R. 4 Calc 576
11 C. L. R. 140

SET-OFF—*contd*

See Small Cause Court, Presidency Towns—Jurisdiction—Set-off.
I. L. R 20 Calc. 527
I. L. R. 21 Calc. 419

See Suit, Maintainability of.
I. L. R. 32 Calc. 654

1 GENERAL CASES.

1. ——— Raising issue of set-off on trial—*Procedure* When a defendant raises a claim of set-off on the trial of that issue, he must be considered as plaintiff JAGADAMBA DASI *v* GROB
5 B. L. R. 639

As to how cases of set-off will be dealt with, *see* RAMGOPAL *v* MAJETI MALLIKKARJANUD
1 Mad. 396

2. ——— Power of Revenue Court to allow set off under Act X of 1859, s. 24—*Suit by principal against agent* A Revenue Court acting under the provisions of s 24, Act X of 1859, had jurisdiction to allow a set-off for any sums which the agent might either have paid to his principal directly or used for the benefit of his principal with his sanction and authority. MOHIMA RUNJUN ROY CHOWDHRY *v* NOBO COOMAR MISSER
18 W. R 339

3 ——— Written statement of set-off—*Act VIII of 1859, s 121* Under s. 121, Act VIII of 1859, a defendant, desirous of setting off against the claim of the plaintiff the amount of any payment made by him on plaintiff's account, was bound to tender a written statement containing the particulars of his demand. POORNA CHUNDER ROY *v* BEHAREE LALL MOOKERJEE . **14 W. R. 473**

4. ——— Character in which claim is made—*Civil Procedure Code, s 111—Written statement pleading a set off* In a suit in which the plaintiff sued, as son of a deceased vakil, to re- [illegible]

[illegible] NAPPA *v* RAGHUNATHA . I. L. R. 10 Mad. [illegible]

5. ——— Right of set-off—*Cross-* [illegible]

6. —————— *Cross-demands arising out of same transaction—Suit to enforce*

SET-OFF—*contd*

1. GENERAL CASES—*contd.*

contract—Damages. The right of set-off exists where there are cross demands arising out of one and the same transaction, or where these are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be driven to a cross-suit. In a suit to recover money due under a contract made between the plaintiff and defendants —*Held*, that the defendants were entitled to set off the amount of damages which the defendants had proved they had sustained by reason of the plaintiff's breach of the contract sued on KISTNASAMY PILLAY *v* MUNICIPAL COMMISSIONERS FOR THE TOWN OF MADRAS **4 Mad. 120**

7. ———————— *Cross-demand arising out of the same transaction—Civil Procedure Code (Act XIV of 1882), s 111* When the defence raises a cross-demand which is found to arise out of the same transaction as, and is connected in its nature with, the plaintiff's suit, the defendant is entitled to have an adjudication of it, although it may not amount to a set-off under s 111 of the Civil Procedure Code *Bhagbat Panda* v. *Bamdeb Panda, I L R 11 Calc 557*, relied on *Clark* v. *Ruthnavaloo Chetti, 2 Mad H C. 296*, referred to CHISHOLM *v* GOPAL CHUNDER SURMA **I. L. R. 16 Calc. 711**

8. ———————— *Civil Procedure Code, s. 111—Suit for balance of account* The defendant was lessee from Government of a bridge of boats over the Ganges under a lease for five years, the consideration for which was payable by instalments extending over the term of the lease The lease contained, amongst other provisions, one to the effect that the Government, if it saw fit at the expiration of the lease to farm the bridge to any other contractor, should be bound to take over the lessee's plant at a fair valuation to be determined by arbitration, and another clause provided that "should the Government, however, see fit to cancel the lease during its currency with a view to substitute a pontoon bridge or for any other cause, for which the lessee is not responsible, he will be entitled to compensation from Government for all losses" The lessee died before the expiration of the lease, and the Magistrate of the district, acting on behalf of the Government, proceeded to deprive his representatives of the use of the bridge and to seize the stock and materials. The Magistrate then directed two persons to assess the value of the stock which was ultimately fixed at R10,900. The Magistrate added a percentage, bringing the total amount up to R12,100, and a suit was filed on behalf of Government against the representatives of the deceased lessee giving credit to the defendants for such amount and claiming the balance due in respect of the last two instalments under the contract. *Held*, that the sum of R12,100 assessed in the manner above described could not strictly be regarded as a set-off The suit was one for balance of account, and the defendants were entitled to dispute the correctness of the plaintiff's estimate of the item allowed in their favour. SECRETARY OF STATE FOR INDIA *v.* MADARI LAL . **I. L. R. 13 All. 296**

9. ———————— *Civil Procedure Code, ss. 111, 216—Cross-claims of the nature of set-off* The plaintiffs agreed to purchase from the defendant certain timber. They paid part of the price in advance and took delivery of some part of the timber, but refused to take delivery of the rest, [illegible]

might claim by way of set-off compensation for the loss which he had incurred in the re-sale of that portion of the timber, the subject of the contract, of which the plaintiffs had failed to take delivery. S 111 of the Code of Civil Procedure is not exhaustive of the descriptions of cross-claim which may be allowed by way of set-off. *Clark* v. *Ruthnavaloo Chetti, 2 Mad. 296*, *Kistnasamy Pillay* v *Municipal Commissioners for the Town of Madras, 4 Mad 120*, *Kishorchand Champalal* v *Madhowji* [illegible]

10. ———————— *Right to set-off a claim for unliquidated damages—Civil Procedure Code (Act X of 1877), s 111—Costs—Act XXVI of 1864, s 9.* The provisions of the Civil Procedure [illegible]

defendant admitted that there was a sum of [illegible]

diately ascertained, the defendant might set-off his claim. *Clark* v. *Ruthnavaloo Chetti, 2 Mad. 296*, [illegible]

to recover from the defendant, for breach of con- [illegible]

11. ———————— *Right to set-off a claim for an unascertained amount—Civil Procedure Code (Act XIV of 1882), s 111.* The provision of the Civil Procedure Code (Act XIV of

SET-OFF—*contd.*

I. GENERAL CASES—*contd*

1882), s. 111, does not take away from parties any right to set-off, whether legal or equitable, which they would have had independently of that Code. And such right exists not only in cases of mutual debts and credits, but also where cross demands arise out of the same transaction, or are so connected in their nature and circumstance as to make it inequitable that the plaintiff should recover, and the defendant should be driven to a cross-suit Where, therefore, a decree had been obtained against certain persons in respect of arrears of rent of an ijara held jointly by them, and one of them having been forced, to pay the whole amount of decree, sued the others, for contribution, and where in such suit the defendants pleaded that, although the plaintiff had paid off the whole of the decree in question, he was not entitled to recover any portion from them, inasmuch as he was indebted to them for his share of the ijara rents, the whole of which had been paid by them to the zamindar in previous years, as well as in respect of rent due to them for the share on account of a portion of the land which he himself held in nij-jote, and for which he had paid no rent, and that, on accounts being gone into, it would be found that their claim exceeded that of the plaintiff —*Held*, following *Clark* v *Ruthnavaloo Chetti, 2 Mad 296*, and *Kishorchand Champalal* v *Madhowji Visram, I L R 4 Bom 407*, that notwithstanding the provisions of s 111 of the Civil Procedure Code, the defendants' claim for the share of rents paid by them to the zamindar on account of the same ijara might properly be pleaded as a set off and be taken into account in determining the plaintiff's suit as arising out of the same transaction, but that their claim for rent for the portion of the lands held by the plaintiff in nij-jote could not be treated in such manner, but must form the subject matter of a separate suit BHAGBAT PANDA v BAMDEB PANDA

I. L. R. 11 Calc. 557

12. ———————— *Right to set off damages for breach of contract—Civil Procedure Code, 1882, s 111—"Ascertained" sum* A suit was brought by *P* against the Elgin Mills Company for recovery of the price of wood supplied under two contracts, each of which contained a clause by which the plaintiff contracted to indemnify the defendants for loss arising by reason of failure on his part to supply the wood as contracted for Defendants

also where the cross-demands arose out of one and the same transaction or were so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be driven to a cross-suit; and that as, in the present case, the claim sprang out of the same contract which the plaintiff sought to enforce, and could readily be determined in the same suit, it was equitable that it should be so determined *Gauri Sahai* v *Ram Sahai, 7 N W 157*, *Kistnasamy Pillay* v. *Municipal Commissioners of Madras, 4 Mad 120*; and *Kishorchand Champalal* v *Madhowji Visram, I L R 4 Bom 407*, followed *Per* OLDFIELD, *J.* That the excess of the set-off in favour of the defendants over and above the claim of the plaintiff might properly be decreed to them, and that the set-off should be allowed, if at all, to its full extent, and not merely to the extent of defeating the claim *Per* DUTHOIT, *J*—That although the set-off might properly be admitted as an equitable protection to the defendants against being cast in the plaintiff's suit, the defendants could not, failing the provisions of s 111 of the Civil Procedure Code, be allowed to recover a sum of money from the plaintiff, they having paid no court-fees on that account PRAGI LAL v MAXWELL . I L R. 7 Mad 284

13. ———————— *Civil Procedure Code, 1859, s 121—Suit or award determining several items—Mutual liability under award* G and *R* referred to arbitration disputes between them regarding the partition of their paternal estate The concluding portion of the award ran as follows: "Both parties shall jointly satisfy the debts on the creditors demanding payment, which debts are joint and have hereunder been declared payable by both parties Should one party neglect to pay or show carelessness in the matter, and should the other be obliged to pay the whole amount of any such debts, the latter shall be competent to realize from the former portion of the debt paid on his account, together with costs and interest by the enforcement of this award, and shall also be entitled to recover the amount by suit in Court Both parties shall act up to this award in its entirety The sum of R338 0-9 which has been found due and payable by *G* to *R* as per account showing the mutual dealings between the parties, shall be made good as follows, *i e.*, *G* shall pay to *R* the whole amount of R338 0-9 by the middle of the month of Pous 1276 Fasli, either in a lump sum or by instalments, and in case of non-payment ...

under the award by the parties jointly, and which he alone had satisfied. The lower Appellate Court deducted from the claim items of the demand admitted by *R*, but refused to determine *G*'s right to set off the items which *R* disputed on the ground that they could be more conveniently inquired into in a separate suit. It was held (*per* STUART,

SET-OFF—*contd.*

1. GENERAL CASES—*contd.*

C.J., SPANKIE, *J.*, dissenting), that *G* was entitled to demand a set-off, and that the lower Appellate Court should have inquired into the disputed items of the demand, and not have referred *G* to a separate suit in respect of those items. GAURI SAHAI *v.* RAM SAHAI . . . 7 N. W. 157

14. ———— *Suit for redemption decree in—Set-off of costs against mortgage-money—Lien of attorney—Civil Procedure Code, 1877, ss 111, 221.* The decree in a redemption suit directed the plaintiff (the mortgagor) to pay the mortgage-money and interest to the defendant, and directed the defendant to pay the plaintiff the costs of the suit. *Held*, that the plaintiff was entitled to set-off the amount of his taxed costs against the mortgage-money which he was liable to pay under the decree, notwithstanding any claim that the defendant's attorney might have against the defendant in respect of the defendant's costs of suit. BRIJNATH DASS *v* JUGGERNATH DASS

I. L. R. 4 Calc. 742

S C. BRIJONATH DASS *v.* JUGGERNATH DASS

4 C. L. R. 122

15 ———— *Civil Procedure Code (Act XIV of 1882), s 221—Costs due by mortgagee to mortgagor—Set-off against the mortgage-debt—Liability of mortgage for any balance—Redemption suit* The mortagor is entitled to set-off or deduct the amount of costs payable to him under the decree against or from the mortgage-debt payable by him If the amount of the costs be larger than the mortgage-debt, the mortgagor is entitled to obtain possession at once of the mortgaged property and to recover the balance against the mortgagee SIDU *v* BALI

I. L. R. 17 Bom. 32

16. ———— *Insolvency Act, s. 39—Mutual credit—Civil Procedure Code, 1877, s. 111* Where there is a debt due from an insolvent

[illegible]

the debt due from him to the insolvent against sums which may be claimed from him. MILLER *v.* BEER

6 C. L. R. 294

17. ———— *Civil Procedure Code, 1882, s 111—Court-fee on set-off.* In a suit to recover a sum of money due as wages, the plaintiff alleging that the defendant had engaged him to sell cloth on his account at a monthly salary, the defendant claimed a set-off [illegible]

as was now claimed by way of set-off, as being due for the price of cloth sold and delivered by the defendant to him, and the plaintiff (then defendant) pleaded that there had been no sale to him, but the cloth had been delivered to him on commission sale. The suit was dismissed on the ground that there was no proof of a sale of cloth, and the question whether any sum was due for cloth sold on commission sale was not gone into The cloth now alleged to have been delivered on commission sale was the same as that alleged in the former suit to have been actually sold to the plaintiff *Held*, that the defendant was entitled, under s. 111 of the Civil Procedure Code, to set off the amount claimed as due for goods sold on commission against the plaintiff's demand. *Held*, also, that the court-fee payable on the claim for set-off was the same as for a plaint in a suit. AMIR ZAMA *v.* NATHU MAL . . I. L. R. 8 All. 396

18. ———— *Liquidated sum due on bond—Suit for rent.* A liquidated sum due

[illegible]

19. ———— *Debt due from deceased husband—Debt due to widow.* A widow is liable for a debt contracted by her husband. Such debt may be set-off against a debt due to her. GRISH CHUNDER LAHOORY *v.* KOOMAREE DABEA

1 W. R. Mis. 23

20. ———— *Lambardar—Co-sharer—Revenue, payment of—Profits, suit for* [illegible]

profits for such subsequent years, to claim in the suit a deduction on account of such payment. UDAI SINGH *v* JAGAN NATH . I. L. R. 1 All. 135

21. ———— *Purchase by patnidar of shares in zamindari—Set-off on payment of rent* The four defendants obtained jointly a patni lease of *R*, and subsequently purchased jointly a 5 annas share in the zamindari Defend-

[illegible]

payment of 5½ annas of the patni rent to the 8 annas share-holder in the zamindari, and a set-off against the other 2½ annas against their own claim as zamindars. *Held*, that, as the defendants 1 and 2 were strangers to the transfer of the rights of defendants 3 and 4 to the plaintiff, they had, as between themselves and the plaintiff, a right still to do what they did formerly, namely, set-off their patni liability against their zamindari right. GOOROO DYAL CHUCKERBUTTY *v.* KESHUB BIBEE

20 W. R. 409

SET-OFF—*contd.*

1. GENERAL CASES—*contd*

22. ———— *Rent, suit for—Rent paid in kind—Set-off allowed for—Account.* In a suit for arrears of rent, where defendant pleaded that, under an arrangement between him and plaintiff's ancestors, payment had been made by him in cash or in kind, and asked for an account to be taken, the lower Court was *held* to have been wrong in decreeing the suit on the ground that it could not go into evidence on a question of set-off in a rent suit, and was bound to take an account. ROY NUNDEEPUT MOHATOON *v* STEWART 23 W. R. 20

23. ———— *Plea of payment in suit for arrears of rent—Indirect payment* In

The lower Court refused to consider the defendant's

plea of payment merely and not in the nature of a set-off. KOONJO BEHARY SINGH *v* NILMONEY SINGH DEO . . . . . 4 C. L. R. 296

24. ———— *Suit for contribution against person jointly liable for rent* In as-

rent in excess of his own share of the rent, although such sums are not claimed in his written statement, the sums paid not being in the nature of a set-off GOGUN CHAND DUT *v* HURI MOHUN DUT 12 C. L. R. 539

25. ———— *Civil Procedure Code, 1859, ss. 121, 195—Claim arising out of same*

26. ———— *Decree for defend-*

27. ———— *Civil Procedure Code, 1859, s. 195—Counter-claim—Deductions allowed in ascertaining mesne profits.* S. 195, Act VIII of 1859, which enabled a defendant to

in ascertaining a defendant's liability for mesne profits, deductions were allowed from the rent proved to have been received, in the nature of allowances made for costs of cultivation or collection expenses. TILUCK CHAND *v* SOWDAMINEE DASSEE 25 W. R. 275

28. ———— *Subordinate Judge invested with Small Cause Judge's powers—Civil Procedure Code (Act XIV of 1882), s. 111—Set-off exceeding pecuniary jurisdiction of the Small Cause powers of the Subordinate Judge—Procedure* In a suit brought by the plaintiff to recover R36-7-9 from the defendant under the Small Cause jurisdiction of a Subordinate Judge, the defendant claimed to set-off R72, which exceeded

29. ———— *Civil Procedure Code, ss 111, 216—Suit for dissolution of partnership* A suit for dissolution of partnership in which the claim was valued at R2,000, with a prayer that

of set-off may be raised in such a suit, and if in consequence of such plea the Court of first instance decrees in favour of the defendant a sum above R5,000, then by reason of the provision in para-

30. ———— *Claim of different nature.* It is not equitable to allow a set-off against a claim relating to a particular account stated, of a matter of another nature altogether. KALEE KOOMAR CHUCKERBUTTY *v.* HURO CHUNDER CHUCKERBUTTY . . . 17 W. R. 177

31. ———— *Amount in excess of jurisdiction of Court* A Court cannot entertain the question of set-off if the amount claimed by the defendant exceeds the amount cognizable by it.

SET-OFF—*contd.*

1. GENERAL CASES—*contd.*

32. ——————— *Unascertained sums.* Setting off an unascertained sum against

litigants. BACHUN *v.* HAMID HOSSEIN. ABDOOL AZEEZ *v.* HAMID HOSSEIN

17 W. R. 113 : 10 B L. R. 45

33. ——————— *Civil Procedure Code, 1859, ss. 121, 195—Claim for unliquidated damages—Suit on bill of exchange—Cross-demands.* Ss. 121 and 195 of the Code of Civil Procedure (Act VIII of 1859) had not the effect of enlarging the right of set off In a suit against the acceptor

34. ——————— *Unascertained damages—Civil Procedure Code, 1859, s 121.* Under s. 121, Act VIII of 1859, a defendant could not claim a set-off for damages in respect of an alleged breach of contract which had not been ascertained in a suit brought against him to recover the amount due on certain dishonoured hundis. RAM DYAL *v.* RAMDHUN DASS . . . 3 Agra 43

RAM LALL *v.* KOONDUN LALL . 3 Agra 97

35. ——————— *Separate debt—Joint and several debt—Directors.* A separate debt cannot be set-off against a joint and several debt, and directors cannot set-off money due from the company to them against sums which may be ordered to refund to the liquidators. NEW FLEMING SPINNING AND WEAVING COMPANY *v* KESSOWJI NAIK . . . . I. L. R. 9 Bom. 373

36. ——————— *Joint and separate debts—Mutual dealings* *A* had dealings with a firm consisting of a father and two sons, who carried on business jointly Shortly after the father's death, the two brothers separated, and *A* dealt with each separately, having notice of the separation. *A* could not set-off, against a claim made by one of the brothers, in respect of the separate dealings between himself and *A*, a debt due to himself from the former joint concern DHUNPUT SINGH *v* FORBES

1 Ind. Jur. N. S. 354

37 ——————— *Costs—Omission to award costs* A set-off cannot be allowed for costs not actually awarded, as where a decree of the High Court gave the successful appellant costs of that Court and of the lower Appellate Court, but omitted to award the costs of the first Court. HURO PERSHAD ROY CHOWDHRY *v* FOOL KISHOREE DOSSEE

16 W. R. 308

38. ——————— *Suit for carriage of goods—Set-off for damages.* In a suit for money

SET-OFF—*contd.*

1. GENERAL CASES—*contd.*

39. ——————— *Suit for mesne profits—Civil Procedure Code, 1859, s. 121.* A set-

40. ——————— *Unascertained mesne profits—Debt not due at time of suit.* An

COOMAR *v.* BHICHOOK SINGH . 22 W. R. 1

41. ——————— *Civil Procedure Code, 1877, s. 111—Mortgage—Compensation for waste.* The usufructuary mortgagee of certain land sued the mortgagor for the money due under the mortgage. The mortgagor alleged the mortgagee had committed waste and was liable to him for compensation which he claimed to set-off. *Held,* that under s. 111 of Act X of 1877 the amount of such compensation could not be set-off. RAGHU NATH DASS *v.* ASHRAF HUSAIN KHAN

I. L. R. 2 All. 252

42. ——————— *Claim against deceased father—Right to appropriate property.*

defendant was rightly referred to a separate suit. MANLY *v.* MANLY . . . 14 W. R. 136

43. ——————— *Civil Procedure Code, 1882, s. 111—Suit by creditor of deceased.* The heirs to *M*, deceased, appointed *A*, one of the heirs, manager of *M*'s estate, with a view to the

SET-OFF—*contd.*

I. GENERAL CASES—*contd.*

44. ——— *Act VIII of 1859, s 121—Co-sharers—Suit for contribution.* In a suit brought against a lessee of a portion of an estate by one of the co-sharers for money alleged to be due as the plaintiff's share of arrears of rent for a certain period, where the claim was admitted —*Held*, that the defendant was not entitled to set-off under s. 121, Act VIII of 1859, the plaintiff's

tween the claim of the plaintiff and the counter-claim of the defendant as would entitle the defendant, as a matter of equity apart from legislative enactment to a set-off HOSSEINA BIBI *v* SMITH 13 B. L. R. 440 . 22 W. R. 15

45. ——— *Suit for contribution—Shares on zamindari and shikmi rights*

sharer for what he ought to have contributed. The lower Appellate Court, finding that the defendant had a 2 anna share in the zamindari, as well as in the shikmi, considered that the one right might be set

ADHIKAREE . . . . 23 W. R. 134

46. ——— *Debts not mutual—Disputed claim for rent in suit for payments*

debts should be mutual, due from and to the same

47. ——— *Suit for rent —Compensation for damage done in execution of decree* If the cultivator suffer damage in execution of a decree of the Civil Court, he may sue and claim compensation for such damage; but until such damage has been ascertained and decreed, it cannot be set off against a claim for rent RAI GOBIND SINGH *v* SOONDER PAL . 2 Agra, Pt. II, 177

48. ——— *Claim for rent—Suit for money paid to protect lease* A claim for

49. ——— *Account, suit*

second the defendant, who also, by cross-appeal

as also no issue had been framed or even asked for on the question, it was not open to the defendant to raise it on this cross appeal. NAN KARAY PHAW *v* KO HTAW AH KO HTAW AH *v.* NAN KARAY PHAW

I. L. R. 13 Calc. 124 L. R. 13 I. A. 48

50. ——— *Civil Procedure Code, 1882, s 111—Counter-claim for damages—Costs of preparing a deed—Stamp duty* In December 1882 the plaintiffs agreed to supply the defendants with machinery for their mill near

lastly provided that this agreement should be treated as forming part of and supplemental to the agree-

SET-OFF—*contd.*

I. GENERAL CASES—*contd.*

counter-claim, as it could not be doubted that there would be considerable delay in investigating it, and there was no reason why the plaintiffs should have to wait so long for the money to which they were now legally entitled. *Held*, also, that the plaintiffs were entitled to include in their claim the stamp duty paid on the trust-deed The agreement contemplated that the defendants should pay all the costs incidental to the execution of the deed. DOBSON & BARLOW *v.* BENGAL SPINNING AND WEAVING CO. . . I. L. R. 21 Bom. 126

51. ——— Decretal amount—*Decretal*

wrong in not entertaining the claim of set-off raised by the defendant. Ill (*d*) of s. 111 of the Civil Procedure Code makes it perfectly clear that the Court can entertain such a claim BHARAT PROSAD SAHI *v.* RAMESHWAR KOER (1903)

I. L. R. 30 Calc. 1066

52. ——— *Landlord and tenant—Civil Procedure Code (Act XIV of 1882), s. 111—Bengal Tenancy Act (VIII of 1885), s. 67.*

and in which the landlord was made a *pro formâ* defendant · *Held*, that the set-off could not be allowed. *Gopi Nath v. Bhagwat, I. L. R. 10 Calc. 697, Bharat Prosad v. Rameshwar, I. L. R. 30 Calc. 1066*, distinguished. TILUK CHANDRA ROY *v.* JASODA KUMAR ROY (1906) . 11 C. W. N. 215

53 ——— **Debtor can set-off against assignee independent claims against assignor**—In an action by the assignee of a debt, the debtor-defendant is entitled to set off a debt due to him by the assignor at the date of the assignment, even when the amount claimed to be set-off is due under a transaction independent of, and unconnected with, the claim assigned to plaintiff. Such right of set-off will not be open to the defendant, if, by his conduct, he has given up his right to proceed against the assignor personally for the debt. ARUNACHELLAM CHETTI *v.* SUBRAMANIAN CHETTI (1906)

I. L. R. 30 Mad. 235

2. CROSS-DECREES.

1. ——— **Decrees under Act X of**

There is now no distinction in this respect between rent decrees and other decrees.

2. ——— **Award on private arbitration.** An award of private arbitration *per se* did not come under the provisions of s 209 of Act VIII of 1859, so as to be set off against a decree of Court. DHEERAJ SINGH *v.* DEEN DYAL SINGH

11 W. R. 144

3. ——— **Requisites for right**—*Decrees in same Court for execution.* Before cross-decrees can be set off the one against the other, it is necessary that they should be in the same Court for execution EAST INDIAN RAILWAY COMPANY *v.* HALL . . . . . 3 N. W. 104

DE SILVA *v* AMEER SHAHA . 16 W. R. 303

4. ——— *Requisites for right—Decrees in same Court for execution—Civil Procedure Code, 1859, s. 209.* The provisions of s. 209, Act VIII of 1859, applied only to cross-decrees of the same Court between the same parties, or to cross-decrees between the same parties, though of different Courts, which had found their way for execution to the same Court. RAM COOMAR GHOSE *v.* GOBIND NATH SANDYAL . 7 W. R. 460

Reversing on review, s. c. GOBINDNATH SANDYAL *v* RAMCOOMAR GHOSE . 6 W. R. 21

HADOO SIRDAR *v.* JADOO MONEE DOSSEE

17 W. R. 46

5 ——— *Requisites for right—Decrees in same Court for execution.* The decrees must be under execution at the same time. JUDOO NATH ROY *v.* RAM BUKSH CHUTTANGEE

7 W. R. 535

6. ——— *Requisites for right—Decrees not in same Court—Act VIII of 1859, s. 209.* Act VIII of 1859, s. 209, which provided for the set-off of cross decrees, applied only to decrees of the same Court or decrees sent to a

SET-OFF—*contd*

2. CROSS-DECREES—*contd*

not apply GIRISHCHANDRA LAHURY *v.* FAKIR CHAND

B. L. R. Sup. Vol. 503 6 W. R Mis 72

7. ——— ——— *Requisites for right—Decrees for definite sums—Civil Procedure Code, 1859, s. 209* In order to admit of a set-off being made when there are cross-decrees, the parties must be the same, and the sum due under each decree or decrees must be definite REZAOODDEEN HOSSEIN *v* FUZLOONISSA 5 W. R. Mis. 12

8. ——— *Appeal from decree* A judgment-debtor is entitled to set-off a decree whether the judgment-creditor may or may not intend to object on appeal to the judgment-debtor's decree HURO PERSHAD ROY CHOWDHRY *v* SHAMA PERSHAD ROY CHOWDHRY

5 W. R. Mis. 52

9. ——— Set-off of joint decree—*Civil Procedure Code (Act X of 1877) s. 246.* A judgment-debtor may set-off against the amount of the decree against him, the amount of a decree which he has obtained against the decree-holder and other persons. HURRY DYAL GUHO *v* DIN DOYAL GUHO

I. L. R 9 Calc. 479 : 13 C. L. R. 93

10. ——— *Civil Procedure Code, s 246.* Where a decree-holder holds a decree

11. ——— *Joint decree—Decrees not between same parties—Civil Procedure Code, 1877, s 246.* *S* and two other persons held a decree for costs against *M* which did not specify the separate interests of each in the decree, and *M* held a decree for money against *S* alone, which he wished to treat as a cross-decree under s. 246 of Act X of 1877. *Held*, that the decree held by *S* and the other persons was not a decree between the same parties as the parties to the decree held by *M*, and *M*'s decree could not therefore be treated as a cross-decree under that section. MURLI DHAR *v.* PARSOTAM DASS . . I. L. R. 2 All. 91

12. ——— Execution by two decree-holders—*Act VIII of 1859, s 209.* Where there

BHUTTACHARJEE

3 B. L. R. A. C. 114 W. 11. R. 488

SET-OFF—*contd.*

2. CROSS-DECREES—*contd.*

13. ——— *Civil Procedure Code, 1859, s 209—Attachment* In April 1877 *M* sued *S* for money, and on the 10th May 1877

claimed by *M* in his suit, and obtained an order prohibiting *M* from receiving, and *S* from paying,

sum was entered on both decrees, and execution

sum became absorbed in the one for the larger, and attachment could not affect it. BHUJHAWAN LAL *v* SUKHRAJ RAI . . I. L. R. 2 All. 868

14. ——— Cross-decrees for mesne profits. Where there are cross-decrees for possession and mesne profits in respect to the same land, the earlier decree comprehending only a part of the land embraced in the latter, each party may take out execution and be entitled to receive wasilat separately. ANUND MOHUN HAJRAH *v.* SHIBO SOONDUREE DABEE . 16 W. R. 256

15. ——— *Cross-decrees for mesne profits* In 1827 *S* commenced a suit against

SET-OFF—*contd.*

2 CROSS-DECREES—*contd.*

decreed to be paid by *S* to *B*. RAM COOMAR GHOSE *v.* GOBIND NATH SANDYAL 12 W. R. 391

16. ——— **Decree not enforceable—** A decree which is incapable of being enforced cannot be set-off against a decree which is alive HURO PERSHAD ROY CHOWDHRY *v.* FOOL KISHOREE DOSSEE . . . 16 W. R. 308

17. ——— **Decree barred by lapse of time.** A set-off is not admissible, except upon a cross-decree which the decree-holder is seeking to execute, and not upon a cross- decree incapable of execution by lapse of time. A cross-decree must be kept alive by the action of the party entitled under it ANUND MOHUN SURMA MOJOOMDAR *v.* HURO CHUNDER BHUTTACHARJEE

5 W. R. Mis. 16

PROSUNNO COOMAR GHOSE *v.* SHAM LAL GUNGOPADHYA . . . . 5 W. R. Mis. 8

HEMRAJ CHOWDHRY *v* ASOODUN

5 W. R. Mis. 43

18. ——— *Civil Procedure Code, 1859, s 209—Decree barred by limitation.* In a suit for resumption of land, plaintiff obtained a decree for a portion of her claim, with costs in pro-

years to elapse from the date of the former decree

ing, and to issue a warrant for that sum and no more *Held*, further, that no question of limitation could

executed to the extent of the difference between the two decrees. NUBO LALL KHAN *v.* MAHARANEE OF BURDWAN . . . . 9 W. R. 590

19. ——— *Act VIII of*

by her against *B*. BHAGWANI KUNWAR *v.* LALA BAIJNATH PRASAD

2 B. L. R. A. C. 84 : 10 W. R. 380

20. ——— **Assignee of decree, right of.** Where execution of *A*'s decree against *B* was stayed pending the passing of a decree in *B*'s cross suit:—*Held*, that no subsequent purchase of *B*'s rights and interests in his cross-suit could be set up as a bar to *A*'s rights to attach the whole of the decree in the cross-suit, in execution of his decree against *B*. PEELOO CHOWDHRAIN *v* COURT OF WARDS . . . . 7 W. R. 219

21. ——— *Assignment of decree—Act VIII of 1859, s. 209—Act XXIII of 1821, s. 11.* The plaintiffs obtained a decree against *B* in the Subordinate Judge's Court. Some time afterwards *B* recovered a decree in the Munsif's

they brought the present suit for a declaration of ... made of the two decrees. RUGHU NAN-

W. R. 235

22. ——— *Civil Procedure Code, 1859, s 209.* *A* obtained a decree in a Court of the N.-W. Provinces against *B*. *C*, taking the

Held, that, in such circumstances, ... 1859, did not apply. ROZEEOODDEEN *v.* JEHANGEER 5 W. R. Mis. 22

23 ——— *Purchaser of decree—Act VIII of 1859, s 209* The purchaser ... right to execute the decree, but was

24. ——— *Purchaser of decree—Act VIII of 1859, s. 209.* *A* and *B*, having obtained a decree for a sum of money against *C* and *D*, sold part of their interest therein to *E*, who

against *C*, and ... benami for him as a cross-decree within the meaning of s. 209 of Act VIII of 1859. *Held*, that the

SET-OFF—*contd.*

2. CROSS-DECREES—*contd.*

decree could not be set off. TARACHAND GHOSE *v.* ANANDA CHANDRA CHOWDRY
3 B. L. R. A. C. 110 10 W. R. 450

25. ———— *Purchaser of decree—Act VIII of 1859, s 209.* The purchaser of a decree held by *A*, against whom *B* holds a cross-decree, takes it subject to a set-off on account of *B*'s decree KAIM ALI JAWARDAR *v* LAKHIKANT CHUCKERBUTTY
1 B. L. R. F. B 23 10 W. R. F. B. 32

NUNDO COOMAR BUKSHEE *v.* KOONJO KISHORE ROY . . . . . 6 W. R. Mis. 73

DOORGA CHURN NUNDEE *v* DEBNATH ROY CHOWDHRY . . . . 18 W. R. 442

OOPENDRO MOHUN MOOSTAFEE *v* POORNA CHUNDER BHUTTACHARJEE . . 19 W. R. 85

RAM CHUNDER *v.* MOHENDRO NATH BOSE
21 W. R. 141

26. ———— *Civil Procedure Code, 1859, s. 209* *A* got a decree against *B*, who subsequently got a larger decree against *A*, which he sold to *C*. After that *A* executed his

[illegible]

...s 209

24 W. R. 299

27. ———— *Fraudulent assignment—Rights of assignee.* [illegible]

[illegible]

assignee would have taken the decree subject to the equities or liabilities of the decree-holder to the judgment-debtor TALUB HOSSEIN *v.* WALKER
7 W. R. 470

28. ———— *Civil Procedure Code, 1877, s. 246—Execution of cross-decrees—Power of Court executing decree—Bonâ fide purchaser—Presumption of validity of order for sale* [illegible]

[illegible]

or not. These are questions to be determined by the Court issuing execution Where property sold in execution of a valid decree, under the order of a competent Court, was purchased *bonâ fide* and for fair value —*Held*, that the mere existence of a cross-decree for a higher amount in favour of the judgment-debtor, without any question of fraud, would

[illegible]

MOTHURA MOHUN GHOSE MUNDUL *v* AKHOY KUMAR MITTER . . I. L R. 15 Calc. 557

29. ———— **Stay of execution of decree** —*Civil Procedure Code, 1859, s. 209.* Where a decree for the plaintiff has been obtained in a [illegible]

[illegible]

CHUND *v.* RAJNARAIN GHOSE
1 Ind. Jur. N S. 330

30. ———— *Civil Procedure Code, 1859, s 209, Procedure under.* When an application to stay execution of a decree is made to a Court in which a suit is pending against a decree-holder, the Court's competency, under s. 209, Act VIII of 1859, to grant the application depended [illegible]

[illegible]

31. ———— *Civil Procedure Code, 1859, s 209—Execution of cross-decrees.* S [illegible]

[illegible]

... W. R. 212

32. ———— *Pending suit by* [illegible]

[illegible]

balance of rent due. *Held*, that the pendency of the suit in the District Munsif's Court was not a bar to the present suit, but that it was open to the Court,

SET-OFF—*contd.*

2. CROSS-DECREES—*contd.*

in its discretion, to postpone the hearing of the present suit until the District Munsif had given his decision. MUTTUKARUPPA KAUNDAN *v.* RAMA PILLAI . . . . . 3 Mad 158

33. ——— **Execution of decree**—*Obligation to set off.* Where two parties have to recover sums from each other under the same decree (not cross-decrees), the party entitled to the lesser sum cannot be allowed to take out execution against the party entitled to the larger sum, and the Court is bound to direct a set-off or to enter satisfaction of the smaller sum upon the decree JUGO MOHUN BUKSHEE *v.* SOORENDRONATH ROY CHOWDHRY . . 13 W R. 106

34. ——— *Decree in favour of one party with costs in favour of the other—Civil Procedure Code, 1859, s 209* When a decree in favour of an appellant describes a set of costs as due by the appellant to the respondent, it means not that any sum should be actually paid to the latter, but that the costs in question should be

35. ——— *Civil Procedure Code, 1882, ss 246, 247—Execution of decree—Cross-decrees—Simple money-decree—Decree enforcing mortgage* S. 246 of the Civil Procedure Code is applicable to cross-decrees and not to cross-claims under one decree To make s 247 of the Code applicable in the case of cross-claims under one decree, the parties entitled thereunder to recover from each other must hold the same character and possess identical rights of enforcing execution, and enforcement of the decree can only be refused, or satisfaction entered up, when this is the case *Held*, therefore, where a decree for money of a Court of first instance directed that the money should be realizable from certain specific property of the defendant, and exempted his person and other property,

such specific property, whereas the defendant was

36. ——— *Costs—Two awards of costs in same decree—Execution of decree.* Where a Court makes two different awards of costs in one and the same decree, when it ought to have made a decree only for the difference between them —*Held,* that execution could only be taken out for the difference between the two amounts awarded. AMJUD ALI KHAN *v.* FAZUL HOSSEIN . . . . 19 W. R. 187

37. ——— *Conditional decree—Purchase-money—Costs—Civil Procedure Code, 1882, ss. 214, 221, 247—Decree in suit for pre-emption* The decree in a suit to enforce a right of pre-emption directed, in accordance with the provisions of s 214 of the Civil Procedure Code, that the plaintiff should obtain possession of the property and recover costs of the suit from the defendants (vendor and vendee), on payment of the purchase-money within a fixed time, but that on default of such payment, the suit should stand dismissed. The plaintiff deposited within time the purchase-money with the exception of a sum less than the amount of costs awarded to him. He subsequently applied for delivery of possession of

R. Sup Vol. 938, 9 W. R. 230; Jugo Mohan Bukshee* v. *Soorendro Nath Roy Chowdhry, 13 W. R. 106;* and *Brijnath Dass* v. *Juggernath Dass, I L. R. 4 Calc. 742,* referred to. ISHRI *v.* GOPAL SARAN . . . . I. L R. 6 All. 351

38. ——— *Civil Procedure Code, 1882, s 247—Cross-claims under the same decree—Costs under the same decree recoverable in different ways* S 247 of the Code of Civil Procedure is not limited in its application to cases in which the remedy of each party against the other is of

WAN SINGH *v* RATAN . I. L. R. 16 All. 395

39. ——— *Civil Procedure Code, 1882, ss 246, 247—Execution of decree—Parties entitled under same decree to recover from each other.* A plaintiff obtained a decree for the

SET-OFF—*contd.*

2. CROSS-DECREES—*contd.*

[illegible]

mortgage amount and value of improvements payable by plaintiff to them. *Bhagwan Singh v. Ratan, I. L. R. 16 All. 395*, approved. SANKARA MENON v GOPALA PATTAR . I. L. R. 23 Mad 121

40. ——————— *Civil Procedure Code, ss 246, 247, 411—Cross-decrees in same decree—Recovery by Government of Court-fees in pauper suit.* A plaintiff suing *in formâ pauperis* to recover property valued at R60,000 obtained a decree for R1,439. The Court, with reference to the provisions of s 411 of the Civil Procedure Code, directed that the plaintiff should pay R1,196 as the amount of Court-fees which would have been paid by [illegible]

application for execution was made by the plaintiff for his R1,439, or by the defendant for her costs In appeal from an order allowing the Collector's application, it was contended that the "subject-matter of the suit" in s. 411 of the Code meant the

[illegible]

favour for R1,439 so as to bring into operation the special rules of ss 246 and 247 of the Code [illegible]

first charge was by law reserved and secured to [illegible]

questions of set-off and consequent reduction or other modification of the "*subject-matter*" *of the suit* decreed against the defendant as payable by her to

SET-OFF—*contd.*

2. CROSS-DECREES—*contd.*

the plaintiff had arisen or could be entertained. JANKI v COLLECTOR OF ALLAHABAD

I. L. R. 9 All. 64

41. ——————— *Civil Procedure Code (Act XIV of 1882), ss 233, 243, 546—Execution of assigned decree—Set-off against assigned decree partly executed.* A B had obtained a decree against *K* and *T* After the decree had been partially satisfied *A B* assigned it to *D* Prior to

[illegible]

assigned to *D* KRISTO RAMANI DASSEE v KEDAR NATH CHAKRAVARTI . I. L. R. 16 Calc. 619

42. ——————— *Civil Procedure Code, s 246—Limitation* Under two decrees of the Sudder Dewany Adalat passed in 1864, *A* was entitled to two-thirds and *B* to one-third of certain immoveable property, with mesne profits in proportion. Each obtained possession of the immoveable property decreed to him *B* appealed to the Privy Council from both decrees in respect of the two-thirds awarded to *A*. In April 1866, pending the appeal, *A* applied for an account of the mesne profits due to him after setting-off the mesne profits due to *B*, but as he failed to comply with a condition requiring him to give security for the amount claimed, in case the Privy Council should allow *B's* [illegible]

Privy Council's decree, applied for R50,000 as mesne profits in respect of the two-thirds *B* at the same time applied that the R18,000 declared in 1867 to be due to him in respect of the one-third might be set-off against the amount claimed by *A* *Held*, that the question of the amount due to *A* up to the date when he acquired possession of the two-thirds, and which had never yet been decided, should be re-opened from the point at which it was left in 1866; that if this amount exceeded the R18,000 declared in 1867 to be due to *B*, satisfaction of *A*'s claim to that extent should be entered up and the balance recovered from *B*, and that this course,

[illegible]

the amount due to *A*, that decision also would

SET-OFF—*concld.*

2. CROSS-DECREES—*concld.*

be a decree, and that s. 246 of the Code could then be applied. MATADIN *v.* CHANDI DIN
I. L. R 10 All. 188

43. ——— *Civil Procedure Code, s. 246—Execution of decree—Decree against* [illegible]

execution. *Rewa Mahton* v. *Ram Kishen Singh, L. R 13 I. A. 106, 110,* referred to. CHAJMAL DAS *v.* LAL DHARAM SINGH (1902)
I. L. R. 24 All. 481

44. ——— *Civil Procedure Code (Act XIV of 1882), ss. 233, 246—Cross-decrees on same day against same parties in different suits—Subsequent transfer of one decree to third party—Petition for execution by transferee decree-holder—Right of transferee subject to equity of cross-decree-holder.* On 3rd February 1900, cross-decrees were passed between *A* and *B* in different suits. *A*'s decree against *B* was for a larger amount than *B*'s decree against *A* On 25th January 1911, *B* transferred his decree to *C*, but *A* only received notice of the assignment in October 1900 *Held,* that *C* was not entitled to execute the decree against *A*. The transfer from *B* to *C* could take effect against *A* in respect of his cross-decree only after *A* received notice of it. That being so, the decree so transferred, being for a smaller amount than *A*'s, became incapable of execution under the equitable principle enunciated in s 246 of the [illegible]

[illegible] PANDARAM *v.* SANTHOJI ROW (1902)
I L R 26 Mad 428

SETTING ASIDE LEASE

See LEASE.
See RECEIVER . 12 C W N. 1023

SETTING ASIDE EX PARTE DECREE.

See CIVIL PROCEDURE CODE, 1882, s 108
3 C W N 846

SETTING ASIDE SALE

See CIVIL PROCEDURE CODE, 1882, s. 310A.
13 C W. N. 224
See SALE . 13 C W. N. 249; 518

——— application for—

See SALE IN EXECUTION [illegible]
I. L. R. 36 Calc. 654

SETTING ASIDE SALE—*concld.*

——— *Setting aside sale, application for—Agreement with a co-lessee of judgment-debtor and the decree-holder—Dissuading purchaser from bidding—Civil Procedure Code (Act XIV of 1882), s. 311* [illegible] co-lessee of the [illegible] holder that he [illegible] then sell it to [illegible] decree, in cons[illegible] framed from bidding at the sale, is not by itself sufficient to vitiate a sale. *Mahomed Mira Ravuthar* v. *Savvasi Vijaya Raghunadha Gopalar, I. L. R. 23 Mad. 227 . L R 27 I A. 17,* explained and followed, *Woopendro Nath Sircar* v. *Brojendro Nath Mundul, I. L R 7 Calc 346,* distinguished SATISH CHANDRA MUKHERJEE *v.* PORTER (1908)
I L R 36 Calc 226

SETTLED ACCOUNTS

——— *Accounts—Settlement of accounts by passing a promissory note—No fraud or coercion used—Waiving of examination of accounts by plaintiff of his free will—Accounts not to be re-opened.* The plaintiff and defendant had mutual dealings and accounts. In settling these accounts the plaintiff of his own free will and accord and without any fraud practised or undue influence exerted by the defendant claimed his right to an examination of the accounts for the purpose of ascertaining the balance due and agreed to treat a gross sum of R3,556 as due from him and accordingly executed a promissory note for that amount. The plaintiff then sued for a declaration that the promissory note in question was fraudulent and had been obtained from him by undue influence and was good only to the extent of such sum as might be found due on taking an account between the parties. At the trial the allegations of fraud and undue influence on the part of the defendant and want of free consent on the part of the plaintiff were held not proved. *Held,* that, on the principle enunciated by the Privy Council in *McKeller* v. *Wallace, 5 Moo I A 372,* the promissory note must be treated either as the result of a settled account or as a settlement by compromise *In either case, it could not be re-*opened MAGNIRAM *v.* LAXMINARAYAN (1908)
I. L. R 32 Bom 353

SETTLED ESTATE

See JHUM CULTIVATION.
I L R 36 Calc 1

SETTLEMENT

SETTLEMENT—*contd.*

See ACT IX OF 1847.
I. L. R. 4 Calc. 103

See ASSAM LAND AND REVENUE REGULATION . I. L. R. 17 Calc. 819
I. L. R. 24 Calc. 239

See CONFISCATION OF PROPERTY IN OUDH.
14 Moo. I. A. 112
I. L. R. 4 Calc. 727
I. L. R. 12 Calc. 1
L. R. 12 I. A. 124

See COVENANT TO RENEW
1 B. L. R. A. C. 7

See DEED—CONSTRUCTION.
I. L. R. 20 Bom. 310

See GRANT . . 8 C. W. N. 105

See MAHOMEDAN LAW—ENDOWMENT.
I. L. R. 30 Calc. 666

See RESUMPTION—EFFECT OF RESUMPTION—EFFECT ON PATTA
L. R. 30 I. A. 159

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI OF 1859
14 W. R. 1
15 W. R. 141
I. L. R. 24 Calc. 887

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—BENGAL REGULATION XI OF 1822.

See STAMP ACT, 1879, s. 3, CL. 19
I. L. R. 7 Mad. 349
I. L. R. 21 Mad. 422

See STAMP ACT, 1879, SCH. I, ART. 57
I. L. R. 8 Mad. 453
I. L. R. 20 Bom. 210

See SUCCESSION . L. R. 30 I. A. 190

See VILLAGE CHOWKIDARS ACT, ss. 48, 51
I. L. R. 21 Calc. 626
4 C. W. N. 814

———— construction of—

See HINDU LAW—GIFT—CONSTRUCTION OF GIFTS . I. L. R. 12 Calc. 663
I. L. R. 12 Mad. 393

———— Gordon Settlement—

See HEREDITARY OFFICES ACT.
4 C. W. N. 517
I. L. R. 20 Bom. 423

See SERVICE TENURE.
I. L. R. 15 Bom. 13
I. L. R. 18 Bom. 22

———— made by guardian—

See HUSBAND AND WIFE
I. L. R. 10 Calc. 951

———— of khas mehal lands—

See LIMITATION ACT (XV OF 1877), SCH. II, ARTS. 14, 45 . 12 C. W. N. 910

———— of rent—

See BENGAL TENANCY ACT, s. 104J.
13 C. W. N. 210

See BENGAL TENANCY ACT, s. 105
13 C. W. N. 1149

See RECORD OF RIGHTS
I. L. R. 35 Calc. 176

———— on marriage—

See MARRIAGE SETTLEMENT
1 Ind. Jur. N. S. 290

See WILL—CONSTRUCTION
I. L. R. 4 Calc. 514

———— post-nuptial—

See TRANSFER OF PROPERTY ACT, s. 53.
I. L. R. 22 Calc. 185

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION . I. L. R. 18 Calc. 146

———— preferential right of—

See NOABAD TALUK . 13 C. W. N. 235

———— suit to set aside—

See PARTIES—PARTIES TO SUITS—GOVERNMENT
13 B. L. R. 118 : 21 W. R. 327
22 W. R. 52

———— wife's equity to—

See HUSBAND AND WIFE
11 B. L. R. 144

1. CONSTRUCTION.

1. ———— Agreements made at time of settlement, duration of. *Held*, on the construction of an "ikramamah" and settlement "roobkari," that it was binding on the plaintiffs only for the currency of settlement. In general engagements made at the time of settlement ought to be considered *primâ facie* as intended to subsist only for the time of settlement. DIAL SINGH *v.* JAWAHIR SINGH . . . . 2 Agra 108

IKRAM ALI KHAN *v.* LUDWA . 2 Agra 113

2. ———— Effect of settlement—*Duration of, and right created by, settlement—Transfer of proprietary right* Where a settlement of a [illegible] only, was [illegible] —*Held*, [illegible] right, [illegible] plaintiff's vendor, having been admitted to a share in the [illegible]

18 W. R. 274

3. ———— *Settlement by Government of land on which stood a hât—Calculation for purpose of settlement—Tools—Hât—Reg. XXVII of 1793.* A settlement of land (on

SETTLEMENT—*contd.*

1. CONSTRUCTION—*contd.*

only; the reason for looking at the tolls being to ascertain the value of the land Such a settlement therefore does not imply a monopoly which will enable the holder to restrain other persons from setting up another hât close by. RAKHAL DAS ADDY *v.* DURGA SUNDURI DASI DURGA SUNDURI DEBI *v.* RAKHAL DAS ADDY

I. L. R. 17 Calc. 458

4. ——————— *Summary Settlement Act (Bom Act VII of 1863)—Nature of settlement under that Act—Settlement made and sanad issued under a mistake—Quit-rent paid by inamdars to Government under such settlement—Refund—Void agreement—Contract Act (IX of 1872), ss. 20, 65—Sanad, meaning and effect of.* Under the Bombay Summary Settlement Act (Bombay Act VII of 1863), a settlement in respect of the village of Mankol was effected in 1864 between the Government and the plaintiffs, who were the inamdars, and a sanad was granted to the plaintiffs, under the terms of which a certain yearly quit-rent was payable by them to Government in respect of the said village. At the time of the settlement the plaintiffs believed that they were the superior holders of all the lands in the village, including certain wanta lands It subsequently appeared, however, that the wanta lands were the property of certain girassias, who were in possession as owners, and that the plaintiffs were not the holders of these lands within the meaning of s. 32 of Bombay Act VII of 1863 The Government, however, required the plaintiffs to pay the entire quit-rent of the village for the S...
1940, as fixed
under protest
amount (R40C
lands *Held,* that the plaintiffs were entitled to a refund of the quit-rent paid in respect of the wanta lands A settlement under Bombay Act VII of 1863 is an agreement effected by proposal and

... were the superior holders of all the lands in the village. There was therefore a common mistake as to a matter of fact which both parties must have regarded at the time as essential to the agreement, it being made so by the Act itself under which they assumed to contract Such a mistake under s. 20 of the Contract Act (IX of 1872) renders the agreement void. ...
the wanta la
that which
village, the
being therefore entitled to a refund of the quit-rent paid in respect of such lands under s. 65 of the Contract Act. A sanad issued under Bombay Act VII of 1863 merely declares what by s. 6 of the Act is stated to be the effect of the settlement to which both the Government and the holders of the land have consented; but it is by virtue of the settlement itself as provided by the Act that Government are entitled to demand payment of such rent. SECRETARY OF STATE FOR INDIA *v.* SHETH JESHINGBHAI HATHISANG

I. L. R. 17 Bom. 407

SETTLEMENT—*contd.*

1. CONSTRUCTION—*concld.*

2. RIGHT TO SETTLEMENT.

1. ——— **Claim to settlement after resumption**—*Beng. Reg. II of 1819—Ex lakhirajdar—Limitation* Long possession gives no title, to a settlement, unless the party claiming a settlement has put forward his claim when the lands were resumed, and the notice has issued to parties to assert their claims to such settlements, and has thus complied with the requirements of the law. GOLACK CHANDRA CHOWDHRY *v.* ALI MOLLAH

8 B. L. R. 528 note

2. ——— **Claim to permanent settlement after expiration of temporary one—**

land, unless he has by his own conduct forfeited that right. WATSON & Co *v* BROJO SOONDUREE DABEE . . . . . 10 W. R. 395

On remand an order was made declaring the plaintiff entitled to the permanent settlement instead of the defendants, and confirmed on special appeal, subject to the proviso that such declaration would not entitle her to dispossess them if they were in possession as patnidars WATSON & Co *v.* BROJO SOONDUREE DEBIA . 17 W. R 376

3. ——— **Purchase of zamindari rights during maafi grant**—*Rights on expiry of maafi grant* An auction-purchaser of the rights and interest of one of several zamindars who at the

4. ——— **Right among co-sharers**—*Arrangement for collection and receipt by one co-sharer—Effect on rights of others on expiration of settlement.* Where at the time of settlement it was arranged that one co-sharer should make the collections and other co-sharers should receive money allowance and such arrangement was to last for the term of settlement only:—*Held,* that after the expiry of the settlement such co-sharers were, if the revenue authorities thought fit, entitled to be

SETTLEMENT—*contd.*

2. RIGHT TO SETTLEMENT—*contd.*

allowed to engage for their shares. KOONWER SINGH *v* SHIB DYAL . . 3 Agra 287

5. ———— **Right on resumption**—*Suit to set aside settlement.* In a suit by a person claiming certain lands which have been resumed by the Gov-

to settle with any person he pleases for the land, nor is such settlement, if made, final as regards all claims. MAHOMED ISRAILE *v* WISE

13 B. L. R. F. B. 118 : 21 W. R. 327

6 ———————— *Ghatwali tenures —Suit against Government for settlement—Limitation.* A ghatwali tenure was resumed by the Government under Bengal Regulation II of 1819 After the resumption, *H N*, the former holder of the tenure, claimed settlement as proprietor. The Government denied his title, but offered him a lease on his giving security On his failure to find security, the Government in 1841 made a temporary settlement with *J S*, who entered into possession of the land. No malikana was reserved to or ever paid to *H N*. In 1862 the Government settled the land permanently with *J S* The heir of *H N* then

appeared to consider that in fact *H N* never had any right to maintain an action in the Civil Court to compel the Government to make a settlement with him. JOY MUNGUL SINGH *v* POKHARUN SINGH GOVERNMENT *v* POKHARUN SINGH . 7 W. R. 465

7. ———— **Right to settlement of person whose tenure is not cancelled**—*Lease by Government after purchase at sale for revenue* *A* was the owner of a talukh in a zamindari which was purchased by the Government at a auction-sale for arrears of revenue The Government did not cancel the talukh, but settled it with *A* for twelve years

2 C. L. R. 592

8. ———— **Owner of parent estate**—*Accretion to estate—Estates separately numbered* Certain lands accreted to an estate, No 667, and were temporarily settled as a separate estate No. 3148. During the currency of this settlement, the owner sold his rights and interests in 667 to the plaintiff and in 3148 to the defendants. On the expiry of the temporary settlement, the plaintiff, as owner of the parent estate, sued to establish his right to the permanent settlement of 3148. *Held*, that the suit would not lie, and that the plaintiff had no claim to have a settlement of 3148. KHUB LAL *v* GHINA HAZARI

2 B. L. R. A. C 339

9. ———— **Right to pottah of waste lands**—*Alleged failure to cultivate or pay assessment.* The plaintiff sued, as the mirasidars of a village, to establish their right to the grant of a pottah of certain waste land of the village which had been granted to some of the defendants The Collector, who was made a defendant, stated that the hookumnamah rules of the district directed that land should be given to mirasidars on their tendering sufficient security, and that the plaintiffs on previous occasions had received lands for which offers had been made by others in consideration of the plaintiff's preferential right, but that they had failed to cultivate the lands or pay the assessment in breach of their agreements *Held*, that the plaintiffs were entitled to the relief sought for COLLECTOR OF MADRAS *v* RAMANUJA CHARIYAR KULLAPPA NAIK *v* RAMANUJA CHARIYAR . . . . 4 Mad. 429

10 ———— **Right of ex-lakhirajdar**—*Resumption by Government—Limitation* An ex-lakhirajdar whose lands have been resumed by Government under Regulation II of 1819 has no absolute right to a settlement When a party claims a right to a settlement as being an ex-proprietor, and his claim is rejected, he must, to avoid being barred by limitation, sue within three years for a declaration of his right BHIKU SINGH *v* GOVERNMENT

8 B. L. R. 529 note 13 B. L. R. 119 note
10 W. R. 296

See KRISHNA CHANDRA SANDYAL CHOWDHRY *v* HARISH CHANDRA CHOWDHRY 8 B. L. R. 524

s c KRISTO CHUNDER SUNDYAL *v* KASHEE KISHORE ROY CHOWDHRY . 17 W. R. 145

11. ———— **Right of shikmi talukhdars**—*Tenants of lakhirajdars—Resumption by Government of lakhiraj tenures* Shikmi talukhdars under lakhirajdars, whose lands have been resumed by Government, cannot sue for a settlement: they can only claim to have their shikmi rights upheld GRISH CHUNDER ROY *v* BOYDONATH DEY W. R 1864, 262

3 EVIDENCE OF SETTLEMENT

1. ———— **Evidence necessary to establish creation of taluks**—*Shikmi talukhdars —Registration of tenure.* The registration of a

quinquennial settlement, and the inclusion of the

SETTLEMENT—*contd.*

3. EVIDENCE OF SETTLEMENT—*contd.*

lands in the decennial settlement as part of the zamindari for which the jumma is assessed, does not afford any strong inference against the evidence of the talukh being only a shikmi talukh paying rent to the zamindar; the talukhdars were not required to mention it, nor was it necessary for the zamindar to do so. Discussion of the evidence requisite to establish the existence of an old shikmi talukh. WISE *v.* BHOOBUN MOYEE DEBIA . 3 W. R. P. C. 5 ; 10 Moo. I. A. 165

2. ——— **Evidence of loss of proprietary right**—*Possession of sir land.* The possession of a share in an estate on settlement may or may not be accompanied by the possession of *sir* land; and the fact of a sharer holding no *sir* land is not of itself sufficient to show that he had lost all proprietary right in the village. TOOLSEE RAM *v.* NAHAR SINGH . . . . 3 N. W. 43

3. ———**Settlement of noabad talukh in Chittagong**—*Power of Government to make settlement—Waste lands—Resumption—Kabuliat,*

—*Presumption of due performance of official acts —Acquiescence—Acceptance of rent after term of settlement.* The plaintiff sued the Secretary of State for India in Council for the declaration that a certain noabad mehal of his in the district of Chittagong was a permanent talukh, not resumable by the Government. He based his claim on

with the approval of the Collector had the same effect. In defence, it was alleged (1) that the mehal was not in existence at the time of the Decennial Settlement, and the settlement of 1800 was a temporary one, and (2) that the kabuliat was never accepted by the Government, but that, on the contrary, the Government passed distinct orders that the settlements of 1836 were for thirty years only, which order was duly published by an istahar to the effect. It was found on the evidence that the talukh was not shown to have been in existence

the part of the talukhdar for the time being and

could be binding on the Government unless confirmed by the Governor General in Council. There being no proof given by either party as to whether the istahar above mentioned was or was not duly

SETTLEMENT—*contd.*

3. EVIDENCE OF SETTLEMENT—*concld.*

published:—*Held,* that the publication of the istahar must be presumed, having regard to the presumption in favour of the due performance of official acts *Held,* also, that, even assuming that the officers of the Government induced by their act and conduct a belief in the talukhdar that the kabuliat had been accepted by the Government, or that a permanent settlement had

vention of the express orders of the Government. *Held,* also, that the acceptance by the Government of rent at the old rate from the talukhdar *for a long time after expiration of thirty years* did not amount to an acquiescence in the terms of the kabuliat. Unsettled and unoccupied waste land, not being the property of any private owner, must belong to the State. PROSUNNO COOMAR ROY *v* SECRETARY OF STATE FOR INDIA

I. L. R. 26 Calc. 792
3 C. W. N. 695

4. MODE OF SETTLEMENT.

refused to accept a revised setlement, under such circumstances he was *held* to be entitled to a reasonable time within which to remove a house standing upon the lands in question. RAM CHAND BERA *v* GOVERNMENT . . . 6 C. L. R. 365

2. ——— **Power of Collector to alter settlement**—*Recognition of title by settlement officer—Beng. Reg. VII of 1822, s. 20.* Where the

2 Agra 256

3. ——— **Power of Collector to assign lands for cultivation**—*Bhadgari tenure. Held,*

SETTLEMENT—*contd*

5. SUBJECTS OF SETTLEMENT.

1. ——— **What passes by settlement**—*Right of julkur—Beng Reg XI of 1825, s. 4.* A settlement dol includes all that ordinarily passes

JESSORE v. BECKWITH . . 5 W R. 175

the claim of the former occupant GENNU REDDI v. ASAL REDDI . . . 1 Mad 12

3 ——— **Waste lands**—*Lands held on*

right of occupation only so long as he pays the Government assessment KUMARADEVA MUDALI v. NALLATAMBI REDDI . . 1 Mad. 407

6. EFFECT OF SETTLEMENT

1. ——— **Effect on rights of third parties**—*Sanad granted by settlement officers,*

1 Bom. 171

2. ——— **Effect on ex-maafidar**—

nue. HUMEED-OOL-LAH KHAN v. PRAN SOOKH 3 Agra 280

3. ——— **Effect on maafidar**—*Settlement with maafidar—Payment of revenue* Where

1825, and paragraph 151, circular order, Sudder

as to exemption from payment of revenue may

SETTLEMENT—*contd.*

6. EFFECT OF SETTLEMENT—*contd.*

be invalid and subject to assessment. TOOLSEE RAM v. NARAIN SINGH . . 3 Agra 265

4. ——— *Resumed maafi lands, settlement of—Adverse possession.* Where

any right adverse to the original possessor after the expiration of that settlement, when the original possessor is entitled to claim settlement. MAHOMED ATA-OOLLAH v. MAHOMED MOHIB-OOL-LAH . . . . . 1 Agra 231

5. ——— **Liability for rent**—*Beng. Reg VII of 1822—Holder of resumed lakhiraj*

6 ——— **Lakhirajdar in Assam**—

MADHUB RAM ATOI BOORHA BHUKUT 16 W. R. 202

7 ——— **Effect of resumption and settlement of lakhiraj**—*Invalid lakhiraj* Assessment of revenue by Government upon invalid

8. ——— **Abadkari talukhdar**—*Acceptance of farming leases—Sale of Government right.* A Government settlement, whether perma-

9. ——— **Settlement with several persons**—*Presumption as to equality of rights.* In the settlement of a talukh after resumption by Government with thirteen persons, it is not to be

SETTLEMENT—*contd.*

6. EFFECT OF SETTLEMENT—*contd.*

presumed that all thirteen persons had equal rights, simply because the settlement was made with all of

. W. R. 500

10. ———————— *Omission to settle boundaries and proportion of assessment which each cultivator ought to pay—Liability to pay revenue individually* In a suit against a Collector for an illegal seizure and subsequent usurpation of plaintiff's shares in an Agraharam village for non-payment of trivari due from other tenants of the village and to recover the increased trivari imposed by the Collector .—*Held*, that the fact of pottahs having been issued separately to each tenant, stating the share of land occupied, without defining the holding by boundaries and the proportionate amount of assessment which the cultivator is to pay for it, though affording cogent evidence of the distinct liability of each for the amount of trivari stated in his pottah and no more, is not conclusive evidence of such individual liability ELLAIYA *v* COLLECTOR OF SALEM . 3 Mad 59

s c affirmed on appeal to Privy Council BRETT *v* ELLAIYA

12 W. R. P. C. 33 ; 13 Moo I. A. 104

11. ——— **Settlement with talukhdar after his refusal to re-settle at increased rent**—*Waiver of refusal to pay enhanced rent* Where, upon a talukhdar's refusal at the end of the period of his settlement to re-settle with Government at an increased rate, the jumma was put up to auction, after which the Government did re-settle with the talukhdar upon the former conditions and the former description of the nature of the taluk, it was *held* that Government renewed the contract, and placed the talukdhar in exactly the position in which he would have stood had he never refused to pay the increased rent OONEE COOMAR ROY *v* KUMOLA KANT ROY 11 W. R. 38

12. ——— **Private rights**—*Limitation—Right of action as proprietor* Certain land having been settled by Government for a period of ten years, one *S* bought the benefit of that settlement at an auction-sale for arrears of rent, and afterwards sold his rights to one *M*. On the expiration of the temporary settlement, Government effected a permanent zamindari settlement with *M* In the following year (1865) the zamindari title was sold, and the purchaser now (1869) sues to recover possession of certain specified land. The lower Appellate Court, finding that none of the persons above mentioned had possession within twelve years immediately preceding the filing of the plaint,

SETTLEMENT—*contd.*

6. EFFECT OF SETTLEMENT—*concld.*

that the plaintiff's claim was traceable solely through *M*, from whom he bought; that at the time of settlement Government has nothing more than a right of action by virtue of its being pro-

...nd by ...ecision ... *of 1825* ... a re-

subsequent to a judgment of the High Court dealing with such land. MODHU SUDAN KUNDU *v*. PROMODA NATH ROY . . I. L R. 20 Calc. 732

7 EXPIRATION OF SETTLEMENT.

1. ——— *Revocation of sanad—Bom. Act VII of 1863, s. 7—Jurisdiction of Civil Court.* Where a sanad by way of summary settlement of land revenue has been granted by Government under Bombay Act VII of 1863, Government cannot reform or set it aside without the assent of all parties interested therein. To do so would be an assumption by Government of the function of a Civil Court. A Civil Court cannot, on the ground that Government has, by mistake, granted such a sanad to a person not the owner of the land, reform or set aside the sanad S. 7 of Bombay Act VII of 1863 renders the quit-rent, fixed by the sanad, binding alike on Government and on the rightful owner of the land, but the latter may recover the land from the grantee of the sanad, subject to the quit-rent, fixed by the sanad, payable to Government ; and such grantee will be declared to have taken the sanad as a trustee for the rightful owner Where Government had granted seven sanads to certain garasis in respect of lands, part of which had been previously sold

lands and that the sanads had been granted by mistake.—*Held*, that such attempted revocation, cancellation, and re-assessment were void and of no effect, and that the grantees were entitled to hold the lands on the terms mentioned in the sanads, but, so far as regarded the sold portion of

I. L. R. 4 Bom. 567

SETTLEMENT—*contd.*

7. EXPIRATION OF SETTLEMENT—*concld.*

2. ———— **Liablity to ejectment**—*Dependent talukhdars* Dependent talukhdars re-admitted to temporary settlements for a certain number of years are not liable to ejectment at the close of those settlements HUROGOBINDO DOSS *v* KALA CHAND SHAHA . **6 W. R., Act X, 26**

3. ———— **Dispossession**—*Dependent talukhdars—Cause of action* When a dependent talukhdar, holding under a temporary settlement, has that settlement placed in abeyance by the Collector taking the collections into his own hands khas, the Collector's act is not one of dispossession from which limitation can count, but limitation will reckon from the date when the purchaser, at a sale after the Collector had ceased to hold khas, had himself made collections, and so created cause of action by dispossession of the former talukh MYENOODDEEN *v* RAMMONEE CHOWDHRAIN **7 W. R. 182**

4. ———— **Shikmi talukhdari right**—*Payment in lieu of shikmi talukhdari right* Where a shikmi talukhdar accepted from Government a pottah which admitted him to be a person having a right to a settlement and gave him as a separate and distinct allowance under the head of expenses (in addition to the usual allowance for collections, etc.) the allowance which had, under the previous settle-

22 W. R. 241

8. MISCELLANEOUS CASES

1. ———— Permanent lease made by Where the ... leases it ... a stipulated ... ceedings are ... authorities for confirmation, he cannot afterwards turn round upon the lessee and plead that he had no power to grant a permanent lease, on the ground that the settlement with him was temporary, and not permanent AMEER ALI *v* AMEEROONISSA BEGUM . . . . . . **11 W. R. 11**

2. ———— **Landlord and tenant**—*Effect*

and extent of their holdings. ALI AHMAD *v* DOORGA ROY . . . . . . **22 W. R. 455**

3. ———— **Right of tenants to deduction for cost of collection**—*Beng Reg. VII of 1822, s. 9.* Where tenants who were aymadars voluntarily signed a jummabundi drawn up under Regulation VII of 1822, s. 9, specifying the amounts

SETTLEMENT—*concld.*

8. MISCELLANEOUS CASES—*concld.*

4. ———— **Powers of Revenue Boards**

by them, may cancel the settlement at any time. HARLAL TEWARI *v* COLLECTOR OF BHAUGULPORE **3 B. L. R. Ap. 82 . 12 W. R. 9**

5 ———— **Settlement of a Government khas mehal**—*Enhancement of rent—Reg. VII of 1822—Beng Act III of 1878—Beng Act VIII of 1879, ss 10, 14.* In order to make the enhanced

law with reference to enhancement of rent in force at the time of such enhancement *D'Silva v. Raj Coomar Dutt, 16 W. R 153*, *Enayetoollah Meah*

private estate AKSHAYA KUMAR DUTT *v* SHAMA CHARAN PATITANDA . **I. L. R. 16 Calc. 586**

SETTLEMENT AWARD.

See ACT XIII OF 1848.

SETTLEMENT OFFICER

See COURT-FEE **12 C. W. N. 917**

See LIMITATION ACT, 1877, SCH II, ART 130 (1871, ART 130) **I. L. R 1 Bom. 586**

See MADRAS FOREST ACT, s 4 **I. L. R 17 Mad 193**

See PUBLIC OFFICER. **I. L. R 14 Bom. 395**

See RECORD OF RIGHTS **I L. R 35 Calc. 176**

See SERVICE TENURE **I. L. R. 1 Bom. 586**

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION. **I. L. R. 18 Calc. 146**

———— act or order of—

See BENGAL TENANCY ACT, s. 104 **I. L. R. 20 Calc. 579** **I. L. R. 23 Calc. 257**

See DECREE—CONSTRUCTION OF DECREE—HINDU WIDOW. **I. L. R. 17 Calc. 246**

SETTLEMENT OFFICER—*contd.*

——— act or order of—*concld.*

See KHOTI SETTLEMENT ACT, ss. 20 AND 21 . . I. L. R. 18 Bom. 244

See LANDLORD AND TENANT—CONSTITUTION OR RELATION—GENERALLY. I. L. R. 16 All 209

See LIMITATION ACT, 1877, SCH. II, ART. 14 . . I. L. R. 18 Bom. 244

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS. I. L. R. 23 Calc. 257

——— application to—

See GUJARAT TALUKHDARS ACT, s. 10 I. L. R. 16 Bom. 408

——— decision of—

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS—N.-W. P. LAND REVENUE ACT . I. L. R. 18 All. 172

See BENGAL TENANCY ACT, ss. 104 (2), 107 . . . 11 C. W. N. 1028

See KHOTI SETTLEMENT ACT, ss 17 AND 20.

See RES JUDICATA . 11 C. W. N. 939

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622. I. L. R. 21 Calc. 935

——— entry in record of—

See KHOTI SETTLEMENT ACT, s 17.

——— jurisdiction of—

See BENGAL TENANCY ACT, ss 101, 106. I. L. R. 32 Calc. 518

See JURISDICTION. I. L. R. 32 Calc. 162

See RECORD OF RIGHTS. I. L. R. 32 Calc. 518

——— order on appeal from—

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
I. L. R. 16 Calc. 596
I. L. R. 16 Bom. 408
I. L. R. 21 Calc. 776; 935
I. L. R. 22 Calc 477
I. L. R. 24 Calc. 462
I. L. R. 25 Calc. 146

——— power of—

See BENGAL TENANCY ACT, ss. 101 TO 115.
I. L. R. 20 Calc. 577
I. L. R. 21 Calc. 378
I. L R. 27 Calc. 364

See BENGAL TENANCY ACT, s. 102.
I. L. R. 21 Calc. 38
I. L. R. 22 Calc. 244

See BENGAL TENANCY ACT, s. 103.
I. L. R. 19 Calc. 641; 643

SETTLEMENT OFFICER—*contd.*

——— statement of facts by—

See EVIDENCE ACT, 1872, s. 35. I. L. R. 21 Bom. 695

——— suit to set aside order of—

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION . I. L. R. 13 Calc. 245
I L R. 15 Calc. 765
I. L. R. 18 Calc 146

1. ——— Duty of settlement officer —*Entries in wajib-ul-urz.* A settlement officer should not receive for entry in the wajib-ul-urz of a village a mere expression of the views of a proprietor [illegible]

[illegible]

2. ——— Power of settlement officer —*Question of payment and right to possession between mortgagor and usufructuary mortgagee.* The duty of the settlement officer is to record the names of those whom he finds in possession of right, or whom he finds to have been wrongfully dispossessed of right within a certain period; but it is not his duty to determine the question whether the mortgagor in a usufructuary mortgage is entitled to possession by reason of the satisfaction of the debt out of the usufruct. BHYRO RAI *v.* GOLAB SINGH 3 Agra 303

3. ——— *Powers of, in making entry in jummabandi.* A settlement officer is bound to record in the jummabandi the existing rights of cultivators, and cannot impose an enhanced rent without notice on those entitled. If he enters a higher rate in spite of protest, such entry does not conclude the tenant from pleading non-liability. LEDLIE *v.* DOORGA MONEE DOSSEE. WATSON & CO. *v.* DOORGA MONEE DOSSEE 21 W. R 410

4. ——— *Act XIV of 1863 —Application under Act X of 1859, s 23.* The [illegible]

given to Government to invest settlement officers with any other of the powers which were vested in a Collector by Act X of 1859, consequently an application under s. 23 of that Act could not be entertained by a settlement officer. THAKOOREE *v.* DHULEEP SINGH . . . 2 N. W. 261

5. ——— *Act XIV of 1863, s. 8—Resumption and assessment.* The powers given by s 8 of Act XIV of 1863 to a settlement [illegible]

SETTLEMENT OFFICER—*concld.*

6. ——— *Power to refer case to another officer for trial—Act X of 1859, s. 150—Act XIV of 1863, ss. 8 and 10.* An officer employed in making or revising settlements of land revenue and invested by the local Government with the powers described in s. 8, Act XIV of 1863, was not thereby empowered to refer a suit, which

1859, and were distinct from the powers given to a Collector by the second clause of s 162. S. 10 of Act XIV of 1863 enacted that, if a suit for enhancement of rent be brought before any officer empowered under s. 8 to hear the same, such suit should be heard and determined by such officer and it was not provided that he might refer it for trial and decision to another PUNCHUM SINGH *v.* HOORMUTOONNISSA . . . 5 N. W. 64

7. ——— *Power to increase rent—Consent of raiyats.* Where increased rent is imposed in the course of settlement proceedings, the Collector's jummabundi must show the consent of all the raiyats before they can be held to be bound by it. REAZOODDEEN MAHOMED *v.* MCALPINE . . . 22 W. R. 540

8. ——— *Power of, in Sonthal Pergunnahs—Reg III of 1872—Reference in settlement cases. Quære* Whether, having regard to Regulation III of 1872 and the notification by the Lieutenant-Governor, dated 7th May 1872, a valid reference can be made in a settlement case in the Sonthal Pergunnahs by a settlement officer TARINI PROSAD MISSER *v* MAHAMMAD CHOWDHRY 6 C. L. R. 555

SHANARS OR NADARS

See HINDU LAW—WORSHIP.
I. L. R. 31 Mad. 236

SHARE.

——— in an estate; registration of—

See LAND REGISTRATION ACT (BENGAL ACT VII OF 1876), ss. 42, 44, 78.
I L. R 30 Calc. 880

——— relinquishment of—

See MAHOMEDAN LAW.
I L. R. 31 Bom. 271

SHARES.

See SHARE-HOLDER.

See SHARE WARRANTS.

See COMPANY.

——— agreement relating to sale of—

See STAMP ACT, 1879, SCH I, ART 5
I L R. 13 Mad 255
I. L. R. 14 Bom. 316

——— assignment of—

See INSOLVENCY—ORDER AND DISPOSITION . . I. L. R. 2 Bom. 542

SHARES—*contd.*

——— cancellation of—

See COMPANY—POWERS, DUTIES, AND LIABILITIES OF DIRECTORS
I. L. R 20 Bom. 654

——— "holding shares," meaning of—

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE.
I. L. R. 17 Bom. 197

——— sale of—

See CONTRACT—CONTRACTS FOR GOVERN-

2

——— transfer of—

See COMPANY—TRANSFER OF SHARES, AND RIGHTS OF TRANSFEREES.

——— transfer of, registration of—

See BANK OF BENGAL
I. L. R. 3 Calc. 392

1 ——— Transfer of shares—*Blank transfer—Cause of action* Shares in the National Bank were sold by the allottee, and a transfer in the form required by the articles of association of the Bank was executed, but no name was inserted as transferee The purchaser pledged them with the I P L and China Bank, and deposited with them the blank transfer. This Bank applied to the

own name in the transfer, and requested the National Bank to register the shares in his name. In an action against the National Bank to recover the price of the shares —*Held*, that they were justified in refusing to register. *Held*, also, that the plaintiff, having received back from his vendors the price of his shares, had no cause of action. KNOWLES *v* NATIONAL BANK OF INDIA
2 B. L. R. O. C. 158

2. ——— *Transfer by way of pledge—Right of transferee to have transfer registered and to have dividends. A* and *B*, proprietors of indigo factories, sold them to the *E. B. Company*, receiving in part payment 1,000 fully

term of two years. *A*, being indebted to *C*, deposited the shares with him as a security for the debt. *C* gave notice of this to the company before he

and guarantee. *Held*, that *C* was entitled to have the deposit of the shares registered in the books of

SHARES—*contd.*

the Company, and to be paid dividends upon them. PIETSCH *v.* EASTERN BENGAL INDIGO COMPANY 1 Ind. Jur. N. S. 278

But where the deposit by *A* was accompanied by a contract with a power of sale of the shares, but nothing was said about receiving the dividend.—*Held*, that, under the contract of *A*, *C* could not receive the dividend, though he could under a contemporaneous general power of attorney from *A*. ROYAL BANK OF INDIA *v.* EASTERN BENGAL INDIGO COMPANY 1 Ind. Jur. N. S. 281

3. ———————— *Blank transfers—Tenders.* On the 19th April plaintiff sold to defendants sixty shares in the N Bank, to be delivered and paid for on Thursday, April 26th. The sold note was as follow: " Baboo Lall Mohun Mullick. Sold by your order, and on your account, to Messrs Pyary Chand Mittra and Sons (Metcalfe Hall) sixty shares in the N Bank at R4 premium per share (Signed) Sree Coomar Sircar, Broker." The bought note exactly corresponded. On the 23rd April plaintiff received from defendants the following: " With reference to the sixty N Bank shares sold by you, we shall thank you to send us three transfer deeds on Friday next, *viz.*, two for twenty-five shares each and one for ten shares " On the 26th April plaintiff sent to defendants sixty N Bank shares, some standing in the name of *H* and some in the name of *P*, accompanied by transfer, all executed by *P* alone. These shares were all returned by the defendants, with the following memorandum " The accompanying shares in the N Bank purchased for delivery to-day are not in order." Later on the same day, the 26th, plaintiff took personally to defendants the same sixty shares with transfers, executed some by *H* and some by *P*, the name of the transferor corresponding number by number with the name in the shares. On this, as on the previous occasion, the name of the transferee was left blank. These shares were also rejected by the defendants as not in order. Plaintiff then, on April 27th about 1 P.M., had the shares registered in his own name, and, within two hours afterwards, sent them to the defendants with corresponding transfers, and with the following letter: " In compliance with request in your memorandum of the 23rd instant, I now send you the sixty shares N Bank, with three transfer deeds, and will feel obliged by your paying the amount to the bearer " The defendants declined to receive the shares, and they were re-sold at a loss. The plaintiff never had any personal interest whatever in the shares, either on the 26th or 27th April, and was a mere benami holder for *H* and *P*. The articles of association of the N Bank required transfers to be in the form F appended to Act XIX of 1857. The transfers tendered by plaintiff were on each [illegible]

they consequently rejected the tender on the 27th. *Held*, (i) that the contract, as it stood on the bought and sold notes, was a contract by the vendor (as in *Stephen v. De Medina*) that " in consideration of such a sum I will execute any proper conveyance which you tender me." (ii) That the memorandum of April 23rd, coupled with the fact of the vendor having made tenders of transfers of the shares, was evidence enough to show that the vendor bound himself to tender a proper conveyance to his vendees (iii) That the document of conveyance must be complete at the time of tender, or capable of being then made complete (iv) The transfers, with a blank for the name of the transferee, were incomplete and insufficient, the vendor showing no authority from *H* and *P*. (v) That the Court below must deal with the question of fact, whether or no the mention of Friday, the 27th, instead of Thursday, the 26th, was a mistake; and *Semble*, that, if the defendants had received the blank transfers and acted upon them the waiver would have rendered them complete. LALL MOHUN MULLICK *v* PEARY CHAND MITTER 1 Ind. Jur. N. S. 383

4. ———————— Sale of shares for future delivery—*Refusal of purchaser to accept*— [illegible]

of the pledgee that he should do so. DAYABHAI DIPCHAND *v* MANIKLAL VRIJBHUKAN 8 Bom. A. C. 123

5. ———————— *Equitable assignment of right to sue—Readiness and willingness to deliver—Tender—Constructive tender.* A contract for the delivery of shares at a future day is a contract that can be assigned in equity, and the assignee of such a contract can, in his own name, [illegible]

with where the defendant has refused to perform the contract, or where, on the day for the performance of it, he has absconded, and, having closed his place of business, has left no agent or other person to represent him. DAYABHAI DIPCHAND *v* DULLABHRAM DAYARAM. 8 Bom. A. C. 133

SHAREHOLDER.

See PRESIDENCY BANKS ACT. I. L. R. 31 Bom. 319

———— *Decree—Interpretation of decree—Shebait's position.* Where a suit for the recovery of possession of immoveable property was instituted against P, who defended the suit as a [illegible]

claim for mesne profits and consequently to be attached and sold in execution of the decree. Powers and duties of a *shebait* explained. PRAMADA NATH ROY *v* POORNA CHANDRA ROY ([illegible]).
I. L. R. 35 Calc. 631
s c. 12 C. W. N. [illegible]

SHERIFF—*contd.*

1. ——— **Right of poundage**—*Satisfaction of decree after attachment, but before sale.* Certain immoveable property of the defendant

entered, and the attachment withdrawn, subject to the payment of such poundage. ROYCHURN DUTT *v.* AMEENA BIBI . **I. L. R. 2 Calc. 385**

PEARSON *v* MADHUB CHUNDER GHOSE
I. L. R. 2 Calc. 387 note

2. ——— **"Debt levied by execution"** —*Ambiguity in document—Usage—Discharge of defendant, effect of, on Sheriff's right.* In the suit brought in the Bombay Court of Small Causes to recover Sheriff's poundage on the amount endorsed on a warrant of arrest in execution of a decree obtained by the defendants, and under which the plaintiff, at the request of the defendants, arrested *H*, who applied to the High Court under s 273 of Act VIII of 1859, and was ordered to be

3. ——— **Compromise after attachment of property and before sale.** Where property is attached by the Sheriff after judgment, and the parties come to a compromise before the Sheriff sells any of such property, the Sheriff is only entitled to poundage on the amount received by the execution creditor in compromise of his claim. *In the matter of* BOMBAY JOINT STOCK CORPORATION. *In re* SHERIFF OF BOMBAY
6 Bom O. C. 22

4. ——— **Sale by Sheriff**—*Civil Procedure Code (Act XIV of 1882), s. 244, cl. (c), ss. 287, 311, 313—Belchamber's Rules and Orders*

SHERIFF—*concld.*

of High Court, Calcutta, 382—386—Deficiency in area of land—Application by purchaser to set aside sale or for compensation. A purchaser at an execution sale of immoveable property held by the Sheriff applied to set aside the sale or for compensation on the ground of deficiency in the area of the land sold *Held*, that such an application in relation to sales held by the Sheriff was not sanctioned by any provisions of the Civil Procedure Code, and s 313 did not apply *Held*, also that, as the interest of the purchaser was adverse to the interest of the judgment-debtor, the former was not the representative in interest of the latter, and therefore s 244 of the Civil Procedure Code did not apply. *Ishan Chunder Sircar v. Beni Madhub Sirkar, I. L. R 24 Calc. 62*, applied.

misstatements, if capable of compensation, while no such condition is imposed on sales by the Sheriff. RAM NARAIN *v.* DWARKA NATH KHETTRY
I. L. R. 27 Calc. 264
4 C. W. N. 13

SHIAHS.

See MAHOMEDAN LAW **I. L. R. 30 All. 153**

See TRUSTEE . **I. L. R. 34 Calc. 118**
11 C. W. N. 297

——— vendor—

See MOHAMEDAN LAW
I. L. R. 32 Calc. 982

SHIAH LAW.

See MAHOMEDAN LAW—SUCCESSION.
I. L. R. 32 Bom. 540

SHIKMI INTEREST.

See MERGER . **I. L. R. 33 Calc. 1212**

SHIKMI TALUKDARS.

See SETTLEMENT—EVIDENCE OF SETTLEMENT.
3 W. R. P. C. 5: 10 Moo. I. A. 185

See SETTLEMENT—RIGHT TO SETTLEMENT
W. R. 1864, 262

SHIP.

See SHIP, ARREST OF.

See SHIP, REGISTERING OF.

See SHIP, SALE OF

——— at anchor, duty of—

See SHIPPING LAW—COLLISION.
I. L. R. 24 Calc. 627
L. R. 24 I. A. 129

——— loss of—

See CONTRACT—CONSTRUCTION OF CONTRACTS . **I. L. R. 13 Bom. 15**
I. L. R. 22 Bom. 189

——— measurement of—

See MERCHANT SHIPPING ACT, ss. 24, 26.
I. L. R. 14 Bom. 170

SHIP—*concld*

——— **seaworthiness of**—

See Bill of Lading . 8 W. R. 35
I. L. R 13 Bom. 571
I L R 19 Bom. 639

See Contract—Conditions Precedent
2 B L. R. O C. 127

See Insurance—Marine Insurance.
5 Moo. I. A. 361
Cor. 5 : 2 Hyde 107

——— **Collision**—*Negligence—Wrongful act—Side lights, want of—Navigation.* Where one ship, by gross negligence, *viz.*, by not carrying any lights, placed another ship in a position of extreme danger, and in the moment of emergency the sarang of the latter gave an order to "starboard" instead of to "port-the-helm," which resulted in a collision.—*Held*, that under the circumstances the latter ship was not guilty of such negligence as would make her responsible for the collision. *The "Byuell Castle," 4 P D. 219*, and *The Owners of the "Tasmania" v. Smith, 15 App. Cas. 223*, referred to. India General Steam Navigation Company *v* Jagat Chandra Kundu (1904) . . I. L R. 31 Calc. 36

SHIP, ARREST OF.

See Admiralty or Vice-Admiralty Jurisdiction . I. L. R 29 Calc. 402

See Arrest—Civil Arrest 1 Hyde 253

See Costs—Special Cases—Admiralty or Vice-Admiralty
I L R 17 Calc. 84

See Salvage I L R 17 Calc. 84

——— **Deposit of security with Marshal**—*Application for arrest of deposit in another action—Admiralty Court, practice of.* The ship *M*, having been arrested in an action promoted by the master of the ship *N* for damage caused by a

15 B. L. R. Ap. 3

SHIP, REGISTERING OF.

——— **British ship**—*Stat. 3 & 4 Vict, c. 56—Act X of 1841—Ship built in foreign port.* A

SHIP, REGISTERING OF—*concld.*

belonged to British subjects, resident at Bombay, *held* to be entitled, under the proclamation of the Governor General in Council under 3 & 4 Vict, c.

4 Moo. I. A. 179

SHIP, SALE OF.

See Bottomry Bond . 5 B. L. R. 258
6 B. L. R. 323

1. ——— **Sale in execution of decree**—*Form of transfer—Merchant Shipping Act, s 55—Mandamus to Registrar to register transfer—Jurisdiction of Small Cause Court—Execution of*

execution, but quite irregular, having reference to the Merchant Shipping Acts, the Court refused a mandamus to order the Registrar to register the

lander" . . 1 Ind. Jur. N. S. 283

2. ——— **Transfer of a ship**—*Merchant Shipping Act (25 & 26 Vict c 63), s 3—Equitable title—Destruction after agreement for sale—Suit to recover purchase money* The defendant agreed to purchase a ship from the plaintiff, but the sale was not completed in the manner prescribed by the Merchant Shipping Acts The ship was delivered to the defendant in pursuance of the agreement and subsequently foundered in port owing to accidental causes. The plaintiff sued to recover the balance of the purchase-money *Held*, that the plaintiff was not entitled to recover Ramanadan Chetti *v* Nagooda Maracayar
I. L. R. 21 Mad. 395

3. ——— *Contract between British subject and non-British subject as to registered ship in Calcutta—Merchant Shipping Acts, ss 53, 55—Jurisdiction of Small Cause Court—Execution of Small Cause Court decree—Form of transfer to purchaser* *A*, not a British subject, contracted with *B*, a British subject, for the purchase of

SHIP, SALE OF—*concld.*

ownership noted in the register under s. 53 of the Merchant Shipping Act. *Held*, further, that *B* not

Causes had power to seize and sell a vessel in execution of a decree of that Court, and the bailiff who sells the vessel is the person who ought to execute the bill of sale to the purchaser. A British ship having, in execution of a decree of the Calcutta Court of Small Causes, been sold to a person qualified to be the owner of the British ship —*Held*,

2 Ind. Jur. S. N. 251

SHIPMENT.

——— contract for—

See CONTRACT—CONSTRUCTION OF CONTRACTS . I. L. R. 12 Bom. 50
I. L. R. 13 Bom. 15
I. L. R. 16 Bom. 389
I. L. R. 17 Bom. 129
I. L. R. 18 Bom. 299
I. L. R. 22 Bom. 189
I. L. R. 18 Mad. 63

See SALE OF GOODS.
I. L. R. 17 Bom. 62

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—DAMAGES FOR BREACH OF CONTRACT
I. L. R. 19 Mad. 304

——— meaning of—

See CONTRACT—CONSTRUCTION OF CONTRACTS . I. L. R. 17 Bom. 129

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . I. L. R. 17 Bom. 129

1. ——— Consignment of goods—*Bills of exchange—Presumption of payment of—Sale of goods.* The plaintiffs in London and the defendant in Calcutta had dealings, which consisted in the defendant shipping jute cuttings and rejections to the plaintiffs in certain quantities, and within

defendant that in case of shipments in excess of the limits given by the plaintiffs they should at their option receive the goods on their own account, or treat them as consignments on account of the defendant, but the defendant denied there was any

SHIPMENT—*concld.*

such arrangement. The defendant made several shipments in excess of the plaintiff's limits and the plaintiffs treated them as consignments on the defendant's account, selling them on defendant's account and forwarding him account sales, and drawing bills on the defendant for any balance due to them in the transactions, which bills the defendant refused to pay. In an action brought by the plaintiffs for the balance due to them from the defendant in respect of the shipments which had been treated by the plaintiffs as consignments in the defendant's account, the defendant admitted he had sold the bills and received the money for them; they were produced by the plaintiffs, the acceptors. *Held*, that the bills being produced by the acceptors after due date, and the defendant having received a notice of dishonour, and no demand for payment of the bills, the presumption was that they had been paid by the plaintiffs. In exercising their option of treating shipments in excess of their limits as on their own

Bills of Lading

7 Bom. O. C. 97

SHIPPING DOCUMENT.

See LETTER OF CREDIT.
I. L. R. 25 Bom. 706

SHIPPING LAW.

Steamship "JASON" . . 1 Mad. 270

2. ——— Collision—*Collision in port & Port Rules, 1856—Liability of ship for damage.* The ship *T* having got adrift in a dark night, in-

SHIPPING LAW—*contd.*

from subsequent collisions. The owners of the *A* sued the *T* for the whole damage done The defence

pre-

that

was

part

could have prevented the accident The *T* did not allege a liability of any of the vessels subsequently collided with. *Held*, that liability for damages occasioned by collision rests, *primâ facie*, on the colliding vessel. That a ship in port is bound to be prepared for such exigencies only as might be expected to arise from the circumstances she knew to surround her, that is, a ship is protected by the port rules from liability for damage only when it is due to the acts or omissions of the officials in charge of her *Held*, also, that the ship is liable for all the consequences occasioned by an accident that results from any defect in her equipment, or want of care or skill of her crew, etc *In the matter of the* "THALATTA" . **Bourke Ad. 1**

Held, on appeal, that an accident to the gear of a ship does not of itself alone render her liable for damages for a collision of which it is a remote occasion, and that a ship at anchor in the port should keep a look-out, and be ready to take all reasonable means for her own safety in an emergency "THALATTA" *v* "ANNE" . **Bourke A. O. C. 87**

3 ——————— *Liability of ship for fault of pilot—Port Rules, 1856—Act XXII of*

pilot in charge of her,—first where a master is

that the legislation regarding the employment of pilots and other officers in the port of Calcutta is contained in Act XXII of 1855 and the Port Rules of 1856; that where no special requisition is made by the port authorities, under rules 2 and 7, a ship may move at her discretion in the port; and that

SHIPPING LAW—*contd.*

it is unlawful, under s 12 of Act XXII of 1855, to moor a vessel in the port without having a port officer on board to take command of the ship. *In the matter of the* "HANOVER". **Bourke Ad. 15**

4 ——————— *Collision from bore in the river—Inevitable accident.* The ship *Thames* was lying a mere hulk, waiting for repair when a board drifted her stern foremost up the river, and she came into collision with another ship No negligence was proved against the master, and the accident was *held* to be inevitable and no costs were decreed on either side. ABDOOLA ROHOMAN MOOSAN *v* "THAMES" . **Bourke Ad. 21**

5 ——————— *Moving vessel in harbour—Act XXII of 1855—Negligence of pilots—Bombay Harbour Rules—Lights on vessels, duty*

not exempted from liability If it be proved on the part of the owners that the pilot was in fault, and there is no sufficient proof that the master or crew were also in fault in any particular which contributed or may have contributed, to the accident, the owners will have relieved themselves of the burthen of proof which the law casts upon them. Rules of Bombay harbour with regard to the showing of

path of other vessels, she is bound by general

6 Bom. O. C. 98

6 ——————— *Admiralty suit—Both vessels to blame—Suit for damages by owners of cargo—Costs* The owners of

SHIPPING LAW—*contd.*

damages which they had sustained. *Held*, also, following the *City of Manchester, 5 P. D. 221*, that in such suit each party should bear their own costs OOKERDA POONSEY *v.* STEAM-SHIP " SAVITRI " . . . I. L. R. 10 Bom. 408

7. ———— *Damage by ship under way colliding with another at anchor—Burden of justifying—Duty of ship at anchor.* Where a ship under way comes into collision with another at anchor in a proper place, and showing at night an anchor light, it is obvious that the burden of justifying is heavily cast on the ship under way. At the same time there is an obligation on the anchored ship to keep a competent watch, to show an anchor light, and to do everything to avert a collision and lessen the damage from it If, as was the case here, the damaged ship is placed in a difficulty entirely by the erroneous course or conduct of the other, and is obliged to take a step on the instant,

night. Near the tug was a pilot brig, astern of which the steam-ship wanted to round, attempting

by the owners of the steam-ship was that she was misled by the pilot brig's drifting, the anchor light of the latter having been kept up Blame to a third ship, if blame there were, was held to be no excuse for the colliding ship, as against the tug's complaint The main charge against the tug was that she did not slack away chain as soon as there was danger, but hove on her anchor It was found, however, that if the tug were already drifting when the collision took place, there was no reason to suppose that by slacking away chain at the earliest possible moment the collision would have been averted or lessened in force. On the other hand, the facts against the impugnants' steam-ship were: (i) that her course could, without difficulty, have been directed so that by going astern of the tug from the port side instead of crossing her bows, all risk of collision would have been avoided; (ii) that

ingly alone

damages

NAVIGATIO

1 C. W. N. 329

8. ———— Jettison—*Right to general average contribution—Right of shippers of jettisoned cargo—Default of master—Right of ship-owner—Remedies of shippers—Lien on cargo saved in consequence of jettison.* In jettison of part of a general cargo, the right of those entitled to contribution, and the corresponding obligations of the contributors, originating in the actual presence of a common danger, not in the causes of it, are mutually perfected whenever the goods of some of the shippers (not being wrong-doers, or those responsible for the latter) have been advisedly sacrificed, and the property of others has been thereby preserved. Such exceptions as that recognized where the average loss has been occasioned by the ship's being unseaworthy [*Schloss* v. *Heriot, 14 C. B. (N. S.), 59*], and as that made in the refusal of

negligence of her master, and thereby ship and cargo were placed in a position of such danger as to make it necessary, to jettison part of the cargo in order to save the remainder and the ship:—*Held*,

rights and remedies in a case of jettison are: *first*,

owner of jettisoned goods either by direct suit or by enforcing through the ship-master, who is his agent for this purpose, a lien on each parcel of goods saved, belonging to each separate consignee, for a due proportion of his claim. STRANG, STEEL & CO. *v* SCOTT & CO. . . I. L. R. 17 Calc. 362
L. R. 16 I. A. 240

9. ———— Maritime lien—*Sale of cargo to*

tered, to recover the value of the cargo sold :—*Held*,

MUTHAYA . . . I. L. R. 5 Mad. 334

10. ———— *Authority of cap-*

SHIPPING LAW—*concld.*

the purpose, which he will be presumed to be only in particular cases of necessity. BAYLEY *v.* TARUKNAUTH PORAMANIC . . Bourke O. C. 263

11. ———— *Master's lien on ship for wages—Act I of 1859, s. 58.* The master of a ship has by Statute (Act I of 1859, s 58) a lien *upon the ship for the recovery of wages due. In the matter of the Barque* "ANNE" 2 Hyde 273

12 ———— *Master's lien on ship for wages—Repairs, lien for—Act I of 1859, ss 55, 56.* The *Persia*, on a return voyage from Jedda to Singapore, was driven into Bombay harbour through stress of weather The owner, resident at Singapore, though frequently applied to, omitted to furnish funds to repair her, or to pay the wages of the mariners, and the master being unable to raise funds for these purposes on the

13. ———— *Lien on ship for*

SHIPPING ORDER.

ever offered, and not merely ready to receive the quantum of cargo mentioned in the shipping order. TAYLOR *v.* BROOKE . . 1 Bom. Ap. 46

measure, the defendants could not afterwards insist upon a right to measure or go into an enquiry of what was the size of the bales. SCHILLIZI & Co *v.* COX, STEEL & Co. . . 17 W. R. 545

SHROFFS, USAGE OF.

See HUNDI, LIABILITY ON.
I. L. R. 1 Bom. 23

SHUDRA.

See SUDRA.

SIGNATURE.

———— acknowledgment of, by testator—

See WILL—ATTESTATION
I. L. R. 1 Bom 547

———— alteration of contract after—

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY PARTY.

———— appearance of—

See PROBATE—PROOF OF WILL
I. L. R. 19 Calc. 65
L. R. 18 I. A 132

———— cancellation of—

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY THE COURT
I. L. R. 3 Bom 242

———— comparison of—

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—EVIDENCE, MODE OF DEALING WITH.
Marsh. 322
22 W. R. 272

———— forged—

See HUNDI—ENDORSEMENT.
5 C. W. N. 313

———— of jailor—

See CIVIL PROCEDURE CODE, 1882, s. 87
4 B. L. R. O C 51

———— of Judge—

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT, ETC.
I. L. R. 23 Calc. 480

———— of Magistrate, warrant without—

See PENAL CODE, s. 186.
I. L. R. 23 Calc. 896

———— of plaint—

See CIVIL PROCEDURE CODE, 1882, s. 432.
I. L. R. 25 All. 635

See PLAINT—VERIFICATION AND SIGNATURE . . . 5 C. W. N. 91

———— of warrant of arrest—

See WARRANT OF ARREST—CIVIL CASES.
6 C. W. N. 845

SIGNATURE—*contd.*

——— witness to bond of—

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY PARTY.
I. L. R. 7 Bom. 418
I. L. R. 12 Calc. 313
I. L. R. 15 Bom 44
I. L. R 15 Mad. 70

——— on blank paper—

See DEED—EXECUTION.
6 C. W. N. 329

——— proof of—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—SIGNATURE.
1 Mad. 164
I. L. R. 11 Bom. 690

See EVIDENCE ACT, s 73 . 21 W. R. 6

——— sufficiency of—

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY PARTY
8 B. L. R. 305
11 W. R 216

See DOCUMENT I. L. R. 30 Calc. 433

——— to memorandum of association, effect of—

See COMPANY—ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS
I. L. R. 12 Bom. 647
I. L. R. 14 Bom. 196

See LIMITATION ACT, 1877, s 19 (1871, s. 20)—ACKNOWLEDGMENT OF DEBTS
I. L R. 1 All. 683
I L R 6 Calc 340
I. L. R. 3 All. 347
1 Mad 358
13 C L R 112
I L. R 5 Bom. 88, 89
I L R 5 Calc 303
L R 7 I A 8
I L R 18 Bom. 586

See MORTGAGE—FORECLOSURE—DEMAND AND NOTICE OF FORECLOSURE.
I. L. R. 16 All 59

See PRACTICE—CRIMINAL CASES—SIGNATURE OF MAGISTRATE.
I. L R. 6 Mad 396

See WARRANT OF COMMITMENT.
I L R 5 Mad. 369

See WILL—ATTESTATION. 21 W R 84

See WILL—EXECUTION .
. I L R. 25 Calc. 911

1. ——— Signature of Rajah—*Title without name.* A signature of a Rajah of the ancient Nuddea family was *held* to be valid, even though it did not contain the name of any particular individual. GUNEE BISWAS v SHEEGOPAL PAUL CHOWDHRY . . . . . 8 W. R. 395

SIGNATURE—*concld.*

2 ——— Signature of Magistrate—*Lithographed stamp of signature* A Magistrate ought not to use a lithographed stamp of his signature QUEEN v DEDAR NUSHYO 14 W. R. Cr 81

3. ——— *Transfer of Property Act (IV of 1882), ss 59 and 123—Mortgage—Signature of mortgagor—Mortgagor's name signed by the scribe of the document, at the request and in the presence of an illiterate mortgagor—Signature held to be good—Maxim—Qui facit per alium facit per se—Construction of Statutes* It is not imperatively required by s. 59 of the Transfer of Property Act, 1882, that a mortgage, where the principal money secured is R100 or upwards, shall be signed by the mortgagor with his own hand, or by an agent specially appointed in that behalf If the mortgagor is illiterate, it is a good signature if, in the presence and at the request of the mortgagor, some other person signs the mortgagor's name on his behalf as executant of the document. So *held* by STANLEY, *C J*, and KNOX, BLAIR and BANERJI, *JJ.* (AIKMAN, *J*, *dissentiente*), overruling the decision in *Moti Begam* v. *Zorawar Singh, All Weekly Notes (1899) 196.* *Per* AIKMAN, *J.*—Whether or not the autograph signature of the executant is required to any particular document, is usually a question of construction, to be decided separately in each case In the case of a mortgage executed in accordance with the provisions of s 59 of the Transfer of Property Act, 1882, the law requires the personal signature of the mortgagor. In the course of the judgments the following authorities were referred to—*Hyde* v. *Johnson, 2 Bing N. C. 776 ; Spencer* v. *Metropolitan Board of Works, L R 22 Ch. D 142 , The Queen* v. *The Justices of Kent, L. R. 8 Q B. 305 ; In re Whitley Partners, Ld , L. R. 32 Ch. D. 337 ; Luchmee Buxsh Roy* v *Runjeet Ram Panday, 20 W. R. C R. 375 ; Beedoo-bhoosun Bose* v. *Enaet Moonshee, 8 W. R. 1 ; Ex parte Wallace, 14 Q B D 22 ; Commissioners for Special Purposes of the Income Tax* v. *Pemsel, [1891] A C. 531 ;* and *Crawford* v. *Spooner, 6 Moo. P C 1* DEO NARAIN RAI v. KUKUR BIND (F B , 1902) . . . I. L. R. 24 All. 319

SIKHS.

——— application of the Probate Act to—

See PROBATE AND ADMINISTRATION ACT (V OF 1881) . . 7 C. W. N. 895

See PROBATE AND ADMINISTRATION ACT (V OF 1881), s 2.
I. L. R. 31 Calc. 11

SIMILARITIES CALCULATED TO DECEIVE.

See TRADE-MARK.
I. L. R. 34 Calc. 495

SIMPLE MORTGAGE.

See MORTGAGE.

See SALE IN EXECUTION OF DECREE.
I. L. R. 40 Mad. 500
5 C. W. N. 63

"SIR" LAND.

——— **Description of**—*Entry in revenue records, effect of* The mere entry in the revenue records of land as *sir* will not make it *sir* land. *Sir* land is land which at some time or other has been cultivated by the zamindar himself, and which, although he may, from time to time, for a season, demise to shikmas, he designs to retain as resumable for cultivation by himself or his family whenever his requirements or convenience may induce him to resume it. BUDLEY *v* BUKHTOO
3 N W 203

SISTER'S DAUGHTER.

See HINDU LAW—INHERITANCE
12 C. W. N. 453

SISTER'S DAUGHTER'S SON

See HINDU LAW . 12 C. W N 453

SLANDER.

See DEFAMATION. I L R 13 Mad 34
I L. R 34 Calc 48

See LIBEL . . I L R 14. Bom 97

See LIMITATION ACT, 1877, SCH II, ARTS 24 AND 25 . I L. R 24 All 368

See PARTIES—ADDING PARTIES TO SUITS —PLAINTIFFS . I. L R 1 Mad 383

See RIGHT OF SUIT—WITNESS
I L. R 15 Calc 264
I L. R 10 All. 425

See WITNESS—CIVIL CASES—PRIVILEGES OF WITNESSES
I L. R. 15 Calc. 264
I L. R. 10 All. 425
I. L. R. 11 Mad. 477

——— ——— **of title**—

See CAUSE OF ACTION. 10 C. W. N. 107

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE
I. L. R. 1 Mad. 65

See TRADE-MARK
I. L. R. 34 Calc. 495

1. ——— **Action for slander**—*Misjoinder—Special damage* An action for slander cannot be brought jointly against several defendants separate actions should be brought against each *Quære* Whether words implying "you are a drunkard, thief, cheat, and the paramour of your sister-in-law, you bastard," applied to a Brahmin, are actionable *per se* without allegation of special damage NILMADHUB MOOKERJEE *v* DOOKEERAM KHOTTAH . . . . . 15 B. L. R. 161

2 ——— *Misjoinder—Spe-* [illegible]

SLANDER—*contd.*

3. ——— *Omission to give courtesy title in petition* The omission of a mere courtesy cannot be taken to be equivalent to slandering or libelling a man, and is not an actionable wrong SITARAMA KRISHNA RAYADAPPA RANGA RAZ *v* SANYASI RAZU PEDDA BALIYARA SIMHULU . . . . . 3 Mad. 4

4. ——— *Slander and assault—Special damage* Special damages are not necessary to be proved in a case of slander and assault HOSSEIN *v* BAKIR ALI
W. R. 1864, 302

5 ——— *Verbal abuse—Hindus—Special damage* In a suit between Hin- [illegible] be re- [illegible] roof of [illegible] laintiff [illegible]
[illegible] Bom. A. C. 17

6. ——— *Damages for verbal abuse* Damages cannot be claimed for mere verbal abuses or threatening language PHOOLBASEE KOER *v* PARJUN SINGH . 12 W. R. 369

7. ——— *Verbal abuse—Special damage* While *C* was giving his evidence in open Court, in a suit of *A* against *B*, *A*, with [illegible]

See SREENATH MOOKERJEE *v* KOMUL KURMOKAR
16 W. R. 83

KALI KUMAR MITTER *v* RAMGATI BHUTTACHARJI 6 B. L. R Ap. 99 16 W. R. 84 note

KANOO MUNDLE *v* RAHUMOOLLAH MUNDLE
W. R. 1864, 269

GHOLAM HOSSEIN *v* HUR GOBIND DASS
1 W. R. 19

TUKEE *v.* KHOSHDEL BISWAS . 6 W. R. 151

OSSEEMOODDEEN *v.* FUTTEH MAHOMED
7 W. R. 259

GOUR CHUNDER PUTEETUNDEE *v* CLAY
8 W. R. 256

8. ——— *Defamation—Action for abuse, no special damage being alleged—Damages, measure of* The rule of English law which prohibits, except in certain cases, an action for damages for oral defamation unless special damage is alleged, being founded on no reasonable basis, should not be adopted by the Courts of British India. If defamatory expressions are used under such circumstances as to induce in the plaintiff reasonable apprehension that his reputation has been injured, and to inflict on him pain consequent on such belief, the plaintiff is entitled to recover damages without actual proof of loss sustained. *Semble:* An action will not lie for vulgar abuse or hasty expressions, but for malicious or culpable oral defamation an action will lie. Vindictive damages should not be awarded, and a distinction should be

SLANDER—*contd.*

drawn in awarding damages when the defendant

charges made PARVATHI v MANNAR

I. L. R. 8 Mad. 175

9. ——— *Cause of action—Defamation—Verbal abuse—Special damage.* A suit to recover damages for verbal abuse of a gross character may be maintained without proof of consequential damage. IBIN HOSEIN v. HAIDAR

I L R. 12 Calc. 109

10. ——— *Defamation—Damages—Consequential damage* A suit for damages for defamation of character involving loss of special position and injury to reputation will lie without proof of special damage. *Parvathi* v. *Mannar, I. L. R 8 Mad 175,* and *Srikant Roy* v. *Satcori Shaha, 3 C. L R 181,* followed. TRAILOKYA NATH GHOSE v CHUNDRA NATH DUTT

I. L. R. 12 Calc. 424

11. ——— *Cause of action —Damages for insult, loss of reputation, and mental pain by the use of abusive language—Suit for libel*

as sala (wife s brother), haramzada (base born or

decided according to the principles of justice, equity and good conscience, and therefore it is but just and right that a person thus vilified, who has suffered from insult and mental pain, should be entitled to maintain an action irrespective of any special damage. GIRISH CHUNDER MITTER v JATADHARI SADUKHAN . . . **I L R. 26 Calc 653**
3 C. W. N. 551

12. ——— *Defamation—Action for slander—Special damage—Damages for mental distress alone, not recoverable—Cause of action—Presidency Town—English Law of Slander, rules of—Charter of 1726—Limitation Act (XV of 1877), Sch. II, Art 24.* In an action for damages against the defendant, for having falsely and maliciously used slanderous words imputing unchastity to the plaintiff, no special damage was alleged in the plaint, nor any actual damage proved at the trial:—*Held*, that, as the words were not *per se* actionable, and as no damage in fact was alleged or proved, the action must be dismissed, with costs The decision of the majority of the Full Bench in *Girish Chunder Mitter* v. *Jatadhari Sadukhan, I L R. 26 Calc. 653*, approved and followed. *Parvathi* v *Mannar, I. L. R. 8 Mad. 175,* discussed *Kashiram Krishna* v. *Bhadu Bapuji, 7 Bom. H C. A. C. 17; Jogeshwar Sharma* v. *Dinaram Sharma, 2 C. W. N. 123 (Notes)*; and *Dawan Singh* v. *Mahip Singh, I. L. R*

SLANDER—*concld.*

10 All. 425, 456, distinguished. Damages are not recoverable for mental distress *alone,* caused to the plaintiff by slanderous words conveying insult. *Wilkinson* v. *Downton, [1897] 2 Q. B. 57; Lynch* v. *Knight, 9 H. L. C. 577, 598,* referred to. By the Common Law of England, introduced into Calcutta by the Charter of 1726, a person injured by slanderous words can recover damages in an action, when actual damage has been caused. *The Advocate-General of Bengal* v. *Ranee*

I. L. R 28 Calc. 452
s.c. 5 C. W. N. 659

13. ——— *Suit for damages,*

of any person, when the words complained of are neither defamatory of him nor have they caused him any injury. *Per* HARINGTON, J.—A witness is not entitled to claim privilege for a slanderous statement wantonly made, which is neither an answer to any question addressed to him in examination or cross-examination, nor has any connection at all with the case under trial. GIRWAR SINGH v. SIRAMAN SINGH (1905) . **I. L. R. 32 Calc. 1060**
s.c. 9 C. W. N. 847

SLAUGHTER-HOUSE.

See NUISANCE—UNDER CRIMINAL PROCEDURE CODES . **7 B. L. R. 499, 516**
25 W. R. Cr. 72

1. ——— **Offence of using unlicensed slaughter-house**—*Beng. Act VII of 1865, s. 7—Slaughter-house license—Transfer of slaughter-house.* R was fined by the Deputy Magistrate for using an unlicensed slaughter-house. He subsequently gave an ijara or lease to A to carry on the business. R was prosecuted again for evading the
cattle to be
was fined
ppeal to the
the motion
rule to set

ing)—The Judge has found that the lease was given by R with the avowed object of continuing the slaughter-house, and admittedly for the express purpose of evading the law; the case therefore falls within the express words of the section, "or

SLAUGHTER-HOUSE—*concld.*

allows cattle to be slaughtered" *In the matter of the petition of the* MUNICIPAL COMMISSIONERS FOR THE SUBURBS OF CALCUTTA

6 B. L. R. Ap. 28 : 14 W. R. Cr. 67

2. ——— *Beng. Act VII of 1865, s 1—Servant of licensee* No person is liable to any penalty under s. 1, Bengal Act VII of 1865, except a person who, without a license, uses a place or building as a slaughter-house, either by letting it out for such purpose or by employing servants and others for the purposes of killing cattle therein ; but a person who may be the mere servant of a butcher killing cattle in a particular slaughter- [illegible]

COMMISSIONERS FOR THE SUBURBS OF CALCUTTA *v.* ZAMIR SHAIKH . . . 16 W. R. Cr. 4

3. ——— **Notice to licensees of slaughter house**—*Beng Act VII of 1865.* The length of notice to be given to persons holding [illegible]

SLAVERY.

See SLAVERY (CRIMINAL CASES).

See UNLAWFUL COMPULSION.

I. L. R. 19 Calc. 572

1. ——— **Act V of 1843**—*Mahomedan law—Succession—Willa—Emancipated slaves* Assuming that, by the *willa* rule of the Mahomedan law, the heirs of the master who emancipates a slave are entitled to the property of which the emancipated slave dies possessed to the exclusion of his natural heirs, the effect of s 3, Act V of 1843, which enacts "that no person who may have acquired property by inheritance shall be dispossessed or prevented from taking possession thereof on the ground that the person from whom the property may have been derived was a slave," [illegible] of the Act, but also where he has been emancipated before its passing. The exclusion of the natural heirs of an emancipated slave in favour of the heirs of his emancipator is a disability arising out of the status of slavery similar in its nature to the exclusion, under the Mahomedan law, of the natural heirs of an emancipated slave by a master or his heirs ; and since the general scope and object of Act V of 1843 is to remove all such disabilities, the Civil Courts are bound, in constructing it, to give it the widest remedial application which its language permits, and cannot consequently limit it to those cases only in which the person from whom property is inherited was a slave at the time of his death, when the words of the statute allow of its being applied to the property of any one who had at any time been a slave. UJMUDDIN KHAN *v.* ZIA-UL-NISSA BEGUM

I. L. R. 3 Bom. 422 : 5 C. L. R. 11
L. R. 6 I. A. 137

In the same case, in the Court below, it was *held* that the effect of Act V of 1843 is to prevent the enforcement of any rights which would, if that Act [illegible] to such master, in his lifetime, to recover, as such heir, property in the hands of persons descended from her, is one the cognizance of which is barred by s 2 of the Act. AJMUDDIN KHAN *v.* ZIA-UNNISSA BEGUM . . . . . . 12 Bom. 156

2. ——— **Spiritual slavery of disciple to guru**—*Act V of 1843—Agreement to become slave.* This was a suit brought in 1881 by the head of an adhinam for declarations that a muth was subject to his control, that he was entitled to [illegible] properties of the muth to a nominee of the plaintiff. The claim extended also to religious establishments at Benares and elsewhere connected with the muth. The muth was founded by a member of the adhinam. Many previous heads of the muth had agreed to be "slaves" of the head of the adhinam, but for over sixty years the head of the adhinam had exercised no management over the endowments belonging to the muth, and in a suit (compromised) of the year 1854 the present pretensions of the adhinam had been denied *in toto* *Held,* that the agreement of the head of the muth to become the "slave" of his guru could have no legal operation since 1843, and that the adverse possession of the defendant from that year was fatal to any claim of the plaintiff under such agreement GIYANA SAMBANDHA PANDARA SANNADHI *v.* KANDASAMI TAMBIRAN

I. L. R. 10 Mad. 375

SLAVERY (CRIMINAL CASES).

1 ——— **Treating kidnapped girl as slave.** If, knowing a girl has been kidnapped, a person wrongfully confines her, and subsequently detains her as a slave, he is guilty of two separate offences punishable under the Penal Code. Slavery is a condition which admits of degrees, and a person is treated as a slave if another asserts an absolute right to restrain his personal liberty and to dispose of his labour against his will, unless that right is conferred by law, as in the case of a parent, or guardian, or a jailor. QUEEN *v* SIKUNDUR BUKHUT . . . 3 N. W. 146

2. ——— **Penal Code, s. 370**—*Buying or disposing of girl as a slave.* *R.* having obtained possession of *D*, a girl about eleven years of age, disposed of her to a third person, for value, with intent that such person should marry her, and such person

SLAVERY (CRIMINAL CASES)—*concld.*

received her with that intent. *Held*, that *R* could not be convicted of disposing of *D* as a slave under s. 370 of the Penal Code. *Queen* v. *Sikundur Bukhut, 3 N. W. 146*, remarked upon. EMPRESS OF INDIA v. RAM KUAR . I. L. R. 2 All. 723

3. ———— *Meaning of term.* *S* transferred to *A* for R25 his rights in the person of *B*, a girl of thirteen years In a document in which the transaction was recorded, *B* was described as a vellati or slave girl purchased by *S* from *P*. *Held*, that *A* was guilty of buying *B* as a slave within the meaning of s. 370 of the Penal Code AMINA v. QUEEN-EMPRESS . I. L. R. 7 Mad. 277

4. ———— **Obligation of Judge to try charge of.** The Sessions Judge was held bound to try the accused upon his commitment by the Deputy Magistrate on a charge, under s. 370, Penal Code, of having detained a woman against her will as a slave QUEEN v FIRMAN ALI 16 W. R. Cr. 73

SMALL CAUSE COURT.

See CIVIL PROCEDURE CODE, 1882, s 223. I. L. R. 31 All. 1

See CIVIL PROCEDURE CODE, 1882, s 586 I. L. R. 32 Bom. 356, 560

See CIVIL PROCEDURE CODE, 1882, s 622. I. L. R. 31 Mad. 490

See PRACTICE—CIVIL CASES—STAY OF PROCEEDINGS . I. L. R. 30 Calc. 627

See PRESIDENCY TOWNS SMALL CAUSE COURTS ACT

See PROVINCIAL SMALL CAUSE COURTS ACT

See SMALL CAUSE COURT, MOFUSSIL.

See SMALL CAUSE COURT, PRESIDENCY TOWNS

———— **proceedings—**

See ARBITRATION ACT. I. L. R. 31 Bom. 236

———— **suit—**

See JURISDICTION, HIGH COURT I. L. R. 33 Bom. 469

See REVIEW . I. L. R. 29 All. 468

———— *Suit of the nature cognizable in the Court of Small Causes—Execution of decree—Second appeal* No second appeal lies against an order in execution of a decree in a suit of the nature cognizable in the Court of Small Causes *Shyama Charan Mitter* v. *Debendra Nath Mukerjee, I L R 27 Calc. 484*, followed. NARAYAN v NAGINDAS (1905) . I. L. R. 30 Bom. 113

SMALL CAUSE COURT, MOFUSSIL.

SMALL CAUSE COURT, MOFUSSIL—*contd.*

SMALL CAUSE COURT, MOFUSSIL
—*contd*

See APPEAL—ORDERS
I. L. R. 11 Mad. 130
I. L. R. 15 Mad. 89
I. L. R. 22 Calc. 734
I. L. R. 19 Mad. 391

See DISTRICT JUDGE, JURISDICTION OF
I. L. R. 11 Mad. 130
I. L. R. 24 Bom. 310

See HINDU LAW I. L. R. 31 Calc. 1057
See JURISDICTION I. L. R. 31 Calc 1057

See LOCAL GOVERNMENT
I. L. R. 9 Mad. 112

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)

See RES JUDICATA—COMPETENT COURT—SMALL CAUSE COURT CASES

See REVIEW—POWER TO REVIEW
I. L. R. 5 Calc. 699

See REVISION—CIVIL CASES—SMALL CAUSE COURT CASES.

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS

See SUBORDINATE JUDGE, JURISDICTION OF . . I. L. R. 3 Bom. 219
I. L. R. 8 Bom. 230
I. L. R. 9 Bom. 174; 237
I. L. R. 10 Bom. 69
I. L. R. 12 Bom. 31; 486
I. L. R. 14 Bom. 371
I. L. R. 22 Bom. 729

——— claim under decree of—

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE.
I. L. R. 3 Calc. 613

SMALL CAUSE COURT, MOFUSSIL
—*contd*

——— clerk of, Bond for performance of duties of—

See PRINCIPAL AND SURETY—RIGHTS AND LIABILITIES OF SURETY
I. L. R. 1 All. 87

——— Judge of—

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS
I. L. R. 3 All. 710
I. L. R. 4 Bom. 472
I. L. R. 9 Bom. 174
I. L. R. 15 Mad 345
I. L. R. 16 Bom. 683
I. L. R. 20 Bom. 377
I. L. R. 21 Calc. 200

——— jurisdiction of—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY I. L. R. 30 Calc. 713
2 B. L. R. A. C. 109

See BENGAL RENT ACT, 1869, s 98
I. L. R. 1 Calc. 183

See CONTEMPT OF COURT—CONTEMPTS GENERALLY . 2 B. L. R. A. C. 188

See MUNSIF . . I. L. R. 26 Mad 212

See NORTH-WEST PROVINCES RENT ACT (XII OF 1881), ss 42, 95 AND 206
I. L. R. 24 All. 517

See REFERENCE TO HIGH COURT—CIVIL CASES . . I. L. R. 25 All. 135

See RES JUDICATA—COMPETENT COURT—SMALL CAUSE COURT CASES

See SALE IN EXECUTION OF DECREE—ERRORS IN DESCRIPTION OF PROPERTY SOLD . I. L. R. 28 Calc. 235

See SHIP, SALE OF
1 Ind. Jur. N. S. 263
2 Ind. Jur. N. S. 251.

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS.

——— transfer of decree of—

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION, ETC.
4 Mad. 331
14 W. R. 396
24 W. R. 151
3 C. L. R. 30; 558
I. L. R. 6 All. 247
I. L. R. 5 Bom. 680
I. L. R. 8 Bom. 230
I. L. R. 10 Bom. 65
I. L. R. 18 Bom. 61

SMALL CAUSE COURT, MOFUSSIL—*contd.*

1. LAW OF SMALL CAUSE COURTS, MOFUSSIL.

1. ———— Law of Civil Courts—*Matters* [illegible]

2. ———— Rules and orders in Military Code. *Held*, that the rules and orders in the Military Code are not binding on a Small Cause Court RAICHAND MANGAL *v.* ABDULLA AMRUDDIN KOTVAL . . . . . 5 Bom. A. C. 99

2. JURISDICTION.

1. ———— General cases—*Act XI of 1865, s. 12—Act XLII of 1860, s 6* Small Cause Courts have sole jurisdiction within their local limits, therefore an action for cattle, or the value of cattle, cannot lie in a Civil Court having jurisdiction within the local limits of a Small Cause Court jurisdiction. ANONYMOUS . . 2 W. R. S. C. C. Ref. 5

2. ———— *Suits cognizable by village Munsif under Mad Reg. IV of 1816, s 5.* A Small Cause Court had concurrent jurisdic- [illegible]

alias COOLLA RAMASAWMY . . [illegible] Mad 45

3. ———— *Village Courts Act (Mad. Act I of 1889), s. 13—Civil Procedure Code, s 15—Jurisdiction of Small Cause Courts to hear suits cognizable by Village Munsif.* The term [illegible]

4. ———— *Suits cognizable by District Munsif in jurisdiction of Small Cause Court* A suit was brought in the Small Cause [illegible]

Court, but the pecuniary claim in each case was cognizable by the District Munsif on the Small Cause Court side. *Held*, that the Small Cause Court had jurisdiction to entertain the suit. ARUNACHELLAM CHETTY *v* GANGATHARAM AIYAN 5 Mad. 287

5. ———— *Suit not cognizable against some of the defendants.* A suit is not cognizable by a Small Cause Court unless it is cognizable by it as against all the defendants. PARSHOTAM LAKHMIRAM *v.* PEMA HARJI I. L. R. 21 Bom. 121

SMALL CAUSE COURT, MOFUSSIL—*contd.*

2 JURISDICTION—*contd.*

6. ———— *Suit for sum on bond the whole amount of which is beyond jurisdiction.* A Small Cause Court can try a suit for an amount withi[illegible] that it is upon [illegible] yond its juris[illegible] HUREEMOHUN [illegible]

7. ———— *Suit on kabuliat under which more than R500 are payable.* That [illegible] 14

8 ———— *Suit for portion of sum due under agreement.* Where the plaintiff sued for a portion of grain in the nature of net rent [illegible]

DAVUR *v.* MARANA KAUNDAN . 2 Mad. 440

9. ———— *Suit for interest on bond for more than R500* Where a suit was [illegible]

crued due. The fact that forgery of the bond is set up as a defence makes no difference. ANANTHA NARAINAPPAIYAN *alias* ASVATA AIYAN *v.* GANAPATY AIYAN . . . . 2 Mad. 469

CHETU NARAYANA PILLAY *v.* AYAMPERUMAL AMBALOM . . . . . 4 Mad 447

10. ———— *Suit for profits of land—Prayer for account—Question of title.* The [illegible]

Small Cause Court cannot be converted into one of a different nature. NARAYAN BHASKAR *v* BALAJI BAPUJI . . . I. L. R. 21 Bom. 248

11. ———— *Separate causes of action each within Munsif's jurisdiction.* Several claims, each of which separately is within the Small Cause Court jurisdiction of a District Munsif, may be joined together and form the basis of a suit in the Small Cause Court. As where there was an agree- [illegible]

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2 JURISDICTION—*contd.*

12. ——————— *Act XI of 1865 —Act IX of 1850, s 34—Cause of action, dividing* There is no provision in the Mofussil Small Cause Courts Act (XI of 1865) similar to s 34 of the Presidency Small Cause Court Act (IX of 1850), which forbids a plaintiff's dividing any cause of action for the sake of bringing two or more suits in the Small Cause Courts of the Presidency. UMED DHOLCHAND *v.* PIR SAHEB JIVA MIYA

I. L. R. 7 Bom. 134

13. ——————— *Provincial Small Cause Courts Act (IX of 1887), s. 23—Civil Procedure Code, s. 586—Suit of the nature cognizable by Courts of Small Causes* A suit is none the less a suit cognizable by a Court of Small Causes because that Court may have exercised the discretion conferred on it by s. 23 of the Provincial Small Cause [illegible]

[illegible] 20 All. 400

14. ——————— *Provincial Small Cause Courts Act (IX of 1887), s. 16—Small Cause suit wrongly tried on regular side—Regular appeal* [illegible]

ground that the suit was one of a nature cognizable [illegible]

[illegible] 21 Calc 249, approved and followed. *Ramasamy Chettiar v. Orr, I. L. R 26 Mad. 176,* not followed. PARAMESHWARAN NAMBUDIRI *v.* VISHNU EMBRANDRI . I. L. R. 27 Mad. 478

15. ——————— *Provincial Small Cause Courts Act (IX of 1887), s 32 (2)—Small Cause suit—Jurisdiction extended pending suit.* A suit to recover R81-4 was filed in the Court of a [illegible]

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

Judge held that no appeal lay on the ground that the suit was triable and must be taken to have been tried by the Subordinate Judge in the extended [illegible]
Cou[illegible]
the [illegible]
Code [illegible]
Dist[illegible]
Sma[illegible]
sary [illegible]
the [illegible]
jurisdiction entitling him to hear the particular suit *Hari Kamayya v Hari Venkayya, I. I. R. 26 Mad 212,* followed *Balchand* v. *Balaram, 5 Bom L R 398,* explained. SAMBHU DHANJI *v.* RAM VITHU (1904) . I. L. R. 27 Bom. 244

16. ——————— *Provincial Small Cause Courts Act (IX of 1887), s 35—Munsif,* [illegible]

[illegible] of Small Causes is in consequence abolished, the successor has jurisdiction under s 35 of the Pro[illegible]

Small Causes The successor can try such suits only in his ordinary civil jurisdiction and this decision in such case is open to appeal. *Mangal Sen v Rup Chand, I. L. R. 18 All. 324,* dissented from. DULAL CHANDRA DEB *v* RAM NARAIN DEB (1904) . . . I. L. R. 31 Calc. 1057

17. ——————— *Suit brought in the Court of First Class Subordinate Judge having small cause powers—The Subordinate Judge on privilege leave—Charge of the Court in Joint Second Class Subordinate Judge who had no small cause* [illegible]

[illegible] was therefore registered as a regular suit. On his return from leave the First Class Subordinate Judge tried it as a regular suit. The question having

SMALL CAUSE COURT, MUFUSSIL—*contd.*

2. JURISDICTION—*contd.*

arisen whether the suit was a small cause :—*Held*, that the First Class Subordinate Judge continued to be a Judge with Small Cause Court powers

GANGARAM RATANCHAND (1909)
I. L. R. 33 Bom. 664

18. ———— Account—*Suit by gomashta for excess expenses* A suit by a gomashta for excess expenses incurred by him over and above the

PROSUNNO CHUNDER ROY *v* SREENATH SREEMANEE
7 W. R. 422

19. ———— *Suit to recover balance of account by tehsildar.* A suit to recover the balance of nikasi papers furnished by defendant in his capacity of tehsildar, there being an allegation in the plaint that the defendant verbally promised to pay part of the sum claimed under the circumstances mentioned therein, was *held* not to be cognizable by a Court of Small Causes. SRISHTEEDHUR BOSE *v.* SHAMA CHURN GHOSE
14 W. R. 53

See GRANT *v* RAM TONOO BHOOMICK
10 W. R. 83

20. ———— *Act XI of 1865, s 6—Suit for balance due on account of rents* A suit for a balance due on account of rents collected from the plaintiffs' zamindaris by the defendants' father acting as agent of the plaintiffs is a suit in which money is claimed as due on a contract within the meaning of s 6, Act XI of 1865 Where the amount claimed in such a suit does not exceed R500, it is cognizable by a Small Cause Court notwithstanding it may be necessary to go into the accounts of both parties to determine what is due. DYEBUKEE NUNDUN SEN *v* MUDHOO MUTTY GOOPTA . I. L. R. 1 Calc. 123 : 24 W. R. 478

21. ———— *Suit against guardian and manager of property for rents collected by him—Trustee bound to account* In a suit to recover, from the guardian of a minor and the manager of his property who had granted to himself, benami, a farming lease of the minor's property, rents collected by him for which he did not account —*Held*, that the defendant could not be considered simply as an agent to collect plaintiff's rents, but was bound as a trustee to account for the proceeds of the property, and that the claim was therefore not cognizable in a Small Cause Court. RAM JOY MOJOOMDAR *v.* KEDAR NARAIN ROY
25 W. R. 75

SMALL CAUSE COURT, MOFUSSIL—*contd.*

2. JURISDICTION—*contd.*

22. ———— *Suit by principal against agent—Question of accounts.* A suit by a principal against an agent for adjustment and investigation of disputed items of account which could not be determined within six weeks, and which charged the agent with colluding with judgment-debtors, was *held* to be properly triable by the Civil Court, and not by the Small Cause Court. KRISHNA KINKUR ROY *v.* MADHUB CHUNDER CHUCKERBUTTY . . . 21 W. R. 283

23. ———— Act XL of 1858, s. 3—*Defending suit without certificate.* A Court of Small Causes, constituted under Act XI of 1865, is competent, under s. 3, Act XL of 1858, to allow any relative of a minor to institute or defend a suit in his behalf without a certificate of administration, where it has jurisdiction in relation to the subject-matter of the suit KHANTO BEWAH *v* NUND RAM NATH . . . . 15 W. R. 369

Held, that the suit was cognizable by the Court of Small Causes. NANDA KUMAR BANERJEE *v* ISHAN CHANDRA BANERJEE
1 B. L. R. A. C. 91 : 10 W. R. 130

25. ———— Arbitration—*Civil Procedure Code, s 327.* When a matter had been referred to arbitration without the intervention of any Court, a

jurisdiction. ELAM PARAMANICK *v.* SOJAITULLAH
1 B. L. R. A. C. 43 : 10 W. R. 85

BRIDGE *v.* EDALJI MANCHARJI. VITHAL AMBARAM *v.* DAYABHAI MURLIDHAR . 10 Bom. 54

GANGAPPA *v.* KAPINAPPA . 5 Mad. 128

26. ———— *Arbitration award Act—XI of 1865, s. 6—Liability arising under an award.* A liability arising under an award is not one of such a nature as to fall within the terms used in the Small Cause Court Act to denote the claims cognizable by such Court GUNESHEE *v.* CHOTAY LAL . . . . 3 N. W. 117

DURJAN SINGH *v.* SIBIA . 7 N. W. 329

A suit to recover a sum of money as payable to the plaintiff under an award which was contested was filed in a subordinate Court on the Small Cause side. The Subordinate Judge returned the plaint, being of opinion that the suit was not cognizable by a Court

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2 JURISDICTION—*contd.*

of Small Causes. The plaint was then presented in [illegible]

I. L. R. 13 Mad. 344

28. ———— Army Act—*Army Act (44 & 45 Vict., c. 58), s 144—Proviso—Jurisdiction—* [illegible]

tion whether the defendant is a soldier or not arises only when the plaintiff seeks to execute his decree KISANDAS BUDHMAL *v.* HALPIN

I. L. R. 10 Bom. 218

29. ———— *Army Act (44 & 45 Vict, c. 58), ss. 148 and 151—Courts of Request, their jurisdiction—Court of Small Causes, power of—Construction of s. 151, cl. 1, of the Army Act* The Army Act (44 & 45 Vict, c. 58) gives jurisdiction to a Court of Small Causes in all actions of debt and personal actions against persons subject to military law (other than soldiers in the regular forces) over which such Court would ordinarily exercise jurisdiction, and provides a Court of Requests (s. 148) for those cases only where an action of the value of R400 or under has to be brought against such persons at a place lying beyond the jurisdiction of any Small Cause Court. *Held,* also, that the words "within the jurisdiction" in s. 151, cl 1, referred to "actions," and not to "persons" SHERE ALI *v.* PRENDERGAST I. L. R. 13 Calc. 143

30. ———— *Army Act of 1881, ss 144, 151—Civil Procedure Code, s. 463—Jurisdiction of Small Cause Courts over soldiers.* *A* sued a soldier to recover a debt not amounting to £30 *Held,* that the suit was cognizable by a Court of Small Causes. *Semble* The commanding officer of the defendant was bound to cause the summons of the Small Cause Court to be served on him. MAHOMED *v.* AGGAS

I. L. R 10 Mad. 319

31. ———— Attachment—*Attachment of immoveable property before judgment.* A Court which cannot attach primarily in execution of its decree cannot attach in anticipation of it A Small Cause Court therefore cannot grant an attachment before judgment of immoveable property. MARTHAMMA *v.* KITTU SHEREGARA . . 6 Mad. 91

32. ———— *Provincial Small Cause Courts Act (IX of 1887), Sch. II, cl. 35 (k)—Jurisdiction to award defendant damages for attachment on insufficient grounds—Civil Procedure Code (Act XIV of 1882), s. 491—Applicability to Small Cause Courts.* A Court of Small Causes has jurisdiction to award damages, under s 491 of the Civil Procedure Code, to a defendant whose property has been attached on insufficient grounds IBRAHI ROWTHEN *v.* SANGARAM SHETTY (1902)

I. L. R. 26 Mad. 504

33. ———— Cess—*Suit to recover arrears of cess* A suit brought to recover arrears of a cess is not a suit of the nature cognizable by small Cause Courts KASIM ALI *v* SHADEE . 3 N. W. 21

34. ———— *Act XI of 1865 s 6—Suit for zamindari dues and cesses* The plaintiff claimed from the defendants, as joint decree-holders, a fourth share of the proceeds realized by auction-sale through the Court of the Munsif of certain houses, situate on land subject to a village-custom whereby a proprietary due of the above [illegible]

were in the nature of suits cognizable by a Court of Small Causes :—*Held,* by the Full Bench, that the claim as brought did not fall within any of the classes of suits cognizable by the Courts of Small Causes. *Aliter,* if the due was payable in virtue of a contract. NANKU *v* BOARD OF REVENUE

I. L. R. 1 All. 444

35. ———— *Suit to recover road cess—Road Cess Act (Beng. Act X of 1871).* [illegible] of the Mofussil Small Cause Court Act DAVID *v.* GRISH CHUNDER GUHA . I. L. R. 9 Calc. 183 : 11 C. L. R. 305

36. ———— *Act XI of 1865—Jurisdiction—Water-cess—Payment by landholder* [illegible] VENKATRAMAYA *v.* VIRAYA

I. L. R. 8 Mad. 4

37. ———— Claim to property seized in execution—*Act XI of 1865, s. 6—* [illegible] A Small Cause Court had no jurisdiction to entertain a suit by a decree-holder [illegible] claimant. RAM DHUN BISWAS *v.* [illegible] BISWAS

1 B. L. R. S. N. 10 : 10 W. R. 141

38. ———— *Suit to establish right to personal property and to recover value of* [illegible]

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

A suit on the part of an unsuccessful claimant to establish his right to personal property and to recover the value of the same is not cognizable by a Small Cause Court. MOOZUFEN GAZEE v. DINOBUNDHOO GOSSAMEE . . 13 W. R. 99

This latter case is not to be taken as extending the rule laid down in *Ram Dhun Biswas v. Kefal Biswas, 1 B. L. R. S. N. 10*, in suits by unsuccessful claimants under s. 246, Act VIII of 1859. PUNJU v. OODOY. . . . . . 18 W. R. 337

See WOOMESH CHUNDER BOSE v. MUDDUN MOHUN SIRCAR . . . . 3 W. R. 44

and ANONYMOUS . 2 W. R. S. C. C. Ref. 5

39. ———————— *Civil Procedure Code, 1877—Owner to recover moveable property under R500.* The plaintiff was owner of moveable property attached in execution of a decree, and, his claim to such property having been rejected under s. 246 of Act VIII of 1859, he brought this

to be brought in a Court of Small Causes. NATHU GANESH v. KALIDAS UMED I. L. R. 2 Bom. 365

40. ———————— *Suit to establish right to property attached under decree—Jurisdic-*

to sue to recover possession of, certain moveable property attached in execution of a decree of a

41. *Attachment of moveable property—Suit to establish right—Civil Procedure Code, s. 283.* A suit under s. 283 of the Civil

cognizable in a Court of Small Causes. ILAHI BUKSH v. SITA . . I. L. R. 5 All. 403

42. ———————— *Claim for personal property and to set aside order disallowing objection to its attachment—Jurisdiction—Act XI of 1865, s. 6.* A suit to recover moveable property attached in execution of a decree and damages for

43. ———————— *Suit for personal property. Suit to establish right—Civil Procedure Code, s. 283. Act XI of 1865, s. 6.* A person who had claimed moveable property attached in execution of a decree as his own, and whose claim had been investigated and disallowed under ss. 278 to 281 of the Civil Procedure Code, sued, the property

Balkrishna v. Kisansingh, I. L. R. 4 Bom. 505 note; and *Radha Kishen v. Choley Lall, 3 N. W. 155*, dissented from. GODHA v. NAIK RAM I. L. R. 7 All. 152

44. ———————— *Suit to recover moveable property wrongly attached—Suit to set aside order of Munsif.* A suit brought by an owner to recover moveable property of which he has been

3 N. W. 155

BALMOKUND v. LEKHRAJ . 3 N. W. 156 note

45. ———————— *Suit to establish right to personal property seized in execution of decree.* A suit to establish the plaintiff's right to the exclu-

5 Mad. 101

46. ———————— *Act XI of 1865, s. 6—Suit as to title to property taken in execution.*

47. ———————— *Personal property—Suit by decree holder.* A suit by a decree-holder to establish his right to attach and sell moveable property as belonging to his judgment-debtor

2. JURISDICTION—*contd.*

is not a suit for personal property within the meaning of s. 6 of Act XI of 1865, and a mofussil Court of Small Causes has no jurisdiction to entertain it even though the value of the property be such as to fall within its pecuniary limit. CHHAGANAL NAGARDAS *v* JESHAN RAV DALSUKHRAM

I. L. R. 4 Bom. 503

BALKRISHNA *v* KISANSING

I. L. R. 4 Bom. 505 note

48. ———————— *Suit by owner for personal property* The defendant, who was farmer of revenue, attached a buffalo for arrears due from a third party In a suit brought by the plaintiff for a declaration that the defendant was not entitled to attach the buffalo.—*Held*, that the suit should be filed in the Court of Small Causes inas-

49. ———————— *Suit to declare moveable property not liable to attachment—Civil Procedure Code, 1882, s. 283.* Certain moveable property having been attached in execution of a Small Cause decree passed by the Court of a Subordinate Judge, a claim thereto was preferred by *M* and rejected. *M* then brought a suit in the District Munsif's Court for a declaration that the property was his and was not liable to be sold in exe-

1865 MAHOMED KOYA *v* KASMI

I. L. R. 9 Mad. 206

50. ———————— *Civil Procedure Code (Act X of 1877), ss 280, 281, and 283—Goods*

2 JURISDICTION—*contd.*

51. ———————— *Suit for value of sheep wrongly attached and sold in execution of decree* Where plaintiff's sheep had been attached

52. ———————— *Suit for property wrongly seized in execution—Civil Procedure Code (Act XIV of 1882), ss 278-283—Attachment of same property in execution of decrees obtained by different creditors—Claim made in one suit to attached property under s. 278—Order made under s 281—Suit by claimant to establish right.* The first and second defendants obtained a decree in suit No. 1548 of 1897 against *R*, described as the owner of the Wahalan Mills, and attached property on the mill premises Twelve other creditors also brought twelve other similar suits and obtained decrees against other persons, who were also described as owners of the Wahalan Mills, and attached the same property. In suit No. 1548 of 1897 *R M* (the present plaintiff), under s 278

recover his property, and he included as defendants not merely those defendants (Nos. 1 and 2) who had been plaintiffs in suit No 1548 of 1897, but also those who had been plaintiffs in the twelve other suits, and who had attached the property in execution of their decrees It was objected that no suit would lie against the latter, as in their suits no claim had been made to the goods which they had attached and no order made under

53. ———— Compensation for acquisition of land—*Provincial Small Cause Courts Act (IX of 1889), Sch II, Arts. II and 14—Claim for compensation awarded under Land Acquisition Act—Interpleader suit—Civil Procedure Code, 1882, ss. 470 and 622—Jurisdiction of Munsif—Superintendence of High Court.* Land having been compulsorily acquired under the Land Acquisition Act for the purpose of the East Coast Railway, the compensation was fixed at R468. A conflict

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

Secretary of State in the Court of the District Munsif. The decision of the District Munsif having been confirmed on appeal, the unsuccessful claimant preferred a petition to the High Court under s. 622, Civil Procedure Code *Held*, that the interpleader suit was not within the jurisdiction of a Provincial Small Cause Court and was rightly brought on the ordinary side of the District Munsif's Court, and consequently, where the petitioner's remedy was by way of second appeal, the petition for revision was not admissible. TIRUPATI RAJU *v.* VISSAM RAJU . . . I. L. R. 20 Mad. 155

54.———— Contract—*Suit for breach of contract on failure to register.* A suit to recover money paid as the price of land in consequence of vendor's failure to complete the bargain by registration of the deed of sale is maintainable in a Court of Small Causes, being substantially a suit for breach of contract for sale of land CHAROO KHAN *v.* DOORGAMONEE . . . 9 W. R 498

55. ———— *Suit for value of produce not paid under contract.* Where a cultivator ...

Small Cause Court, but in the Revenue Courts under Act X of 1859. SREENATH DUTT *v* DWARY DHALLIE . . . 2 W. R. S. C. C. Ref. 2

56. ———— *Suit for payment in kind.* A suit to recover a quantity of rice (or ... had ... was ... Court ... 27.

DOM KUMAR *v.* SOORJO DUTT SURMAH 22 W. R. 259

57. ———— *Hindu son's liability for family debt.* The manager of a Hindu family, having borrowed money for a proper and necessary purpose, —his son's marriage,—gave a bond to secure the debt. *Held*, that a suit against the father and son to recover the money lent was cognizable by a Court of Small Causes under Act XI of 1865. PUNA KARUPPANA PILLAI *v.* VIRABADRA PILLAI . . . . I. L. R. 6 Mad. 277

58. ———— *Suit against sons in undivided family to enforce debt incurred by father.*

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

59. ———— *Civil Procedure Code, s. 586—Mofussil Small Cause Courts Act (XI of 1865), s. 6—Suit against sons of Hindu debtor, on a bond executed by father, not cognizable by Small Cause Court—Hindu law—Liability of son for debt of living father.* In a suit upon a bond executed by a Hindu, the plaintiff made the debtor's sons defendants along with their father, and a decree was passed against the father and sons jointly for payment of the debt. *Held*, by the Full Bench, that the suit as against the sons was not a suit of the nature cognizable in a Court of Small Causes within the meaning of s. 586 of the Code of Civil Procedure. *Held*, further, by the Divisional Bench, that the decree against the sons was bad NARASING *v.* SUBBA . . . I. L. R. 12 Mad. 139

60. ———— *Share of trees cut by tenants—Second appeal.* A suit by a zamindar for one-fourth of the price of trees cut by tenants, is, when based upon contract, one of the nature cognizable in a Court of Small Causes, and consequently, where the amount claimed is under five hundred ...

61. ———— *Suit for share of produce of trees—Landlord and tenant—Wajib-ul-...al.* ...

amount being claimed in virtue of an agreement ...

I. L. R. 3 All. 37

62. ———— *Act X of 1859.* ...

between themselves, sought to recover from the ...

MOHOMED KOLU 1 B. L. R. S. N. 13 : 10 W. R 203

63. ———— *Suit on contract.* Plaintiffs, having obtained a sum from defendants on a bond, let certain land to them in ijara for a

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

[illegible]

64. ——————— *Suit against co-contractor—Suit for money due on a contract.* Plaintiff, defendant, and another party had jointly and separately contracted with Government to do certain work, depositing security and stipulating that a percentage upon the worth of the work done should be retained in the hands of Government to meet the contingency of the Government incurring expense in case of failure on the part of the contractors. The contract was completed by one of the contractors, who received the amount which had been [illegible]

for money due on a contract, and was not cognizable by a Small Cause Court. NARAIN DOSS *v* RAM COOMAR MYTEE . . . 15 W. R. 513

65. ——————— *Act XI of 1865, s. 6—Contract, suit on* The word "contract" in s 6, Act XI of 1865, was intended to include a suit to recover money received by the defendant to a share of which the plaintiff is entitled; the foundation of the claim being that the defendant, with [illegible]

66. ——————— *Act XI of 1865, s. 6—Suit to recover arrears of annuity from endowed property* In a suit by a widow of one of the de- [illegible]

branch of the family from another descendant who had received the whole stipend —*Held,* that this was not a suit for money due on a contract or "for personal property or otherwise" within the meaning of s 6 of Act XI of 1865, cognizable by a Court of Small Causes in the mofussil. KESHAVBHAT *v* BHAGIRTHIBAI . 3 Bom. A. C. 75

67. ——————— *Suit to recover share in varshasan—Claim on implied contract.* Suit to recover a share in a *varshasan* payable by the Gaekwar's Government and received by the defendant as the eldest member of the original grantee's family is cognizable by a Court of Small Causes in the mofussil, the claim being one on an implied contract, *viz*, a contract by the defendant to pay to the plaintiff money received by the defendant to the use of the plaintiff *Sunkar Lall, Pattuck Gyawal v. Ram Kalee Dhamin, 18 W. R. 104,* followed *Keshav Bhat v Bhagirthi Bai, 3 Bom A. C 75,* overruled. RATAN SHANKAR REVASHANKAR *v.* GULAB SHANKAR LALSHANKAR 10 Bom. 21

See BHIMRAV JIVAJI *v.* BHIMRAV GOVIND 11 Bom. 194

68. ——————— *Suit to recover share of annual allowance.* A suit to recover a share of arrears of a varshasan or annual allowance paid by the Gaekwar of Baroda to the defendant, in which the plaintiff alleged he was entitled to a third share, is maintainable in a Court of Small Causes RATANSHANKAR REVA SHANKAR *v* GULABSHANKAR LALSHANKAR . . . 4 Bom. A. C. 173

69. ——————— *Act XI of 1865, s 6—Suit for money borrowed by servant on understanding it would be repaid by master* A servant borrowed on account of his master a sum of money which was partly spent in satisfaction of his master's debt and partly taken by the latter and spent for his own private purposes No re-payment having been made by the master, the lenders took out a decree against the servant, who then sued the master to recover the money *Held,* that there was a legal pre- [illegible]

70. ——————— *Act XI of 1865, s. 6—Suit for money on implied contract* Plaintiff took a lease from defendant, and a bakijai setting forth a certain sum (R473-10) as due from the tenants on account of rent, and on the faith of the bakijai paid that sum to the defendant. He then sued the tenants for the same, and was met with pleas either of payment to the defendant or of payment by assignment for the defendant's debts. He then sued defendant for a refund. *Held,* that the claim was for money due under an implied contract for the repayment of a sum under R500, and cognizable by a Small Cause Court under Act XI of 1865, s 6, cl. 4 WUZEER MULLICK SIRCAR *v.* NITUMBINEE DEBEE . . 18 W. R. 484

71. ——————— *Implied contract —Contract to indemnify against claim of superior landlord* If *A* buys a tenure at a public auction [illegible]

72. ——————— *Second appeal—Relation resembling contract—Contract Act, s. 70—Act XI of 1865, s. 6.* On the death of *K,* a dispute

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

arose among her heirs as to the succession to the share of a village of which she was the recorded proprietor. In January 1874 *N*, who was not one of her heirs and who was not a shareholder in such village, was recorded in the revenue register as lambardar in respect of her share, and was so recorded until February 1878, when his name was expunged and the name of *B*, who was one of the heirs, was recorded as proprietor. In a suit by *N* against *B* to recover R70, being the amount he had paid on account of revenue in respect of such share for the period between January 1874 and February 1878.—*Held*, that the suit was one for damages under s. 70 of Act IX of 1872 within the meaning of s. 6 of Act XI of 1865, and accordingly of the nature cognizable in a Court of Small Causes, and no second appeal in the suit would lie NATH PRASAD *v* BAIJ NATH . . . I. L. R. 3 All. 66

73. ——————— *Payment of revenue by a person for another—Suit for reimbursement.* A suit by the proprietor of one village who has been compelled to pay the revenue payable by the proprietor of another village for reimbursement is,

ABUL HASAN . . . I. L. R. 4 All. 154

74. ——————— *Relations resembling contract—Contract Act (IX of 1872), ss. 69,*

between the sale and the date the plaintiffs obtained possession. They then sued the defendant in the Munsif's Court to recover the amount they had paid. *Held*, that, with reference to the principle laid down in *Nath Prasad* v. *Baij Nath, I L R 3 All 66*, the suit should have been instituted in the Court of Small Causes. *In the matter of the petition of* ALI MAZHAR . I. L. R. 4 All. 152

75. ——————— *Contract Act (IX of 1872), ss 69, 70—Small Cause Court Act (XI of 1865), s. 6—Patni rent—Implied contract.* The plaintiff, a purchaser in execution of a patni right, brought a suit in a Munsif's Court to recover from the defendant, a former holder of the patni

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

within the provisions of ss. 69 and 70 of the Contract Act are cognizable by a Court of Small Causes under s. 6 of Act XI of 1865. *Nath Prasad* v. *Baij Nath, I. L. R. 3 All. 66*, approved. KRISHNO KAMINI CHOWDHRANI *v.* GOPI MOHUN GHOSE HAZRA I. L. R. 15 Calc. 652

76. ——————— *Provincial Small Cause Courts Act, Sch. II, Art 41—Civil Procedure Code, s 586—Suit for contribution—Joint property—Suit relating to contract—Contract Act, s. 69.* Lands of which part belonged to the plaintiffs and part to the defendant were comprised in a pottah which ran in the names of the plaintiffs and another. The defendant's share of the assessment fell into arrear and was collected from the plaintiffs, who now sued to recover R200, being the amount so

KOLUNDU . . . I. L. R. 12 Mad.

77 ——————— Contribution—*Suit for contribution* A Small Cause Court has no jurisdiction to try a suit for contribution. TAMIZUDDIN MIRDHA *v* GAFFUR KHAN . 7 B. L. R. Ap. 40

78. ——————— *Provincial Small Cause Courts Act (IX of 1887), Sch II, cl 41.* Cl 41, Sch. II of the Provincial Small Cause Courts Act (IX of 1887), excludes a suit for contribution from the ... of the Small Cause Court, and

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79 ——————— *Suit for contribution where there is no contract.* A suit for contribution,

plied, c.

Court.

ITCHA MOYEE DOSSEE *v* BAMA SOONDUREE DOSSEE . . . . 25 W R. 73

80. ——————— *Suit against co-sharer for money recovered on joint decree* A suit

12 W. R.

81. ——————— *Suit for contribution under joint decree—Act XI of 1865, s 6* A Small Cause Court has jurisdiction to entertain a suit by one of several debtors against whom a

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

82. ———— *Decree against several defendants jointly—Second appeal* A suit for contribution not founded upon contract, but

will therefore lie in such a suit. *Rambux Chittangeo v. Modhoosoodun Paul Chowdhry, B L R Sup Vol. 675*, followed. *Nath Prasad v Baij Nath, I. L. R 3 All 66*, distinguished. FUTTEH ALLI *v.* GUNGANATH ROY

I. L. R. 8 Calc. 113 : 10 C. L. R. 20

83. ———— *Money paid in*

followed. *Nath Prasad v Baij Nath, I L R 3 All. 66*, dissented from. RAMJOY SURMA *v* JOYNATH SURMA I. L. R 9 Calc. 395 : 12 C. L R. 314

84. ———— *Suit to recover a share of money recovered by co-plaintiff under a decree—Act XI of 1865 (Mofussil Small Cause Courts Act), s. 6* *Held*, that a suit to recover a share of money which had been recovered by a co-plaintiff, under a decree was a claim for money due on a

Procedure Code, no second appeal could lie DEBI DAS *v* LACHMAN SINGH . I. L. R 7 All. 896

85 ———— *Hindu law—Coparceners—Family debt* A decree having been passed against the plaintiff and defendant, undivided Hindu brothers, jointly for a family debt, and the decree-holder having levied the sum

KRISHNAMA PANTULU . I. L. R. 6 Mad. 424

86 ———— *Agency—Recovery on joint decree* Plaintiff and defendant having been co-sharers in a decree in which the

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2 JURISDICTION—*contd.*

the former would recover what was due from the latter, and pay it over or account for it to her, and that therefore the case came within the jurisdiction of the Small Cause Court. *Held*, also, that as the Subordinate Judge before whom the case came in

87 ———— *Suit against co-sharer for contribution in respect of Government*

88 ———— *Suit for contribution in respect of money paid as revenue to save estate from sale* A claim for money below R50 paid as revenue by one partner in an estate on account of another in order to save the estate from

89 ———— *Suit to recover arrears of revenue compulsorily paid* A suit to recover arrears of revenue which the plaintiff was compelled to pay by the revenue authorities, but which the defendant was liable to pay, is cognizable by a Court of Small Causes PARASURAMA CHEDUMBRAIYAN *v* KRISTNAIYAN . 5 Mad. 462

90 ———— *Suit by co-sharer*

Small Cause Court BROMMOPOOP GOSWAMEE *v.* PRANNATH CHOWDRY . . 7 W. R. 17

91. ———— *Suit for contribution by co-sharer who paid whole Government revenue* Where one of several co-sharers in an estate paying revenue to Government has paid the

MODHOOSOODUN MOZOOMDAR *v* BINDOBASHINY DOSSEE . . 6 W. R. Civ. Ref. 15

92 ———— *Suit for contribution—Co-sharers.* No suit for contribution between co-parceners in a revenue-paying estate, or for contribution between co-parceners in a jumma, will lie in the Small Cause Court. NOBIN

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

KRISHNA CHAKRAVATI *v.* RAM KUMAR CHAKRAVATI. BUNNIJAN BIBI *v.* MAHAMMAD HOSSAIN
I. L. R. 7 Calc. 605 : 9 C. L. R. 90

93 ——— *Suit for share of revenue paid by mortgagee.* A suit by a mortgagee to compel a mortgagor to repay him the amount of Government assessment, which he has

94. ——— *Suit to recover money paid to co-sharers as excess of rent.* A suit to recover money alleged to have been paid in excess of plaintiff's share of rent on account of his co-

95 ——— *Suit cognizable by Revenue Court—Suit to recover money paid to prevent sale for arrears of rent* The plaintiff sued to recover money paid in order to prevent his lands from being sold at the instance of the defendant for non-payments of arrears of rent under Madras Act VIII of 1865, the plaintiff's allegation being that no rent was due to the defendant. *Held*, that the Small Cause Court had no jurisdiction, because the suit was cognizable before a revenue officer. SHAUNKARA SUBBIEN *v.* VELLAYAN CHETTY
5 Mad. 179

96 ——— *Suit by surety against principal for recovery of money paid on his account—Suit for contribution.* A suit by a surety

SHABOO MAJEE *v.* NOORAI MOLLAH. JONEEP *v* NABOO. BHARUT CHUNDER DUTT *v.* DENGAR GOPE **B. L. R. Sup. Vol. 691 : 7 W. R. 386**

97. ——— *Suit by one surety against another for contribution—Act XI of 1865, s 6.* A suit by one surety against another for contribution, where the sureties are bound by the same instrument, is a suit on an implied contract, and therefore within the jurisdiction of a Court of Small Causes. *Govinda Muneya Tiruyan* v. *Bapu, 5 Mad. 200*, and *Ratan Shankar* v. *Gulabshankar, 10 Bom. 21*, followed. HARI TRIMBAK *v.* ABASHAHEB . . **I. L R. 4 Bom. 321**

98 ——— *Provincial Small Cause Courts Act (IX of 1887), Sch II, Arts. 2, 41, 42 and 41—Suit for costs paid by one of two persons jointly liable.* *N C* granted a lease of three plots of land to *B S*. The heirs of the former lessee brought a suit against *N C* and *B S* to recover possession of the same three plots of land The suit was

SMALL CAUSE COURT, MOFUSSIL — *contd.*

2. JURISDICTION—*contd.*

decreed with costs; and the costs, amounting to to R80 and annas 5, were recovered from *B S* alone.

99 ——— *Suit for share of costs of repairs of channel—Provincial Small Cause Courts Act (IX of 1887), s. 15, and Sch II, Art. 41.* The plaintiff sued to recover from the defendant R227, being his share of the cost of repairing a channel which was the property of the plaintiff and defendant *Held*, that the suit was cognizable by a Court of Small Causes. FISCHER *v.* TURNER. . . **I. L. R 15 Mad. 155**

100 ——— *Provincial Small Cause Courts Act (IX of 1887), Sch. II, Art. 41—Small Cause Court—Jurisdiction—Suit for contribution arising out of satisfaction of a joint decree for costs* *Held*, that a suit by one of several joint

101 ——— **Copyright**—*Jurisdiction of Presidency Small Cause Courts—Copyright Acts (XX of 1847 and XII of 1876), s 1—District Courts.* As the class of cases provided for by s. 7

petition of HAMEEDOOLLAH. HAMEEDOOLLAH *v.* MAHOMED ASGHUR HOSSEIN
I. L. R. 6 Calc. 499 : 7 C. L. R. 471

102. ——— **Costs**—*Suit for costs incurred in suit to compel registration of document* An

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103 ——— **Crops**—*Standing crops—Immoveable property—Suit for enforcement of lien—*

SMALL CAUSE COURT, MOFUSSIL —contd

2. JURISDICTION—*contd.*

Cause Courts Act A Small Cause Court therefore is not competent to try a suit for enforcement of a lien in respect of standing crops. CHEDA LAL *v.* MULCHAND MINDAI *v.* KUNDAN SINGH

I L. R. 14 All. 30

104 ———————— *Act XI of 1865, s 6—Suit to establish right to crops on basis of title to land on which they are grown—Question of title.* A suit to establish the plaintiff's right to a standing crop on the basis of his title to the land is an ordinary civil suit, and not a suit of a Small Cause Court nature *Godha* v *Naik Ram, I. L R 7 All. 152,* and *Shiboo Narain Singh* v. *Madden Ally, I. L. R. 7 Calc. 608,* relied on. DAKHYANI DEBEA *v* DOLEGOBIND CHOWDHRY

I. L. R. 21 Calc. 430

105 ———— Customary payments—*Proprietary due, suit for* A suit for russum (a proprietary due) not claimed as rent nor under a contract, but by custom, payable by cultivators in occupation of the land either as proprietors or raiyats, is not of a nature triable by a Small Cause Court. EBRAHIM SAIB *v* NAGASAMI GURUKAL

I L. R 3 Mad. 9

106 ———————— *Suit for inamdar for proprietary dues* Suits for proprietary dues, to which the inamdar, as the owner of the village, lays claim, are not cognizable by a Court of Small Causes They are not paid as rent, nor are they claimed under any contract SUBRAMANIAN CHETTI *v* PRINCE OF ARCOT

I. L. R. 2 Mad. 146

107. ———————— *Suit for share*

1865. CHOONEE LALL *v* GOUREE SHUNKUR

1 Agra 84

108 ———— Damages—*Act XI of 1865, s 6—Suit for damages for personal injury* By s 6 of Act XI of 1865, suits to recover damages for personal injury cannot be brought in a Mofussil Small Cause Court, unless actual pecuniary damage has resulted from the injury That section excludes from the jurisdiction of the Mofussil Small Cause Courts suits for defamation, infringement of right, and the like, where no actual pecuniary damage has been sustained by the plaintiff, and where the

thing additional for loss of character or other indefinite injury DURGA PERSHAD *v* ASA JOLAHA

I. L. R. 5 Calc 925 ; 6 C. L. R. 487

109. ———————— *Suit for damages —Loss of reputation.* Where actual pecuniary damages have resulted from personal injury, the suit for damages as a whole will lie in the Small

SMALL CAUSE COURT, MOFUSSIL —contd.

2. JURISDICTION—*contd.*

Cause Court, even though it should include damages for loss of reputation or other claim for damages not cognizable in the Court. GUNGA NARAIN MOYTRO *v.* GUNGADHUR CHOWDHRY

13 W. R 434

MANSING LALUNG *v* THERAM DOLOYE

22 W. R. 395

110. ———————— *Suit for damages for malicious prosecution* A suit properly alleging a malicious prosecution and special pecuniary loss resulting therefrom is cognizable in a Small Cause Court. SITARAMAN *v* SUSA PILLAI

2 Mad. 254

111. ———————— *Provincial Small Cause Courts Act (IX of 1887), Sch. II, cl. 35 (c)—*

Cause Court MAHOMED ALI *v.* BAYAMA

I L. R. 14 Bom. 100

112 ———————— *Suit for damages for personal injury—Actual pecuniary damage.* The plaintiff, in a suit for damages laid at R200 claimed R50 on account of medical expenses caused by an assault committed on him by the defendants, R50 as the costs of a criminal prosecution which

BHOLA . . . . . I. L. R. 10 All. 49

113 ———————— *Compensation for personal injury—Actual pecuniary damage.* The plaintiff in a suit for compensation for mali-

recovery of damages on account of an alleged personal injury, from which actual pecuniary damage had resulted, it was cognizable and should have been instituted in the Court of Small Causes having local jurisdiction. *Gunga Narain Mytro v. Gudadhur Chowdhry, 13 W. R. 434,* and *Brojo Soondur* v. *Eshan Chunder Roy, 15 W. R. 179,* followed. DEBI SINGH *v.* HANUMAN UPADHYA

I. L. R. 3 All. 747

SMALL CAUSE COURT, MOFUSSIL—*contd.*

2. JURISDICTION—*contd.*

114. ———— *Act XI of 1865, s. 6—Suit for damage to crops.* The term "damages" in s ... to crops, a ... wrongful r... certain fiel... Causes. DAUR SINHA *v.* RUGHNUNDUN SINHA 3 N. W. 101

115. ———— *Suit for value of produce carried off by defendant cultivating plaintiff's land without consent.* A suit to recover the value of produce carried off without plaintiff's consent from his land, which had been forcibly retained in the cultivation of defendant No. 1, assisted by defendant No. 2, was *held* to be a suit not for rent, but for damages KAROO KAHAR *v.* NAUBOO SINGH . . . . 24 W. R. 380

116 ———— *Provincial Small Cause Courts Act (IX of 1887)—Suit for damages for the forcible cutting and ca...*

I. L. R. 17 Calc. 707

117. ———— *Provincial Small Cause Courts Act (IX of 1887), Sch. II, cl 31—Suit for profits of land.* A suit to recover with interest ...

...ch. II of Act IX of 1887; such a suit is not excepted from the jurisdiction of the Small Cause Court under that Act. ANNAMALAI *v* SUBRAMANYAN I. L. R. 15 Mad. 298

118 ———— *Suit for damages for value of timber washed up and taken away by Government.* Where ...

LALL SINGH *v.* GOVERNMENT . 9 W. R. 97

119 ———— *Suit to recover value of ...*

SMALL CAUSE COURT, MOFUSSIL—*contd.*

2. JURISDICTION—*contd.*

Cause Court had jurisdiction to entertain the suit. MADUTHAN *v* SUBBIER . . 6 Mad. 34

120. ———— *Suit for damages for illegal attachment—Civil Proced...*

costs awarded to the defendants, who thereupon sued the plaintiffs to recover damages sustained consequent on the attachment, *viz.*, first for what could have been earned by means of the fishing nets had they not been under attachment; and second, for injury suffered by the nets owing to carelessness and exposure. *Held,* that the suit was properly cognizable in the Small Cause Court, and the Judge was at liberty to take into consideration both elements of damage. Such a suit would only be barred when compensation had been awarded under s. 88 of the Civil Procedure Code. GOBURDHUN MAJHEE *v.* BANEE CHUNDER DOSS 21 W. R. 375

121. ———— *Provincial Small Cause Courts Act (IX of 1887), s. 35—Suit for compensation for illegal attachment—Suit to recover money paid in excess.* The plaintiff sued to recover from his landlord a sum which the defendant had collected in excess of what was properly due to him by distraint of the plaintiff's cattle. *Held,* that the suit was cognizable by the Small Cause Court KARUPPANAN AMBALAM *v* RAMASAMI CHETTI I. L. R. 21 Mad. 239

122 ———— *Suit for damages ...*

... 15 W. R. 100

123 ———— *Suit for damages for obstruction of watercourse—Provincial Small Cause Courts Act (IX of 1887), Sch. II, cl 35 (i)—"Diversion," meaning of* If by obstruction the flow of water is diverted from a plaintiff's lands, such obstruction amounts to "diversion" within the meaning of cl 35 (i) of Sch. II of Act IX of 1887, and a suit for damages for such obstruction will not lie in the Small Cause Court PERIAKARUPPAN *v.* PALANIVANDI . . I. L. R. 18 Mad. 28

124 ———— *Suit for damages for injury caused by diversion of watercourse—Provincial Small Cause Courts Act (IX of 1887), Sch. II, cl. 35 (i).* A suit to recover damages for ...

I. L. R. 20 Bom. 283

SMALL CAUSE COURT, MOFUSSIL
—contd.

2. JURISDICTION—*contd.*

125. ——————— *Suit for damages for omission to certify payments to the Court. Held,* that a suit will lie in the Small Cause Court for damages sustained in consequence of decree-holder fraudulently omitting to certify to the Court the payments made by plaintiff in satisfaction of a decree out of Court, when there was a contract made that he should so certify them BHUGOBAN TANTEE *v.* GOBIND CHUNDER ROY 9 W. R. 210

But unless there is actual damage, the suit should be dismissed MOHIM MUNDUL *v* KALA CHAND NAEK . . . . 13 W. R. 147

126 ——————— *Suit to recover money paid to save estate from sale* A suit to recover money as damages, measuring the loss to which plaintiff was put by having to pay on behalf of defendant money which defendant had agreed to pay out of the purchase-money in order to save from [illegible]

127 ——————— *Suit to recover money paid for defendant—Act XI of 1865, s. 6* A suit to recover money which plaintiff has paid for defendant is in the nature of a suit for damages, as described in s 6 of the Small Cause Court Act GOPAL SURNOKAR *v* GOYARAM SIRCAR 13 W. R 273

128 ——————— *Act XI of 1865, s 6—Suit for damages* A suit to recover the price [illegible]

129 ——————— *Civil Procedure Code, 1882, s 586—Suit for money paid and dama-* [illegible]

Courts Act (IX of 1887), and is therefore not entirely a suit of the nature of a Small Cause Court suit S 586 of the Civil Procedure Code, 1882, does not bar a second appeal in such a suit. DEWAN ROY *v* SUNDAR TEWARY I. L. R. 24 Calc. 163

130 ——————— *Code of Civil Procedure, 1882, s. 586—Suit for compensation for use and occupation of land valued at less than R500 —Provincial Small Cause Courts Act (IX of 1887), ss. 15 and 23, Sch. II, Art. 8* A suit for compensation for money realized by the defendants from the actual occupants of land, who were stated to have been the plaintiff's tenants, is a suit not for rent, but for damages of a nature cognizable by the [illegible]

Court under s 23 of the Provincial Small Cause Courts Act, on the ground that the suit involved a question of title. *Mohesh Mahto* v *Piru, I L R. 2 Calc 470*, and *Muttukaruppan* v. *Sellan, I L. R. 15 Mad. 98*, referred to KALI KRISHNA TAGORE *v.* IZZATANNISSA KHATUN I. L. R. 24 Calc. 557

See MAKHAN LALL DUTTA *v* GORIBULLAH SARDAR . . I. L. R. 17 Calc 54

SADA SHANKAR *v* BRIJ MOHAN DASS I. L. R. 20 All. 480

VIRA PILLAI *v* RANGASAMI PILLAI I. L. R. 22 Mad. 149

131. ——————— *Suit for damages —Act XI of 1865, s 6* An action to recover from the hands of defendants money collected from a landed estate which had been charged with the payment thereof under an instrument to which the defendants had not been parties was *held* to be a personal action for damages within the meaning of Act XI of 1865, s 6 BHUGOBUTTY CHURN BAJPAYE *v* SARODA PERSHAD SOOKUL 22 W. R. 298

132 ——————— *Suit to recover as damages profits from service lands—Mad Reg VI of 1831, s 3* A small Cause Court has no jurisdiction to entertain a suit to recover damages claimed in respect of the profits which the plaintiff would have derived from service inam lands by reason of s 3 of Reg VI of 1831 TOPPYA PILLAY *v* PEDDOO PILLAY . . . . 5 Mad. 383

133 ——————— *Suit by representative for share of debt due to deceased—Withdrawal of money on deposit by other representatives— —Wrongful act* The legal representatives having allotted the estate of the deceased in certain shares among themselves, a sum of money less than R500, the entire amount of a debt due to the deceased, was deposited with a banker by the debtor, and was withdrawn by certain of the legal representatives. The others thereupon sued in the ordinary Civil Court for their proportionate share. *Held*, that the suit was a suit for damages caused by the wrongful act of the defendants in withdrawing the whole amount, and was therefore cognizable by a Small Cause Court. KUMRUNNESSA *v.* SUJAN 10 C. L. R. 31

134 ——————— *Suit for damages* [illegible]

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2 JURISDICTION—*contd.*

114. ——————— *Act XI of 1865, s. 6—Suit for damage to crops.* The term "damages" in s. 6 of *Act XI of 1865* includes damages to crops, and a suit to recover damages for the wrongful reaping and carrying off the produce of certain fields is cognizable by a Court of Small Causes. DAUR SINHA *v* RUGHNUNDUN SINHA
3 N. W. 101

115. ——————— *Suit for value of produce carried off by defendant cultivating plaintiff's land without consent.* A suit to recover the value of produce carried off without plaintiff's consent from his land, which had been forcibly retained in the cultivation of defendant No. 1, assisted by defendant No. 2, was *held* to be a suit not for rent, but for damages KAROO KAHAR *v* NAUBOO SINGH . . . . 24 W. R. 380

116 ——————— *Provincial Small Cause Courts Act (IX of 1887)—Suit for damages for the forcible cutting and carrying away of grass.* [illegible]

[illegible] referred to. KRISHNA PROSAD NAG *v* MAIZUDDIN BISWAS
I. L. R. 17 Calc. 707

117. ——————— *Provincial Small Cause Courts Act (IX of 1887), Sch II, cl. 31—Suit for profits of land* A suit to recover with interest from the date of suit R500, the value of crops alleged to have been illegally carried away by the defendant, while the plaintiff was in possession, is not a suit for the profits of land within cl. 31 of Sch. II of Act IX of 1887; such a suit is not excepted from the jurisdiction of the Small Cause Court under that Act ANNAMALAI *v* SUBRAMANYAN
I. L. R. 15 Mad. 298

118. ——————— *Suit for damages for value of timber washed up and taken away by Government.* Where a landowner sued for dam- [illegible]

[illegible] cognizable by a Court of Small Causes. CHUTTER LALL SINGH *v.* GOVERNMENT . 9 W. R. 97

119 ——————— *Suit to recover value of fishing nets* The plaintiffs sued the defendants in the Small Cause Court to recover the [illegible]

[illegible] business as fishermen by reason of the detention of their nets by the defendants. *Held,* that the Small Cause Court had jurisdiction to entertain the suit. MADUTHAN *v.* SUBBIER . . 6 Mad. 34

[illegible]

costs awarded to the defendants, who thereupon sued the plaintiffs to recover damages sustained consequent on the attachment, *viz.*, first for what could have been earned by means of the fishing nets had they not been under attachment; and second, for injury suffered by the nets owing to carelessness and exposure. *Held*, that the suit was [illegible]

[illegible] under s. 88 of the Civil Procedure Code GOBURDHUN MAJHEE *v.* BANEE CHUNDER DOSS
21 W. R. 375

121. ——————— *Provincial Small Cause Courts Act (IX of 1887), s 35—Suit for compensation for illegal attachment—Suit to recover money paid in excess.* The plaintiff sued to recover from his landlord a sum which the defendant had [illegible]

[illegible] I. L. R 21 Mad. 239

122 ——————— *Suit for damages for breaking wall* In a suit for damages for breaking [illegible] from a wall where [illegible] value [illegible] replied [illegible] Hindu [illegible] he suit [illegible] SHUM- [illegible] MULLICK . . . . . 13 W. R. 105

123. ——————— *Suit for damages for obstruction of watercourse—Provincial Small Cause Courts Act (IX of 1887), Sch II, cl 35 (i)—"Diversion," meaning of* If by obstruction the flow of water is diverted from a plaintiff's lands, such obstruction amounts to "diversion" within the meaning of cl 35 (i) of Sch II of Act IX of 1887, and a suit for damages for such obstruction will not lie in the Small Cause Court PERIAKARUPPAN *v.* PALANIVANDI . . I. L. R. 18 Mad. 28

124 ——————— *Suit for damages for injury caused by diversion of watercourse—Provincial Small Cause Courts Act (IX of 1887), Sch II, cl 35 (i).* A suit to recover damages for [illegible] water- [illegible] Cause [illegible] excep- [illegible] *In* [illegible]

I. L. R. 20 Bom. 283

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

125 ———————— *Suit for damages for omission to certify payments to the Court. Held,* that a suit will lie in the Small Cause Court for

TANTEE *v.* GOBIND CHUNDER ROY 9 W. R. 210

But unless there is actual damage, the suit should be dismissed. MOHIM MUNDUL *v* KALA CHAND NAEK . . . 13 W. R. 147

126 ———————— *Suit to recover money paid to save estate from sale* A suit to recover money as damages, measuring the loss to which plaintiff was put by having to pay on behalf of defendant money which defendant had agreed to

127 ———————— *Suit to recover money paid for defendant—Act XI of 1865, s. 6.* A suit to recover money which plaintiff has paid for defendant is in the nature of a suit for damages, as described in s 6 of the Small Cause Court Act GOPAL SURNOKAR *v* GOYARAM SIRCAR 13 W. R. 273

128 ———————— *Act XI of 1865, s. 6—Suit for damages.* A suit to recover the price

129 ———————— *Civil Procedure*

does not bar a second appeal in such a suit. DEWAN ROY *v* SUNDAR TEWARY I. L R. 24 Calc. 163

130 ———————— *Code of Civil Procedure, 1882, s. 586—Suit for compensation for use and occupation of land valued at less than R500 —Provincial Small Cause Courts Act (IX of 1887), ss. 15 and 23, Sch. II, Art. 8.* A suit for compensation for money realized by the defendants from the actual occupants of land, who were stated to have been the plaintiff's tenants, is a suit not for rent, but for damages of a nature cognizable by the Small Cause Court; therefore no second appeal lies to the High Court in such a suit valued at less than

See MAKHAN LALL DUTTA *v* GORIBULLAH SARDAR . . I. L. R. 17 Calc 54

SADA SHANKAR *v* BRIJ MOHAN DASS I L R. 20 All. 4801

VIRA PILLAI *v* RANGASAMI PILLAI I. L. R. 22 Mad. 149

131. ———————— *Suit for damages —Act XI of 1865, s 6* An action to recover from the hands of defendants money collected from a landed estate which had been charged with the payment thereof under an instrument to which the defendants had not been parties was *held* to be a personal action for damages within the meaning of Act XI of 1865, s 6 BHUGOBUTTY CHURN BAJPAYE *v* SARODA PERSHAD SOOKUL 22 W. R. 298

132 ———————— *Suit to recover as damages profits from service lands—Mad Reg VI of 1831, s 3* A small Cause Court has no jurisdiction to entertain a suit to recover damages claimed in respect of the profits which the plaintiff would have derived from service inam lands by reason of s 3 of Reg VI of 1831 TOPPYA PILLAY *v* PEDDOO PILLAY . . . 5 Mad. 383

133 ———————— *Suit by representative for share of debt due to deceased—With-*

10 C. L. R. 31

134 ———————— *Suit for damages for fraudulent concealment and*

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

[illegible]

ges for the injury sustained by plaintiff by reason of the fraudulent concealment and misrepresentation, and to be cognizable by a Small Cause Court. FATIMA BEGUM *v.* MOOSA . **18 W. R. 128**

135. ——— *Suit for damages for withholding receipt for rent* A suit for damages for withholding a receipt for rent is not cognizable by a Court of Small Causes, and therefore was *held* not to come under the purview of Act XXIII of 1861, s. 27. SHOYLENDRO GEER SUNNYASEE *v.* PATOO DOSS BUSANEA . . **23 W. R. 304**

136 ——— *Suit for recovery of money paid to, but misapplied by, ijaradar.* A [illegible]

137. ——— *Act XI of 1865, s. 6—Suit for overpayment by mistake—Contract Act, s. 72.* A suit under s 72 of the Contract Act to recover from a creditor the amount of an overpay- [illegible]

I. L. R. 2 All. 671

138 ——— *Provincial Small Cause Courts Act (IX of 1887), Sch II—Suit for damages for breach of covenant not to cut and carry away trees—Jurisdiction of Small Cause Court—Civil Procedure Code (Act XIV of 1882), s. 622—Suit brought on the ordinary side of Court, though maintainable on the Small Cause side—Revision by High Court.* [illegible]

to cut certain green trees for his own use and certain other green trees for agricultural purposes, as well as all trees planted by himself, at his option; and he was further entitled to take and use all decayed and fallen trees. The landlord sued the tenants to recover R20, being the value of trees which, it was alleged, the tenants had cut and taken away. The suit was instituted on the ordinary side of the Court of first instance, and no objection was raised, either there or on appeal, as to the competency of that Court to entertain it The District Munsif passed a decree in plaintiff's favour for a portion of the amount claimed, which was increased by R1-8-0 by the Subordinate Judge, on appeal. Upon

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

a civil revision petition being filed in the High Court:—*Held,* that the suit was one for damages for breach of covenant, and as such was cognizable by a Court of Small Causes, and that the Court in which it had been instituted had no jurisdiction to entertain it. RAMASAMY CHETTIAR *v.* ORR (1902) **I. L. R. 26 Mad. 176**

139. ——— **Declaratory Decree**—*Suit to determine co-parcener's rights in moveable property.* A Small Cause Court has no power to entertain a suit for a declaratory decree. There is nothing to prevent a Small Cause Court from determining [illegible]

property sued for in such shares as the Judge may consider them to be entitled. A declaratory decree of the relative rights of the parties cannot be made. AKBAR ALI *v.* JEZUDDIN . **I. L. R. 8 Calc. 399**

140. ——— *Suit for declaration of right to bring property to sale as liable to attachment.* A suit in which the plaintiff sues for a declaration of his right to bring certain property to sale as the property of his judgment-debtor cannot be entertained by a Small Cause Court RAMESHUR KULWAR *v* BEHAREE SETH **3 N. W. 208 : Agra F. B. Ed. 1874, 254**

141 ——— *Suit for declara-* [illegible]

142. ——— *Act XI of 1865, s. 6—Declaration that bond is satisfied—Claim for money on bond* A claim for money on a bond as specified in Act XI of 1865, s. 6, does not include case for a declaration that the bond has been satisfied and is inoperative. A suit of that description, if maintainable, must be brought in the regular Court. AGUR MULLICK MUNDAL *v* DEBNATH CHATTERJEE . . . **24 W. R. 190**

143. ——— *Suit for declaration of right to moveable property wrongfully taken.* Where a suit is brought for property wrongfully taken by the defendant praying for restoration [illegible]

with the defendants of a division of a caste, [illegible] such tenants-in-common with them of certain cooking vessels of less than R500 in value, were excluded by the defendants from possession and common use of the vessels, and sought for a declaration

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

that the plaintiffs and the defendants were equally entitled to the use of the said vessels, and for restoration of the same to some third person who should hold them to the use of the plaintiffs and defendants:—*Held*, that the suit was not a suit for a declaratory decree, but for the recovery of property within the meaning of the Small Cause Court Act (XI of 1865), and as such was exclusively triable by Small Cause Courts were Court The proceedings of the lower Court pronounced null, and the plaint directed to be returned for presentation in the proper Court. KALIAN DAYAL *v* KALIAN NARAR I. L. R. 9 Bom 259

144 ——————— A suit for a declaration of right by a person against whom an order has been passed under s. 280 of the Civil Procedure Code, 1877, will not lie in the Small Cause Court. *Ramdhan Biswas* v. *Kefal Biswas, 1 B. L. R S. N. 10 10 W R 141*, *Moozdeen Gazee* v. *Dinobundhoo Gossame, 13 W R 99;* and *Woomesh Chander Bose* v. *Muddun Mohan Sircar, 2 W. R 66*, discussed and explained. SHIBOO NARAIN SINGH *v* MUDDEN ALLY NATABAR NANDI *v.* KALIDASS PALI . I. L. R. 7 Calc. 608 : 9 C. L. R. 8

145 —Decree—*Suits to recover certain decrees, and claim to execute them* In addition to a claim to recover certain decrees, amounting together in value to less than R500, the plaintiffs

146 ——————— *Suit on decree of Civil Court* A suit cannot be maintained in a Small Cause Court in the mofussil to enforce the decree of a Civil Court MANCHHARAM KALLIANDAS *v* BAKSHE SAHEB MIR MAINUDIN KHAN 6 Bom A C. 231

147. ——————— *Suit for balance due on decree of Small Cause Court* A suit cannot be maintained in a Small Cause Court in the mofussil to recover the unsatisfied balance of a decree of such Court SANDES *v* JOMIR SHAIKH 9 W. R. 399

148 ——————— *Suit for instalment of decree under Act X with stipulation for execution of decree in default* Where a defendant

AGHORE CHUNDER MOOKERJEE *v* WOOMASOONDEREE DEBEA . . . 7 W. R. 216

149 ——————— *Suit to set aside decree of Small Cause Court.* A suit to set aside a decree of a Small Cause Court when no defect of jurisdiction is manifest on the face of the proceeding and where there is no reason to suppose that the decree was obtained by fraud or collusion, cannot be maintained in a Court of Small Causes BAMA SOONDUREE DEBEE *v* KAMINEE BEWA 10 W. R 352

150. ——————— *Application to set aside an ex parte decree*

the decree or give security as provided for by the

an ex parte decree *Jogi Ahir* v *Bishen Dayal Singh, I L. R 18 Calc 83*, followed *Ramasami* v. *Kurisu, I L R 13 Mad 178*, and *Muhammad Fazal Ali* v *Karim Khan, Punj Rec (1891) 410*, dissented from JAGAN NATH *v* CHET RAM (1906) I. L R. 28 All. 470

151. ——— Deed—*Suit for re-formation of a deed.* A Small Cause Court has no jurisdiction to entertain a suit for the re-formation of a deed. GULABHAI MONDAS *v* DAYABHAI GOVARDHANDAS 10 Bom. 51

152 ——————— *Suit as to validity of gift or deed of sale by Hindu law.* A Small Cause Court has jurisdiction in cases involving questions as to the validity or otherwise under the Hindu Law of a deed of gift or a deed of sale. GRISH CHUNDER ROY *v* GOBIND SINGH 17 W. R. 88

See ROOGHOORAM BISWAS *v* RAMCHANDER DOBEY W. R. F. B 127 : B. L. R. Sup. Vol. 34

and HUREE PARSAD MALEE *v* KOONJO BEHARY SHAHA . . Marsh. 99 : 1 Hay 238

153 Dower

of very considerable difficulty may be raised in it collaterally with regard to the validity of the marriage. The decision of the Small Cause Court on

154 ——————— *Suit for deferred dower—Act XI of 1865, s. 6.* A suit for deferred dower or muwajjal, payable to the wife by the husband upon her divorce, or upon the husband's death by his heirs out of his estate, is cognizable by a Small Cause Court. HAYATUNNISSA BIBEE *v.* ASIROODDEEN . . . . 18 W R. 304

155 ——————— *Suit for property conveyed in lieu of dower* *Held*, that a suit

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

for R100 would not lie in the Small Cause Court upon a deed by which the defendant conveyed to

156. ——— Dwelling or carrying on business—"*Dwelling*"—*Actual residence* The

157. ——— *Dwelling—Casual residence—Act XLII of 1860, s 4.* Mere casual presence, or even residence for a temporary purpose, without the intention of remaining is not dwelling within the jurisdiction of a Small Cause Court within the meaning of s 4 of Act XLII of 1860. A person, resided at Coimbatore, but had some cultivated land within the local jurisdiction of Ootacamund to which place he came to answer another demand against him *Held*, that he did not dwell within the jurisdiction of the Ootacamund Small Cause Court SAMINATHA PILLAI *v.* VARISAI MAHOMED RAVATTAN . . . 2 Mad 304

158. ——— *Temporary absence—Dwelling—Act XI of 1865, s 8* Although a defendant may be temporarily absent from his dwelling-house, yet if he retains the same, he will be held to dwell there within the meaning of the Small Cause Court Act (XI of 1865) To dwell in a place is to have one's permanent abode there MADHO DOSS *v* SITA RAM . . 3 N. W. 121

159. ——— *Temporary absence from imprisonment—Residence* Temporary imprisonment beyond the jurisdiction of a Small Cause Court was *held* not to bar the jurisdiction of that Court in respect of defendants who formerly resided within its jurisdiction and whose families continued to reside within it, the inference from the latter fact being that the defendants had an intention of returning to their former place of abode on the termination of their imprisonment. GOPAL CHUNDER SIRCAR *v.* KURNODHAR MOOCHEE 7 W. R. 349

160 ——— *Dwelling—Temporary residence—Attendance at race meeting* In the

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

for a few days, he was in that case also not dwelling at Meerut, but if, having availed himself of furlough and having retained no permanent place of residence at Shahjehanpore nor having any permanent place of residence elsewhere, he attended the

Meerut when the summons was served. MAYHEW *v* TULLOCH . . . . . 4 N. W. 25

161. ——— *Residence as domestic servant.* A suit is not maintainable at K against a defendant who is employed as a domestic servant at M, and who is not shown to have any immediate or early intention of returning to K where his family are continuing to reside; the word "dwell" in s. 8, Act XI of 1865, it being *held*, must be used in the strict sense of actual residence. PORGASH PARAY *v.* HACHIM . 7 W. R. 417,

162 ——— *Act XI of 1865,*

163 ——— *Suit against wife —Husband not in jurisdiction.* A suit against a woman living under the protection of her husband is not cognizable in a Small Cause Court, if at the time of the commencement of the suit the husband does not dwell, nor personally or through a servant or agent carry on business or work for gain within the local limits of the jurisdiction of the Court. BOWMAN *v* SHAWE . . 10 W. R. 240

164 ——— *Commission agent —Residence—Carrying on business.* A person who carries on business at a place by a commission agent, to whom he only consigns goods, cannot be said to carry on business or personally to work for gain within the local limits of a Court where the commission agent resides GOPEE MOHUN ROY *v.* PROTAP CHUNDER ROY . . 11 W. R. 530

165. ——— *Act XI of 1865, s 8—Residence—Zamindari business.* Zamindari business is not such business as is intended by Act XI of 1865, s 8, and mookhtears and karpurdazes carrying it on are not servants or agents within the meaning of s. 11. Where zamindars from the mofussil come in occasionally to the head-quarters of a Small Cause Court to prosecute or defend suits,

SMALL CAUSE COURT, MOFUSSIL —contd

2. JURISDICTION—contd.

settle business with creditors or for social intercourse or medical treatment, and remain in their [illegible]

ANONYMOUS . . . 23 W R. 223

166 ——— *Act XI of 1865, s 9—Suit against Agent of Governor General.* A suit against an Agent to the Governor General on the part of a Government, is substantially a suit [illegible]

167 ——— *Residence in* [illegible]

168 ——— *Dwelling—Act XI of 1865, s 8* The defendant, an officer in a regiment stationed at Vellore, was sued for money due for the rent of a house occupied by him at Madras While absent on leave on medical certificate, he rented the plaintiff's house at Madras, where he was residing at the time of the institution of the suit; but he returned to Vellore previous to the [illegible]

169 ——— *Defendant residing out of jurisdiction—Act XXIII of 1861, s 4* The provisions of s 4 of Act XXIII of 1861 were applicable to Courts of Small Causes in the mofussil. ANPURNABAI v SAKHARAM JAGANNATH 6 Bom. A. C. 256

170 ——— *Cause of action—Defendant residing out of jurisdiction—Act XXIII of 1861, s. 4* When a cause of action had [illegible]

JAGJIVANDAS v. NATHA BAJA 6 Bom. A. C. 131

MOHUR RAM MOODEE v. KARBAREE SIRDAR. 18 W. R. 312

171. ——— *Suit against joint obligors—Act XLII of 1860, s. 21.* An order from the High Court was necessary to enable a Court of Small Causes to entertain a suit against several obligors, one of whom at the time of [illegible]

of the plaint, upon a statement of the circumstances of the particular case S. 21 of Act XLII of 1860 was to have the same operation as if Act XXIII of 1861 had formed part of Act VIII of 1859 when it became law. SABHAPATI MUDALI v MUTTUSVAMI MUDALI . . . . 1 Mad. 103

172 ——— *Madras Civil Courts Act (III of 1873)—Act XI of 1865, s 8.* [illegible]

[illegible] High Court is necessary ANONYMOUS 8 Mad Ap. 10

173 ——— *Suit for debt against defendants with joint liability—Act XXIII of 1861, s. 4* A suit for debt against two defend- [illegible]

174 ——— *Joint bond—One of parties out of jurisdiction—Act XI of 1865,* [illegible]

BAKSH MISTRI v BENI MANDAL 6 B. L. R. 719 note · 14 W. R. 156

175 ——— **Endowment**—*Suit by Mahomedan for share of property under terms of certain endowment—Provincial Small Cause Courts Act (IX of 1887), Sch II, cl. 13.* A suit by a Mahomedan to obtain a share in property distributable under the terms of a certain endowment is a suit [illegible]

I. L. R. 14 All. 413

176. ——— **Foreign judgment**—*Jurisdiction—Suit on foreign judgment* A suit upon a

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

foreign judgment is not cognizable by a Court of Small Causes established under Act XI of 1865. ANAKATTIL NARAYANA KRISHNAN KARTHAVU *v.* KOCHERI PILO PILO . I. L. R. 6 Mad. 191

177. ——— *Suit on foreign judgment—Judgment of Court of Native State* No suit is maintainable in a Small Cause Court in British India founded upon the judgment of a Court situate in a Native State BHAVANISHANKAR SHEVAKRAM *v.* PURSADRI KALIDAS

I. L. R. 6 Bom. 292

178. ——— Government—*Suit to which Government officials are parties—Act XI of 1865, ss 1, 6, and 9—Local Government* A suit, within the pecuniary and other limits prescribed for Courts of Small Causes, in which an officer of Government is a party in his official capacity, may be entertained by a Court of Small Causes in the mofussil. The phrase "Local Government" used in s 9, and

179. ——— *Suit for compensation for damages against the Secretary of State—Provincial Small Cause Courts Act (IX of 1887), Sch, II, Art. 3* A suit was brought against the

IX of 1887, and that it was cognizable by the Small Cause Court. BUNWARI LAL MOOKERJEE *v.* SECRETARY OF STATE FOR INDIA

I. L. R. 17 Calc 290

180. ——— *Provincial Small Cause Courts Act (IX of 1887), Sch II, Art 3—Karnam in a zamindari—Officer of Government—Public servant* The plaintiffs, being the lessees

181. ——— Immoveable property—*Provincial Small Cause Courts Act (IX of 1887), Sch II, Arts 4 and 13—Hereditary allowance—Bombay General Clauses Act (Bom Act III of 1886)* Plaintiffs sued in the Court of Small Causes at

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

reversing the decree, that the suit was not for possession of immoveable property or recovery of an

GANESH JOSHI *v.* YESHAVANTRAO

I. L. R. 21 Bom. 387

182 ——— Immoveable property—*Provincial Small Cause Courts Act (IX of 1887), Sch II, cls (13) and (31)—Small Cause Court.* The plaintiff claimed, as land-owner, to be entitled to receive the rents or fees paid by shopkeepers for the temporary occupation, during a fair, of a piece of land, which, the plaintiff alleged, belonged to his *mahal* He further alleged that the defendant, claiming that the land was his, had wrongfully

referred to RAMESHAR SINGH *v* DURGA DAS (1901) . . . . I. L. R. 23 All. 437

183. ——— Intestacy—*Suit for money as share under an intestacy.* The decree of a Small Cause Court was annulled as made without jurisdiction in a suit to recover money as personal property in respect of a share under an intestacy. GRISH CHUNDER SINGH *v.* AUNA DOSSEE

17 W. R. 46

NOBIN CHUNDER GOSSAMEE *v.* DRIBO MOYEE DEBEE . . . . . 17 W. R. 520

184. ——— *Suit for possession of personal property as heir under former decree* A suit for possession of personal property to which the plaintiff has been, by a decree in a former suit, declared entitled as heir of a third person, is not a suit coming within the second exception to s. 6 of Act XI of 1865, and is

MONDUL . . .

185 ——— Maintenance—*Suit for arrears of maintenance—Right to maintenance* A Small Cause Court has jurisdiction only as regards arrears of fixed maintenance, but not to determine the right to receive it BHUGWAN CHUNDER BOSE *v.* BINDOOBASHINEE DOSSEE 6 W. R. 286

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd*

186. ——— *Suit for arrears of maintenance* *Held* that a suit by a widow for arrears of maintenance fixed by a Munsif's decree where defendant urged non-liability on the ground that the property of plaintiff's husband was exhausted, and that defendant had already brought an action in the Munsif's Court for release from his liability, was not cognizable by the Small Cause Court. KAMINEE DOSSEE *v* BISHONATH SHAHA 9 W. R 214

HEMA KOOERREE *v* AJOODHYA PERSHAD 24 W. R. 474

187. ——— *Maintenance, suit for arrears of—Fixed maintenance—Small*

vincial Small Cause Courts Act (IX of 1887), and is therefore not cognizable by a Court of Small Causes. AMRITOMOYE DASIA *v* BHOGIRUTH CHUNDRA . . . I. L. R. 15 Calc. 164

188. ——— *Provincial Small Cause Courts Act (IX of 1887), cl 38, Sch II—Suit for arrears of maintenance due under a bond or agreement* A suit for arrears of maintenance due under a bond or agreement is not cognizable by a Provincial Court of Small Causes under cl. 38 of Sch. II of Act IX of 1887 BHAGVANTRAO *v* GANPATRAO . I L. R. 16 Bom. 267

189. ——— *Suit for arrears of maintenance—Provincial Small Cause Court*

I L R. 20 Mad 29

190 ——— *Suit by Hindu widow* *Held*, that a suit for maintenance by a Hindu widow is cognizable by a Court of Small Causes in the mofussil JUDAL KOM RANCHHOD MULJI *v* HIRA MULJI . 4 Bom. A. C 75

RAMCHANDRA DIKSHIT *v* SAVITRIBAI 4 Bom A. C. 73

But *see quære* in RAMABAI *v* TRIMBAK GANESH DESAI . . . . . . 9 Bom. 283

191. ——— *Suit for maintenance* In the absence of any special bond or other contract for the payment of maintenance, a suit for maintenance is not cognizable in a Court of Small Causes in the mofussil. SIDLINGAPA *v* SIDAVA KOM SIDLINGAPA .I L. R 2 Bom. 624

NOBIN KALEE DEBEA *v* BINDUBASHINEE DEBEA . . . 5 W. R. S C. C. Ref. 5

192. ——— *Suit for maintenance* In a suit by a Hindu widow against her husband's brother for an allowance as maintenance and for the expenses of a pilgrimage :—*Held* (following *Sidlingapa* v *Sidava kom Sidlingapa, I L*

cured by bond or other special contract *Nobin Kalee Debea* v *Bindubashinee Debea, 5 W R. S. C. C Ref 5,* followed APAJI CHINTAMAN DEVDHAR *v* GANGABAI I. L. R. 2 Bom. 632

193 ——— *Act XI of 1865, s 6—Civil Court—Suit by the mother of a child to recover from the father the cost of its maintenance* A Mahomedan wife, divorced by her husband while pregnant, subsequently gave birth to a son. The father refused to maintain the child, which was therefore maintained by the mother, who now sued the father to recover the amount expended by her in the child's maintenance *Held*, that the obligation on which the suit was based was one, if it existed at all, that was imposed on the father by the law, and did not arise out of any contract, express or implied · hence the suit was one not cognizable by a Court of Small Causes, but by the ordinary Civil Court NURBIBI *v*. HUSEN LAL I. L. R. 7 Bom. 537

194. ——— *Suit for breach of agreement for payment in nature of maintenance.* Where the defendant entered into an agreement

tertain a suit for a breach of the agreement PAUPAMMA *v* CHINNA REDDY 5 Mad 432

195. ——— *Provincial Small Cause Courts Act (IX of 1887), Sch. II, Art 38—Suit for maintenance based on a family arrangement* A suit for maintenance based on a family arrangement is within the jurisdiction of a Mofussil Small Cause Court KOMU *v* KRISHNA I. L. R. 11 Mad. 134

196 ——— *Suit for maintenance fixed by decree of Court* A suit for maintenance fixed by a Court's decree is not cognizable by a Small Cause Court PAHLUD SINGH *v* AHLUD SINGH . . . . . 6 N. W. 91

197. ——— *Suit for maintenance fixed by decree.* A suit by a Hindu widow for arrears of maintenance, based on a decree charging immoveable property, with the payment of the maintenance allowance, is not a suit of the nature cognizable in a Court of Small Causes *Pahlud Singh* v. *Ahlud Singh, 6 N. W. 91,* followed. DHARAM CHAND *v*. JANKI I. L. R. 5 All. 389

198. ——— *Suit for arrears of maintenance fixed by award* A suit for arrears of maintenance, at a rate ascertained by an award, is not a suit of the nature cognizable by a Court of Small Causes· *Guneshee* v. *Chotay Lall, 3 N. W.*

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd*

117. The suit was bad, being based upon an award, in which the arbitrators had exceeded their powers. DURJAN SINGH *v* SIBIA
7 N. W. 329

199. ——————— *Contract Act (IX of 1872), s. 23—Consideration opposed to public policy—Parents making profit for themselves out of the marriage of their daughter—Small Cause Court suit—Provincial Small Cause Courts Act (IX of 1887), Sch II, cl. (38)* The parents of a girl caused her to enter into an utterly unsuitable marriage, the husband agreeing to pay a certain sum monthly for the maintenance of the parents On suit by the mother to recover certain instalments of the maintenance so promised, it was *held*, (i) that the suit was one not cognizable by a Court of Small Causes; and (ii) that the agreement was one which was opposed to public policy, and ought not to be enforced *Bhagvantrao* v. *Ganpatrao, I L. R 16 Bom 267*, *Dholidas Ishvar* v *Fulchand Chhagan, I. L R 22 Bom 658*, and *Vishvanathan* v *Saminathan, I. L. R. 13 Mad. 823*, referred to BALDEO SAHAI *v.* JUMNA KUNWAR (1901) . . **I. L. R 23 All. 495**

200. ——— **Marriage**—*Provincial Small Cause Courts Act (IX of 1887), Sch. II, Art 35, cl. (g)—Suit for actual pecuniary damages for breach of contract of marriage—Jurisdiction* A suit for actual pecuniary damages for breach of contract of marriage comes within cl. (*g*) of Art. 35, Sch II of Act IX of 1887, and as such is excluded from the jurisdiction of the Small Cause Court KALI SUNKER DASS *v* KOYLASH CHUNDER DASS
I. L. R. 15 Calc. 833

201. ——— **Mesne profits**—*Suit solely for mesne profits* A suit for mesne profits only, no other question arising, is cognizable by a Small Cause Court SUNGRAM SINGH *v* JUGOUN SINGH
2 N W. 18

202 ——————— *Suit for mesne profits—Provincial Small* [illegible]

within Art 31 of Sch. II of Act IX of 1887, and therefore is not cognizable by a Small Cause Court SRIRAM SAMANTA *v* KALIDAS DEY
I. L. R. 18 Calc 31

203 ——————— *Provincial Small Cause Courts Act (IX of 1887), Sch. II, Art. 31—Suit for mesne profits under R500—Civil Procedure Code (Act XIV of 1882), s 586—Second appeal* A suit for mesne profits [illegible]

[illegible] of s. 586 of the Civil Procedure Code, and no second appeal lies from a decision in it *Kunja*

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

Behary Singh v. *Madhub Chundra Ghose, I. L R. 23 Calc. 884*, followed SESHAGIRI AYYAR *v.* MARAKATHAMMAL . . **I. L. R. 22 Mad. 196**

LINGAYYA AYYAVARU *v* MALLIKAYUNA AYYAVARU . . **I. L. R. 22 Mad. 196 note**

204 ——————— *Nature of suit—Appeal—Provincial Small Cause Courts Act (IX of 1887), Sch II, cl (31)* The plaintiff purchased certain land in June, 1892, at a sale in execution of a decree against *R*. He did not obtain formal possession until June, 1894. The defendant was in actual possession of the land, under an alleged private sale by *R* to him in October, 1892 The [illegible]

nature cognizable by Courts of Small Causes, and that, therefore, an appeal lay to the District Court from the Court of the Subordinate Judge ANTONE *v* MAHADEV ANANT (1900). **I. L. R. 25 Bom 85**

205. ——————— *Civil Procedure Code (Act XIV of 1882), s. 586—Suit of a nature cognizable in a Court of Small Causes—Suit for mesne profits—Second appeal—Provincial Small* [illegible]

decision in such a suit SUBBA RAO *v* SITARAMAYYA (1900) . . **I. L. R. 24 Mad. 118**

206. ——————— *Provincial Small Cause Courts Act (IX of 1887), Sch II, cl. (31)—Dispossession of plaintiff from immoveable property by defendant under decree—Receipt by defendant of profits—Decree reversed on appeal—Suit by plaintiff to recover profits wrongfully received by defendant while in possession—Suit not cognizable by Small Cause Court* [illegible]

the decree, which was reversed. While defendant [illegible]

[illegible]RMUTHU *v.* AITHURUSU ROWTHER (F.B. 1901)
I. L. R. 25 Mad. 103

SMALL CAUSE COURT, MOFUSSIL —*contd*

2. JURISDICTION—*contd.*

207. ——— Military men—*Military officer—Military Court of Requests* A Court of Small Causes has no jurisdiction to try an action brought against a military officer in a military cantonment where a Court of Requests is established. ABOO SAIT & Co *v.* ARNOTT. ABOO SAIT & Co. *v.* DALE . . . . 2 Mad. 439

208. ——— *Military Courts of Requests—Act XLII of 1860.* Act XLII of 1860, s. 6, did not alter or interfere with the jurisdiction of the Military Courts of Requests constituted by Stat 20 & 21 Vict, c. 66, s 67 SHANMUGA *v.* MEDDLETON . 1 Mad 443

209. ——— *Liability of European soldiers and their native wives to Small Cause Court jurisdiction* Reference to the High Court regarding the amenability of European soldiers and their native wives to Small Cause Courts in action for debt KEEFE *v* CHRISTIE

5 W. R S C. C. Ref. 21

210 ——— *Non-commis-*

Court, even in cases below thirty pounds COHEN *v.* MCCARTHY . . . 14 W. R. 231

211. ——— *European soldier acting as army school-master* A European soldier

JARAJOO *v.* HAYNES . . . 6 Mad. 83

212. ——— *Suit against military officers—Military Court of Requests—Mutiny Act, 1862, s 103* An action was brought in a Small Cause Court against a military officer residing at M, at which the only other military persons stationed were staff officer and two sergeants *Held*, that the Court had jurisdiction to try the case, the suit not being one exclusively cognizable by a Court of Requests under s 103 of the Mutiny Act of 1864 BASTIAN *v* TIRFMAN

2 Mad. 389

213. ——— *Mutiny Act (30 & 31 Vict, c 13), s. 99—Camp-followers—Jurisdiction of Civil Courts* The defendant, a native

KHODABAKSH . . . 2 B L. R. S. N. 7

S. C. MUSSEROODDEEN *v* KHODA BUX

10 W. R. 386

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

214 ——— *Military officers.* The 99th section of the Mutiny Act (30 & 31 Vict., c 13) exempts officers in all places in India, where anybody of Her Majesty's force may be serving,

S. C. HOSSEINEE *v.* DICKINSON . 9 W. R. 112

215. ——— Money had and received—*Suit for money had and received for plaintiff's use—Implied contract—Zamindari due* A zamindar as such claimed and realized from a tenant R20, being one-fourth of the price of trees cut down and sold by the tenant, basing his claim on general usage The tenant sued to recover such money, denying that any such usage existed *Held*, that the suit was in the nature of one for money had and received by the defendant for the plaintiff's use, and therefore cognizable in the Court of Small Causes *Lachman Prasad* v *Chammi Lal, I. L. R 4 All 6*, followed COLLECTOR OF CAWNPORE *v* KEDARI . . . I. L R. 4 All. 19

216. ——— *Suit by assignee of profits against lambardar* The transferee of a

I. L. R. 5 All. 531

217. ——— *Money deposited under agreement to return mortgaged property* C, a mortgagee, the mortgage having been foreclosed, sued D, the mortgagor, for possession of the mortgaged property and obtained a decree for possession thereof He subsequently agreed with D to surrender the mortgaged property to

deposited by D remained in deposit, and while there C caused it to be attached in execution of a money-decree he held against D, and it was paid to him. L thereupon sued C in the Munsif's Court to recover the money which amounted to R350. *Held*, that the suit must be regarded as one for money had and received by the defendant for the use of the plaintiff, and was therefore one cognizable in a Court of Small Causes. LACHMAN PRASAD *v.* CHAMMI LAL . I. L. R. 4 All. 6

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

218. ———— *Suit for money received for plaintiff's use.* When one of two or more joint creditors receives full payment of the debt, he does so under the implied contract that he will deliver their shares to the other joint creditors Such implied contract falls under the purview of s. 6 of Act XI of 1865, and a suit will lie in the Small Cause Court by a creditor to recover his share *Lachman Prasad* v. *Chammi Lal, I. L. R 4 All 6 ; Huro Mohun Roy* v. *Khetter Monee Dossee, 12 W. R. 372 ; Sunkur Lall Patuck Gyaual* v *Ram Kalee Dhamin, 18 W. R 104,* referred to. SOHAN v MATHURA DAS . I. L. R. 6 All. 449

219. ———— *Suit for share*

Acquisition Act, against the other co-sharers in

the defendants had received. *Held,* that the suit was one for money had and received for the plaintiff's use, and was therefore cognizable by a Court of Small Causes. *Sohan* v *Mathura Das, I. L. R 6 All 449,* followed. UMRAI v RAM LAL

I. L. R. 7 All. 384

220. ———— *Suit to recover share of profits of inam villages—Provincial Small Cause Courts Act (IX of 1887), Sch II, cls (4), (31), s 23, cl. (1)* In a suit for the recovery of a certain share in the profits of inam villages, of which the defendant was the manager, the only relief claimed by the plaintiffs being payment of money, namely, R13 —*Held,* that the suit was for money had and received for plaintiff's use, and was cognizable by the Court of Small Causes It did not fall under cl. (4) of Sch II of the Provincial Small Cause Courts Act (IX of 1887), as it was not a suit for the possession of immoveable property or for recovery of an interest in such property. If the plaintiffs had alleged that the defendant had "wrongfully received" the plaintiff's share of profits, then the suit would have fallen under cl. (31), Sch II of the Act. DAMODAR GOPAL DIKSHIT v. CHINTAMAN BALKRISHNA KARVE

I. L. R. 17 Bom. 42

221. ———— *Provincial Small Cause Courts Act (IX of 1887), Sch. II, Arts. 13 and 31—Small Cause Court Suit—Suit for money had and received—Second appeal—Civil Procedure Code, s. 586* Under a decree passed upon an award a certain market was partitioned between the plaintiff and the defendant. In the plaintiff's share was a temple The plaintiff, alleging that according to the award and the decree thereon the duties and weighment charges, collected in the market were allotted for payment of the expenses of the temple, sued the defendant to recover, for the purposes of the temple, certain dues said to have been collected by the defendant in his share of the market The suit was instituted in the Court of a Munsif *Held,* (i) that the suit was a suit of the nature cognizable by a Court of Small Causes, and (ii) that the fact that the suit was instituted in the Court of a Munsif and not in a Court of Small Causes would not render the provisions of s 586 of the Code of Civil Procedure inapplicable *Kalian Dayal* v. *Kalian Narer, I. L R. 9 Bom. 259,* followed. *Dyebukee Nundun Sen* v *Mudhoo Goopta, I. L. R 1 Calc 123,* dissented from. MAHADEO v. BUDHAI RAM (1904)

I. L. R. 26 All. 358

222. ———— *Provincial Small Cause Courts Act (IX of 1887), Sch II, Art. 31—Jurisdiction of Small Cause Courts—Suit to recover an ascertained sum as profits of land—Second appeal—High Court—Practice.* The plaintiff sued to recover three specific sums of money amounting

able by a Court of Small Causes ; and that, therefore, no second appeal lay GIRJABAI v RAGHUNATH (1905) . . . I. L. R. 30 Bom. 147

223. ———— **Money illegally exacted**—*Suit for money illegally exacted from plaintiff—Mamlatdar's order—Bom. Act V of 1879, s. 87.* A suit for an amount less than R500, which the

GANESH HATHI v MEHTA VYANKATRAM HARJIVAN

I L. R. 8 Bom. 188

224. ———— *Suit to recover illegal exaction of rent* A suit to recover an illegal exaction of rent will not lie in the Small Cause Court. SURBO CHUNDER DOSS v. WOOMANUND ROY . . . . . 11 W. R. 412

225. ———— *Suit to recover assessment by Government officials levied wrongfully —District Judge, jurisdiction of.* A suit to recover less than R500, levied as assessment by Government officials, is cognizable by a Court of Small Causes ; and therefore, under s. 27 of Act XXIII of 1861, no special appeal lay District Judges should ordinarily try such suits when brought in the District Court, and should not delegate the trial to their assistants. RAMCHANDRA BHIKAJI v. COLLECTOR OF RATNAGIRI

10 Bom. 305

226. ———— **Mortgage**—*Money decree on mortgage-bond.* A Small Cause Court has jurisdic-

227. ———— *Money-decree on mortgage-bond* The Small Cause Court has no

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

228. ———————— *Suit to enforce contract pledging moveable property* Plaintiff sued for recovery of a sum of money lent upon the pledge of personal property, and asked that the moveable property pledged might be declared liable *Held,*

229. ———————— *Suit on bond hypothecating land.* In a suit for money due on a

12 W. R. 184

WEBB v. RINCHIDEN . . 14 W. R. 214

230. ———————— *Suit to recover money on bond and to declare lien on property mortgaged by bond.* A suit, the object of which is not only the recovery of money due upon a bond, but

231. ———————— *Suit for enforcement of hypothecation against moveable property*—

purchased them at an auction sale in execution of

RAJPAL SINGH v. JAIRAMGIR I. L. R. 7 All. 855

Cause Court suit within the meaning of s. 6 of Act XI of 1865, in which a second appeal would be barred by s. 586 of the Civil Procedure Code *Surajpal Singh* v. *Jairamgir, I. L. R. 7 All 855,* followed. *Ram Gopal Shah* v. *Ram Gopal Shah, 9 W. R 136,* and *Appavu Pillai* v *Subraya Muppen, 2 Mad. 474,* referred to. KALKA PRASAD v. CHANDAN SINGH . . I. L. R. 10 All. 20

233. ———————— *Suit for order to enforce mortgage-decree against person and property of defendant* A suit to obtain an order from

same and so deprived the plaintiff of his lien thereon, not being a claim for debt, damages, or for the recovery of property, is not cognizable by a Court of Small Causes OMER KURIM v LALA SHEWAN LALL . . . . . 4 C. L. R. 291

234. ———————— *Mortgage of moveable property—Suit for redemption* Where

Cause Court But if there has been tender and the suit is for possession after ascertainment of defendant's lien on the property, the Small Cause Court has no jurisdiction in the matter BHUBOTARINEE GHOSANY v JUGGERNATH TEWARY

16 W. R. 58

235. ———— Moveable property—*Act XI of 1865, ss 19 and 20—Huts* Huts are not "moveable property" within the meaning of Act XI of 1865 RAJ CHUNDER BOSE v DHARMACHANDRA BOSE

2 B. L. R. A. C. 77 : 8 B L. R. 510 note
10 W. R. 416

ROHINI KANT GHOSE v MAHABHARAT NAG.
8 B L. R. 514 note : 10 W. R 258

236. ———————— *Sale in execution of decree of Small Cause Court—Right of purchaser* A hut is not "moveable property" within the meaning of s. 19 of Act XI of 1865 A Small Cause Court has no jurisdiction to sell a hut. A purchaser of a hut sold by a Small Cause Court in execution of a decree acquires no title to it. NATTU MIAH v NANDRANI

8 B. L. R. F. B. 508 : 17 W. R. 309

(*Contra*) KASI CHANDRA DUTT v JADUNATH CHUCKERBUTTY

8 B. L. R. 512 note : 10 W. R. 29

237. ———————— *Immoveable property—Act XI of 1865, s 19. Held,* that, for the purposes of the Mofussil Small Cause Courts Act, standing timber is not "moveable" property

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

Nasir Khan v. *Karamat Khan, I. L. R. 3 All. 168*, referred to. UMED RAM v DAULAT RAM
I L. R. 5 All. 564

238. ———— *Sugar mill—Moveable property.* A stone sugar-mill was *held* to be moveable or personal as distinguished from immoveable property. HURMUNGAL SINGH v ATHUL SINGH . . . . . . 4 N. W. 15

239. ———— *Trees—Growing crops—Moveable property* Trees and growing crops are not moveable property. TOFAIL AHMUD v BANEE MADHUB MOOKERJEE · 24 W. R. 394

240. ———— *Growing crops.* Growing crops are "immoveable property" and execution of a decree of a Small Cause Court cannot be had against them under s 19 of Act XI of 1865 GOPAL CHANDRA BISWAS v RAMJAN SIRDAR . . 5 B. L. R. 194: 13 W. R 275

MUHAMMAD SILEMAN v SATU VALAD HARJI
5 Bom. A. C. 90

241. ———— *Suit for possession of tree or delivery of produce—Suit for definite quantity of produce of tree.* A Small Cause Court cannot entertain a suit for the possession of a tree nor for the annual delivery of the produce, so long as the tree should be productive. But a suit for definite quantity of the produce of the tree, or the value thereof, may be entertained by a Small Cause Court if the value be within the prescribed limit SHANTI LAKSHMINARAASAMMA v VEPA VENKATRAMADAS . . . . 3 Mad. 237

242 ———— *Suit for fruit upon trees—Suit for compensation for the wrongful taking of fruit upon trees—Immoveable property* When the damage or demand does not exceed in amount or val . . .

moveable property, but being moveable property within the meaning of s 6 of Act XI of 1865. NASIR KHAN v KARAMAT KHAN
I. L. R. 3 All 168

243 ———— *Thatch* Suit to recover a thatch of a value less than R500 must be brought in the Small Cause Court. A thatch, especially when severed from the house, is moveable property RAJKUMAR MOOKERJEE v PRANNATH MOOKERJEE
7 B. L R. Ap. 41: 15 W. R. 499

244. ———— *Suit to recover baluta leviable on the crops of village lands* A suit to recover baluta leviable on the crops of village lands is not a suit for an interest in land, but for a share of produce severed from land, and is cognizable by a Mofussil Court of Small Causes NARU PIRA v NARO SHIDHESHVAR
I. L. R. 3 Bom 8

245. ———— *Act XI of 1865, s. 6—Suit by vatandar mahars to recover "aya"—Immoveable property, what is* A suit for *baluta* or aya is a claim in respect of a hak belonging to, and forming the emoluments of, an hereditary office amongst Hindus, and one in respect of immoveable and not moveable or personal property. A Mofussil Small Cause Court has no jurisdiction . . .

not personal property. APPANA v NAGIA.
I. L. R. 6 Bom 512

246. ———— *Suit for share of hakwartanee allowance* A suit by an alleged sharer in a hakwartanee allowance to recover from the defendant, who received the whole of such allowance from Government, the plaintiff's share in it, was *held* not to be a suit cognizable by a Court of Small Causes VENKAJI LAKSHMAN DESHPANDE v YYAMUNABAI . 7 Bom A. C. 114

247. ———— *Suit for malikana allowance.* A suit for a malikana allowance concerns the proprietary right in land. A dispute . . .

248. ———— *Act XI of 1865, s. 6—Suit to recover price of buffaloes after sale.* *A* obtained an ikrar from *B* by which *B* pledged to *A* certain buffaloes which *B* purchased with money borrowed from *A*. The ikrar also stipulated that *B* would not alienate his rights in the buffaloes till the sum borrowed was repaid. *A* obtained a decree against *B* for the amount of the loan and attached the buffaloes in execution. This attachment was set aside at the instance of *C*, who purchased the buffaloes from *B* after the date of the ikrar given by *B* to *A*. *A* sued *C* (making *B* a party) in the Small Cause Court, praying for the sale of the buffaloes pledged to him by *B*, or, in default of that, for the sum due to him *Held*, that such a suit was not a suit within s. 6, Act XI of 1865, to recover personal property, or the value of personal property, and was not cognizable by the Small Cause Court. RAM GOPAL SHAH v RAM GOPAL SHAH . . . . . 9 W. R. 136

249. ———— *Madras Rent Recovery Act, 1865—Suit to recover moveable property* A suit to recover moveable property attached under colour of the Rent Recovery Act (Madras Act VIII of 1865) is cognizable by a Court of Small Causes constituted under Act XI of 1865. DAVUD BEG v KULLAPPA I. L. R. 11 Mad. 264

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

250. ——— **Municipal Commissioners** —*Act XI of 1865, s 9—Suit against Municipal Commissioners* S. 9, Act XI of 1865, is no bar to a suit against Municipal Commissioners being brought in a Court of Small Causes HURISH CHUNDER TALAPATTUR *v* O'BRIEN

14 W R. 248

251. ——— **Municipal tax**—*Suit to recover Municipal tax* A suit to recover a Municipal tax is not cognizable by a Small Cause Court constituted under Act XI of 1865. LOGAN *v* KUNJI

I. L. R. 9 Mad. 110

252. ——— *Wrongful assessment of profession tax—Madras District Municipalities Act (Mad Act IV of 1884), ss 49, 50—Provincial Small Cause Courts Act (IX of 1887), Sch. II, para 1—Order of a Local Government* The Municipality at Tuticorin demanded R50 as profession tax from the South Indian Railway Company, which had already paid profession tax to the Municipality at Negapatam The company complied with the demand under protest, and sued the Municipality for a refund of the amount paid on the Small Cause Side of the District Munsif's Court. *Held*, that the Court had jurisdiction to [illegible]

[illegible] WAY Co . . **I. L. R 13 Mad. 78**

253. ——— *Provincial Small Cause Courts Act (IX of 1887), Sch II, Arts 8 and 13—Calcutta Municipal Consolidation Act (Beng Act II of 1888), ss 117 and 119—Suit to recover occupier's share of tax by the owner of a bustee* A suit by the proprietor of bustee land for the recovery of Municipal taxes from the owner of a hut in the bustee is cognizable by the Provincial Small Cause Courts BROJONATH MITTRA *v* GOPI SHAKRANI . **I. L R. 23 Calc 835**

254. ——— **Order of Civil Court**— [illegible]

[illegible]

256. ——— *Act XI of 1865, s. 6* Where defendant had been plaintiff's ser- [illegible]

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

balance of partnership account RAM KANAYE SHAHA *v* BYKUNTNATH SHAHA . **15 W. R. 89**

257. ——— *Suit involving question of partnership account* A, B, and C, the joint owners of an estate, sued their tenant in the Munsif's Court for rent; the tenant defeated [illegible] expended the share of rent due to *A* for the benefits of the joint estate, and that *A* had collected the rents of other mehals belonging to the joint estate, and had not accounted for such rents *Held*, that the suit, being one which involved questions of partnership account between the joint proprietors of an undivided estate, could not be entertained in a Court of Small Causes RAMTONU ACHARJEE *v* PEARYMOHUN ACHARJEE

I. L R. 6 Calc. 551 : 7 C. L. R 557

258 ——— *Provincial Small Cause Courts Act (IX of 1887), Sch II, Art. 29 (c)—Suit by a retired partner for the consideration due on account of his retirement.* A suit by a retired partner for money alleged to have been agreed to be paid to him by the continuing partners in consideration of his retirement is not a suit for balance of a partnership, and is not excluded from the jurisdiction of a Court of Small Causes FAUJI LAL *v* CHANGA MAL . **I. L. R. 19 All. 513**

259. ——— *Settlement of accounts—Promise to pay balance* The plaintiff and defendant, having carried on business in partnership, settled their accounts and struck a balance of R196, which the defendant agreed orally to pay in a month. The plaintiff now sued in a Small Cause Court for the amount, not asking for an account to be taken. *Held*, that the suit was maintainable MARIMUTHU *v.* SAMINATHA PILLAI . . . **I. L. R. 21 Mad. 366**

260. ——— *Jurisdiction—Suit for balance due on a partnership account—Addition of prayer for dissolution of partnership—Civil Procedure Code, s 646B* Where a plaint asked in [illegible]

the suit to be erroneous. CHHOTU *v* JAWAHIR (1905) . . . **I. L. R. 28 All. 293**

261. ——— **Prisoners' Testimony Act (XV of 1869)**—*Mofussil Small Cause Court*

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

Judge of—Defendant in custody. A Judge of a Small Cause Court in the Mofussil could direct the jailor to bring up before the Court, at the hearing of the suit, a defendant committed to custody, under s 78 of Act VIII of 1859, without having recourse to the procedure under Act XV of 1869. KILARAM MAJI *v* NARAYAN DAS

5 B. L. R. 215 : 13 W. R. 278

262. ———— Purchase-money—*Civil Procedure Code, s. 315—Suit to recover purchase-money—Suit by purchaser at Court sale when debtor had no saleable interest* A suit brought, under s. 315 of the Code of Civil Procedure, by a purchaser at an execution-sale to recover the purchase-money when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold, is not a suit of a nature cognizable by a Small Cause Court constituted under Act XI of 1865 PACHAYAPPAN *v* NARAYANA

I. L. R. 11 Mad 269

263. ———— *Provincial Small Cause Courts Act (IX of 1887), Sch II, Art 11—Suit to recover purchase-money by purchaser ejected* [illegible] *a third person* [illegible] the Small Cause [illegible] the purchase- [illegible]

second Schedule to the Provincial Small Cause Courts Act (IX of 1887) was no bar to the maintainability of the plaintiff's suit, although, as a defence to the action, it may be necessary for the defendant to show that he had a good title GOOL KHAN *v* TETAR GOALA . . 4 C. W. N 63

264. ———— Receiver—*Power to appoint receiver—Attachment and sale of bond—Civil Procedure Code, 1877, s. 268.* A Court of Small Causes cannot appoint a receiver Bonds, therefore, on which recovery will be time-barred before the date on which a sale can legally be made, which, by s 268 of Civil Procedure Code, 1877, is six months from the date of the attachment, cannot be made available for satisfaction of the judgment-creditor's debt NURSINGDAS RUGHUNATHDAS *v* TULSIRAM BIN DOULATRAM . I. L R. 2 Bom. 558

265. ———— Registration Act—*Suit on bond under s 52, Registration Act, 1864* The Court which had jurisdiction in a proceeding to [illegible]

[illegible] MITTER *v* MASABDY MUNDUL

4 W. R. S. C. C. Ref. 11

SMALL CAUSE COURT, MOFUSSIL —*contd*

2. JURISDICTION—*contd.*

SREEMUNT SEN *v* GORAI GAZEE

18 W. R. 199

which was a suit under s 53 of Act XX of 1866.

266. ———— *Bond registered, under Act XX of 1866, s 53* A suit upon a bond specially registered under the provisions of s 50 of Act XX of 1866 for an amount less than R503 is cognizable by a Mofussil Court of Small Causes and under s 586 of the Code of Civil Procedure, 1877, no second appeal lies to the High Court against an order passed on an application for execution of a decree made in such a suit. BULLOV BHUTTACHARJEE *v* BABURAM CHATTOPADHYA

I. L. R. 11 Calc. 169

267. ———— Rent—*Suit for money for permission to tap date-trees* Suit for money for which plaintiff agreed to let defendant tap certain date-trees and appropriate the produce for a single [illegible]

268. ———— *Suit by landholder against purchaser of produce of tenant's land for rent—Damages* B, who held a decree for [illegible]

the ground that under s 56 of the N.-W. P. Rent Act the produce of the land was hypothecated for the rent *Held*, that the defendants could only be held responsible *ex delicto*, and the suit was therefore one for damages, and the amount claimed being under R500, one cognizable in a Court of Small Causes SHIBBA *v* HULASI

I. L. R. 5 All. 518

269 ———— *Suit for rent under agreement—Failure to prove agreement.* In a suit for rent of a holding which the plaintiff alleged to be included within certain homestead land which he owned in virtue of a sale-certificate in execution of a decree, the defendant urged that the said holding was expressly excluded from the certificate The plaintiff contended further that the defendant had agreed to pay him rent for the [illegible]

DOSSEE . . . . . [illegible]

270. ———— *Tenant and under-tenant—Assignment of rent—Set-off* The plaintiff held an under-tenure within a jote-jumma held by *B* within *D's* zamindari and under an assignment from *B* paid to the zamindar *D* a sum of money as rent due by *B* to *D*. Ultimately *D*, ignor-

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd*

ing such payment, recovered the rent from *B* by a separate suit in which no plea of payment was raised, and the latter again recovered his due from plaintiff by a separate suit *Held*, that an action was not maintainable in the Small Cause Court [illegible]

271 ——— *Suit for use of land—Damages—Rent* Suit for rent or hire of land which defendant used and caused to be used for passing and repassing to and from his steamer —*Held*, that, if there was no express hiring, the defendant ought to be sued for damages for trespassing upon the plaintiff's land, that if he agreed to pay for the use of a way across the land, it would not be rent, and that in either case the Small Cause Court was competent to entertain the suit BRICE *v* TOOGOOD . 5 W. R. S. C C. Ref. 18

272 ——— *Suit for rent of land with buildings* In a suit for rent of land, where the principal subject of the entire occupation is bastu land, the residue (if any) of the holding being merely subordinate, the Small Cause Court has jurisdiction But when the principal subject is agricultural land, the building or buildings being mere accessories thereto, the Small Cause Court will not have jurisdiction CHUNDESSUREE *v* GHEENATH PANDEY . . . 24 W. R. 152

273. ——— *Arrears of rent of homestead, or bastu land, suit for—Provincial Small Cause Courts Act (IX of 1877), Sch II, cls 7 and 8* A Mofussil Small Cause Court has no jurisdiction to entertain a suit for arrears of rent of homestead or bastu land under the provisions of the Provincial Small Cause Courts Act (IX of 1887) UMA CHURN MANDAL *v*. BIJARI BEWAH

I. L. R 15 Bom. 174

274. ——— *Suit for sums stipulated to be paid for use of private path* A suit [illegible]

4 W. R. S. C. C. Ref. 10

275. ——— *Suit on instalment-bond for nuzzur or salami* Plaintiff sued in a Small Cause Court on an instalment bond for R81. The bond had been executed for nuzzur or salami contemporaneously with the execution of a pottah and kabuliat, by which the defendants agreed to pay the plaintiff R335 a year for two years, as rent for certain land. The pottah and kabuliat had not been registered. A previous [illegible]

simple debt due under the bond It was clearly not for rent, nor was it an abwab or illegal cess; whether it was nuzzur or salami was immaterial. DINANATH MOOKERJEE *v* DEBNATH MULLICK

5 B. L. R. Ap. 1; 13 W R 307

276. ——— *Suit for rent and a sum as penalty for non-payment.* Where a party sued for R17-8 as rent, and a like sum as penalty for non payment thereof, it was *held* that he was in fact suing for a penalty equal to double the amount due, and that a Small Cause Court was competent to entertain the suit HINGUN SOWDAGUR *v* BOISTUM CHURN OJAH

6 W. R. Civ. Ref. 5

277. ——— *Suit for arrears of rent and assessment of rate* A suit for arrears of rent of land for which no rent has ever been [illegible]

278 ——— *Suit for rent—Act XI of 1865, s 6* A suit to assess rent at an increased rate upon the defendants and for a decree for rent at such rate in respect of land situated [illegible] Courts JOY KISHORE CHOWDHRAIN *v* NUBEE BUKSH . 17 W. R. 178

279. ——— *Suit for rent of land used for building purposes* A suit for the rent of land used for building purposes is not cognizable in a Mufussil Court of Small Causes. PEAREE BEWAH *v* NOKOOR KURMOKAR 19 W. R 308

GOKHUL CHUND CHATTERJEE *v* MOSAHROO KANDOO . . . . 21 W. R. 5

280. ——— *Suit on instalment bond for arrears of rent* A suit upon an instalment-bond given for arrears of rent is cognizable in a Small Cause Court Also a suit by a judgment-debtor to recover money paid by him to be applied in satisfaction of a decree under Act X of 1859, but not so applied by the decree-holder. SHUTT CHURN GHOSAL *v* MAHOMED ALLY. TARINEE CHURN ROY *v* GOPAL KISTO ROY

2 W. R. S. C. C. Ref. 5

281. ——— *Suit on document given for arrears of rent—Act XI of 1865, s 6.* A suit to recover arrears of rent on a tahood kistbundi, under which defendant had been appointed a tahsildar to collect rents, having been filed before

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2 JURISDICTION—*contd.*

the Munsif, it was returned as being cognizable by the Court of Small Causes. The Judge of the latter Court, seeing that the instalment-bond on which the suit was brought was exactly in the form of a kabuliat, and that the defendant was in possession of the land for which the rent was claimed, referred the question of jurisdiction to the High Court, which *held* that the money which the defendant contracted to pay, being rent, could not be sued for under Act XI of 1865 PEAREE MOHUN ROY CHOWDHRY *v* ASSAD KHAN . 18 W. R 444

282. ———————— *Suit for rent where there is no contract to pay it.* A suit was brought in the Small Cause Court by a zamindar against a raiyat for arrears of rent. The plaintiff alleged that he had tendered pottahs which the defendant was bound to accept, and the defendant [illegible]

283. ———————— *Suit for arrears of phulkar.* A suit for arrears of rent of the description known as phulkar cannot be tried by a Small Cause Court GOBIND SOOKOOL *v* GOKOOL BHUKUT . . . . 23 W. R. 304

284. ———————— *Act XI of 1865, s 6—Jurisdiction—Suit for refund of rent voluntarily paid to a wrong person* A Mofussil Court of Small Causes has no jurisdiction under s 6 of Act XI of 1865 to entertain a suit for a refund of money paid as rent, in which it is found that the payment was made to a wrong person voluntarily, and under no mistake as to that person being entitled to receive it, but with the object of defrauding an intermediate tenure-holder RAM CHAND DUTT *v.* MOSAI SANTAL . I. L. R. 11 Calc. 738

285 ———————— *Suit for rents—Suit at full rates after remission for years—Act XLII of 1860, s 3—"Suit"—Mad Regs XXVIII of 1802 and V of 1822, s 2* A zamindari was attached in 1827, and the Collector, without authority from the Board of Revenue or the Government, remitted a portion of the tirvai, and continued such remission until 1842, when the zamindari was restored. The then zamindar and his successors continued the remissions, always, however, enter- [illegible]

to the defendant and the raiyats at the faisal rates. *Held, first,* that the plaintiff was not precluded from raising the rents to the amount of the faisal assess- [illegible]

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

[illegible] pro- [illegible] and [illegible] 'ILLAI [illegible] 1. 22

But *see* UPPALAPATI GANAKAYA GARU *v.* BALAVI RAMUDU . . . . . 2 Mad. 475

286. ———————— *Suit for damages after notice to quit or pay rent.* A notice was issued on defendant requiring him to quit the land or pay rent, and defendant refused to do either. Plaint- [illegible] its order was set aside, and the suit ordered to be restored to the file of that Court. BHOOBUN MOHUN BOSE *v.* CHUNDERNATH BANERJEE 17 W. R. 69

287. ———————— *Damages on account of rent—Suit for use and occupation—Trespass—Ejectment—Mesne profits* The plaintiff, alleging that the defendant, with her permission, removed a lock placed by her on her house and took possession of it, sued in a Court of Small Causes for "damages on account of rent" of which she was thus deprived. The Court, regarding the suit as one for use and occupation, made a decree in favour of the plaintiff. *Held,* that the suit was not rightly regarded as one for use and occupation, for the claim was not based on any contract, express or implied, it should have been regarded as an action of trespass brought to try a question of title,—an action in which the Court of Small Causes had no jurisdiction The plaintiff's proper remedy was by an action of ejectment in the ordinary Civil Courts, to which, if he chose, he could add a claim for mesne profits for the period during which the defendant had been in occupation. The decree of the Court of Small Causes was accordingly annulled JAMNADAS *v.* BAI SHIVKOR I. L. R. 5 Bom. 572

288. ———————— *"Damages on account of rent"—Suit for use and occupation—Trespass—Ejectment—Mesne profits* The plaintiff obtained a decree declaring him entitled to a certain house He thereupon gave to the defendant, who was in occupation, notice to pay him [illegible]

prior to the trespass, or to have obtained a decree in ejectment which would relate back to the date of the trespass. The plaintiff had obtained no-

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

thing more than a decree declaring him to be the owner of the house; but this did not necessarily import a right to immediate possession, nor could the plaintiff be allowed to deprive from it all the benefits which he might derive from a decree in ejectment KALIDAS *v.* VALLABHDAS

I. L. R. 6 Bom. 79

289. ——— *Suit for the recovery of damages for the use and occupation of land.* A suit for the recovery of damages for the use and occupation of land is within the jurisdiction of the Mofussil Small Cause Courts MAKHAN LALL DATTA *v.* GOPIBULLAH SARDAR

I. L. R. 17 Calc. 541

KALI KRISHNA TAGORE *v.* IZZATANNISSA KHATUN

I. L. R. 24 Calc. 557

290. ——— *Provincial Small Cause Courts Act (IX of 1887), Sch II, Art.*

[illegible]

I. L. R 22 Mad. 149

291. ——— *Suit for jodi—Provincial Small Cause Courts Act (IX of 1887), Sch. II, Art 13.* A suit for arrears of *jodi* rent on favourable terms is maintainable as a small cause suit under Provincial Small Cause Courts Act, 1887. VENKATAGIRI RAJAH *v* VENKAT RAU

I L R 21 Mad. 243

292. ——— *Provincial Small Cause Courts Act (IX of 1887), s 15 and Sch II, Art 8—Suits for rent other than house-rent—"Suits of the nature cognizable in Courts of Small Causes"—Second Appeal—Civil Procedure Code (Act XIV of 1882), s 586* A suit for the recovery of rent other than house-rent does not become a suit of the nature cognizable in Courts of Small [illegible]

MUDDALI *v* RAMASAMI RAJA

I. L. R. 22 Mad. 229

(*Contra*) SOUNDARAM AYYAR *v.* SENNIA NAICKAN

I. L. R. 23 Mad. 547

decided by a Full Bench and overruling the above case

293. ——— *Suit by tenant for excess payment of rent—Civil Procedure Code (Act XIV of 1882), s. 586—Landlord and tenant—Bengal Tenancy Act (VIII of 1885), s. 114* A suit between landlord and tenant of the recovery by the tenant of excess payments taken by the

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd*

landlord in respect of the rent of the holding and [illegible]

cedure Code, as it determines only the venue and has no bearing upon the nature of the suit RANGO ROY *alias* RUNG LAL ROY *v* HOLLOWAY

I. L. R. 26 Calc. 842

4 C. W. N. 95

294. ——— *Suit by a landlord* [illegible]

against a tenant for a certain sum of money payable by him out of the rent to a third person under assignment is one for rent and not for damages. *Rutnessur Biswas v Hurish Chunder Bose, I. L R. 11 Calc. 221*, referred to *Mohabut Ali v. Mahomed Faizullah, 2 C. W. N. 455*, approved of. BASANTA KUMARI DEBYA *v.* ASHUTOSH CHUCKERBUTTY . . . I. L R. 27 Calc. 67

4 C. W. N. 3

295. ——— *Suit for rent* [illegible]

[illegible] ract; [illegible] Pro- [illegible] n v. [illegible] med. [illegible] L R.

Ap. 27 · 11 W R 151; Mullick Amanut Ali v Olloo Pasi, 25 W. R. 130, and *Jumna Doss v. Gausee Meah, 21 W. R 124*, referred to SHOMA MEHTA *v.* RAJANI BISWAS . I C. W. N. 65

296. ——— *Landlord and tenant—Suit for rent by an assignee of landlord whether suit for rent or money—Provincial Small Cause Courts Act (IX of 1887), Sch. II, Art 8.* *K* and *U* owned in equal share some lands apper- [illegible]

had sold a portion of those arrears being made pro [illegible]

was due as rent at the time of the assignment

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

and the assignment did not deprive it of that character, so far, at all events, as the tenant was concerned. *Sama Soonduree Dossee* v. *Brindabun Chunder Mozoomdar, Marsh. 199; Lall Mohun Singh* v. *Troyluckonath Ghose, 14 W. R. 456;* and *Reedoy Monee* v. *Sibbold, 15 W. R. 344,* followed *Lalla Bhugwan Sahoy* v. *Sungessur Chowdhry, 19 W. R. 411,* distinguished MUNSAR *v.* LOKNATH ROY . . . . **4 C. W. N. 10**

297. ———————— *Suit by an assignee of arrears of rent after they fall due, whether cognizable by the Smal lCause Court—Bengal Tenancy Act (VIII of 1885), s 3, sub-s. 5—Provincial Small Cause Courts Act, Sch. II, Art. 8.* *Held,* by the Full Bench (BANERJEE, J., dissenting), that a suit brought by an assignee of arrears of rent, after *they fell due, for the recovery of the amount due,* is a suit for rent, and therefore excepted from the cognizance of the Court of Small Causes SRISH CHUNDER BOSE *v* NACHIM KAZI

I. L. R 27 Calc. 827
4 C. W. N. 357

MOHENDRA NATH KALAMAREE *v* KAILASH CHANDRA DOGRA . . **4 C. W. N. 605**

298. ———————— *Provincial Small Cause Courts Act (IX of 1887), s. 15, Sch II, cl 8.—Suit for rent, with cross-demand for value of improvements—Jurisdiction of Small Cause Court.* Plaintiffs sued to recover arrears of rent due by defendants, and also prayed that the value of improvements due to the defendants might be made liable for the claim. *Held,* that the suit was one for rent, and triable by a Court of Small Causes KARUNAKARA KURUP *v.* MUNIPERANAN (1901)

I. L. R. 24 Mad. 356

299. ———————— *Provincial Small Cause Courts Act (IX of 1887), Sch II, Art 31—Suit for rent* A suit by a divided co-parcener to recover his share of rent from a tenant, and, if he should not be liable, from the other co-parcener in whose sole name the lease was executed by the tenant, is substantially a suit for rent and is not [illegible]

300. ———— Sale-proceeds—*Suit for refund of moneys paid under order of Court.* A suit to recover a refund of moneys paid under an order of Court is not cognizable by a Court of Small Causes. GRISH CHUNDER MUNDUL *v* DOORGA DOSS . . . **I. L. R. 5 Calc. 494**

301. ———————— *Act XI of 1865—Civil Procedure Code, 1882, s 295—Suit for refund of assets paid in execution of decree.* A suit under s. 295 of the Code of Civil Procedure to compel refund of assets paid in execution of a decree to a person not entitled thereto is cognizable by a Court of Small Causes constituted under Act XI of 1865. *Shahi Ram* v. *Shib Lal, I. L. R 7 All. 378,* dissented from. HARIHARA *v* SUBRAMANYA . . . . **I. L. R. 9 Mad. 250**

302. ———————— *Second appeal—Sale-proceeds, suit for share of.* A suit by one decree-holder against another for the money received by the latter on a division between them of the proceed of an execution-sale as his share of such proceeds under the order of the Court executing the decrees, is a suit of the nature cognizable in a Court of Small Causes, and consequently where the amount of such money does not exceed five hundred rupees, no second appeal lies in such suit MATA PRASAD *v.* GAURI

I. L. R. 3 All. 59

303. ———————— *Civil Procedure Code, 1882, s. 295—Suit for refund of proceeds of execution-sale.* *S* and *L* held mortgage-bonds executed in their favour by the same person *S's* bond was dated the 16th June 1882, and was registered, the registration being compulsory, *L's* bond was of prior date, the 30th December 1880, and was not registered, the registration being optional. Both instituted suits on their bonds against the obligor, and obtained decrees for sale of the property, the decrees being passed on the same day. The property was attached in execution of both decrees on the 14th August 1882. The sale proceeds were divided by the Court executing [illegible] encumbrancer under a decree passed on a registered instrument, and therefore entitled to priority. *S,* being dissatisfied with this order, brought a suit to recover from *L* the moiety of the sale-proceeds paid to him *Held,* that the suit, being one to compel the defendant to refund assets of an execution-sale which he was not entitled to receive, and to *set aside the order of the Court executing the decree,* which directed the payment of the assets to him, was expressly allowed to be brought under the provisions of the penultimate paragraph of s 295 of the Civil Procedure Code, and could not be regarded as a suit of the nature cognizable in a Court of Small Causes SHAHI RAM *v* SHIB LAL

I. L. R. 7 All. 378

304. ———————— *Suit for money paid for property sold where judgment-debtors had no interest—Provincial Small Cause Courts Act (IX of 1887), s 15.* *Held,* that a suit to recover [illegible]

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd.*

Neither Art 2 nor Art 35, cl. (j), Sch II of Act IX of 1887 excludes such a suit from the cognizance of the Small Cause Courts PRASANNA KUMAR KHAN *v* UMA CHARAN HAZRA

1 C. W. N. 140

305. ———— *Proceeds of immoveable property—Jurisdiction—Act XI of 1865, s 6—Money had and received—Sale of tenure—Co-sharers.* The plaintiff and the defendant were co-owners of a certain talukh. The zamindar brought a suit for arrears of rent of the taluk, against the defendant, obtained a decree, and in execution of that decree sold the tenure The proceeds of the sale, after satisfying the zamindar's decree, were taken by the defendant, and the plaintiff instituted the present suit to recover an 8-anna share thereof *Held*, that such a suit was not cognizable by a Small Cause Court. *Mata Prasad* v *Gauri, I. L R 3 All 59*, dissented from. RAM COOMAR SEN *v* RAM COMUL SEN

I. L. R 10 Calc. 388

306. ———— **Salvage**—*Suit for salvage—Abandonment of property saved* A suit for salvage, even when the saved property has been abandoned by those in charge of it, is not cognizable by a Court of Small Causes KISHORE SINGH *v* GUNNESH MOOKERJEE . . **9 W. R. 252**

307. ———— **Tax**—*Suit for amount of trade impost—Suit for rent* A Court of Small Causes has no jurisdiction to entertain a suit to recover the amount of a trade impost alleged to be leviable from the defendant in common with all other persons carrying on the trade of weaving within a particular district Such a suit cannot be considered as a claim for rent JAGHIRDAR OF ARNEE *v* PERIYANNA MUDELY **5 Mad 317**

308. ———— **Title, question of**—*Provincial Small Cause Courts Act (IX of 1887), s 23—Claim to possession of land when title to land disputed—Second appeal—Civil Procedure Code (Act XIV of 1882), s 586—Practice* The plaintiff sued to recover R75 as the *utpan* (income) of certain lands. In his defence the defendant raised the question of the title to the land. The plaintiff

KRISHNARAO SAKHARAM ADHIKARI (1901)

I. L. R. 25 Bom. 625

309. ———— *Provincial Small Cause Courts Act (IX of 1887), s 23—Question of*

s 23 of the Provincial Small Cause Courts Act, was presented to the Munsif's Court, together with a petition asking the Court to come to a decision on the question of title, but there was no prayer for declaration of title to the land, nor did the plaintiff offer to pay any further court-fee —*Held*, that the question of title could not be decided finally in such a suit, and that the lower Appellate Court had no jurisdiction to make a declaratory decree for title *Held*, also, that a second appeal was precluded by s 586, Civil Procedure Code *Kali Krishna Tagore* v *Izzatunnissa Khatun, I L R 24 Calc 557*, followed RASH BEHARI PAL CHOWDHRY *v* SRIDHAR BELAL (1902) **6 C. W. N. 687**

310. ———— **Title, question of**—*Denial of title of plaintiff by defendant* Where the cause of suit, as stated by the plaintiff, appears to be within the cognizance of a Court of Small Causes, the mere denial by the defendant of the plaintiff's right of title is not sufficient to oust the jurisdic-

311. ———— *Question incidentally arising* If a *bonâ fide* question of title arises incidentally in a Small Cause Court suit, the Court should determine it ALAGIRISAMI NAIKER *v* INNASI UDAYAN . **I. L. R. 3 Mad. 127**

312. ———— *Right to cut trees* A Court of Small Causes may try incidental questions of title which are indispensable to the decision of the claim before it,—*e g*, a right to land on which depends a party's right to cut trees RADHA CHURN GANGOOLY *v* GUDADHUR BAHADOOR

15 W. R 166

313 ———— *Suit for produce of land* If the right of the plaintiff be a question raised in a suit brought in a Court of Small

question in the suit,—the right to the produce claimed DARMA AYYAN *v* RAJAPA AYYAN

I. L. R. 2 Mad. 181

314. ———— *Suit for damages for loss of produce.* The jurisdiction of a Small

decline jurisdiction if it appears that incidentally a question of title is raised which it has not jurisdiction to determine for any other purpose than the decision of the suit before it. Under such circumstances, the Court may, however, properly grant a reasonable adjournment that the question may be litigated and determined by the proper tribunal. MANAPPA MUDALI *v.* MCCARTHY

I. L. R. 3 Mad. 192

SMALL CAUSE COURT, MOFUSSIL —contd.

2. JURISDICTION—*contd.*

315. ——————— *Act XLII of 1860.* Plaintiff sued defendant in the Small Cause Court for damages for having cut down and removed trees from plaintiff's land Defendant pleaded that he was entitled to do so under his pottah *Held,* the Court had jurisdiction to try the question of the genuineness of the pottah RAGHU RAM BISWAS *v.* RAM CHANDRA DOBAY
B. L. R. Sup Vol 34 : W. R. F. B. 127

SHUMBHOO CHOWDHRY *v* COMBS. **2 W. R. 179**

RAM JEEBUN KOYEE *v.* SHAHAZADEE BEGUM **9 W. R. 336**

SUNKUR LALL PATTUCK *v.* GYAWAL RAM KALEE DHAMIN . . . . **18 W. R. 104**

But *see* INAYAT KHAN *v* RAHMAT BIBI **I. L R. 2 All. 97**

and PACHOO RAREE *v* GOOROO CHURN DASS **15 W R. 556**

316. ——————— *Question of amount due on bond mortgaging land* Where an ijara constituted a mortgage of the rents as a security for an amount due on a bond, with a stipulation that the balance after paying the jumma payable by the mortgagor should be applied by the mortgagee in payment of the bond —*Held,* that the Small Cause Court had jurisdiction to try what amount was due on the bond, and also to try the question of payment by means of the rent assigned. MOHIMA CHUNDER MOOKERJEE *v* RAM CHURN ROY . . . **6 W. R Civ. Ref. 16**

317. ——————— *Suit for arrears of malikana allowance—Act XI of 1865, s 6.* A sold a share in immoveable property to *M* by a registered deed of sale, which contained the following provision "The said vendee is at liberty either to retain possession himself or to sell it to ... Queen's ... he had ... perty to *B,* who obtained possession; and, after the mortgage, the annual payments provided for by the deed of sale ceased The representatives of the vendor sued *M* and *B* to recover arrears of malikana, the amount sued for being less than R500. *Held,* upon a preliminary objection made with reference to s. 586 of the Civil Procedure Code, that the intention of the Legislature as expressed in s 6 of the Mofussil Small Cause Courts Act (XI of 1865) was that directly and immediately involving questions of title to immoveable property should not be cognizable by the Small Cause Courts; that in the present suit such a question was directly involved, and that consequently s. 586 of the Code had no application and a second appeal would lie *Mohamed Karamut-ullah v Abdool Majeed, 1 N W. 205,* and *Bhawan Singh v Chatter Kuar, All Weekly Notes (1882) 114,* referred to. *Pestonji Besonji v. Abdool Rahiman, I. L. R 5 Bom. 463, Qutub Husain v Abul Husain, I. L. R. 4 All 134,* and *Kadureesur Mookerjee v. Gooroo Churn Mookerjea, 2 C. L. R. 388,* distinguished CHURAMAN *v* BALLI . . . **I. L. R. 9 All. 561**

318. ——————— *Suit for arrears of rent* In a suit for arrears of rent a Small Cause Court may decide whether the renting has taken place, and pass judgment for the amount claimed, without adjudicating upon the plaintiff's title. SUBBIRAMANIYA AYYAN *v.* VELAYUDA DEVAR
1 Mad. 212

319. ——————— *Denial of title.* A Small Cause Court has no jurisdiction to try a suit for rent where the defendant *bonâ fide* sets up by way of defence that the title to the land in respect of which the rent was claimed passed from the plaintiff to others since the creation of the tenancy between the plaintiff and defendant, and that the rent claimed had accrued due after the determination of the plaintiff's title as landlord. VENKATACHALAM *v.* THIMMA NAIKAN **5 Mad. 64**

320. ——————— *Mahomedan law.* The seven heirs of a deceased Mahomedan under an agreement among themselves, took equal shares of 14 annas of his estate and allotted 2 annas to rehalallah, *i e,* devoted the profits to charitable ... under the management of one of their ... shares allowed ...

321. ——— Trusts—*Act IX of 1887 (Provincial Small Cause Courts Act), Sch II, cl. (18)—Small Cause Court suit—Suit relating to a trust—Suit to recover money paid to legal practitioner to institute suits, but not so expended* *Held,* that a suit in which the plaintiff claimed from the defendant, the refund of certain moneys alleged by the plaintiff to have been paid to the defendant, a legal practitioner, for the purpose of instituting certain suits, but not to have been so expended, was a suit which was within the cognizance of a Court of Small Causes, and was not a suit relating to a trust, within the meaning of cl. (18) of the second Schedule to Act IX of 1887. NORTH-WESTERN COMMERCIAL BANKING CORPORATION *v.* MUHAMMAD ISMAIL KHAN (1901)
I. L. R. 24 All. 208

322. ——————— *Provincial Small Cause Courts Act (IX of 1887), Sch. II, cl. (18)—*

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd*

Suit for money borrowed by a trustee from his co-trustees out of moneys belonging to the trust estate—"Suit relating to a trust"—Jurisdiction of Small Cause Court One of several trustees of a charity personally borrowed from other trustees some

Small Cause Courts Act, and that the Small Cause Court had jurisdiction to try it SUNDARALINGAM CHETTI *v* MARIYAPPA CHETTI (1902)
I. L. R. 26 Mad. 200

323. ———— *Provincial Small Cause Courts Act (IX of 1887), Sch II, cl (18)—Suit relating to a trust—Appointment of plaintiff under trust deed on a salary—Suit for unpaid salary—Jurisdiction of Small Cause Court* By a deed of trust, the settlor vested a press in trustees with the object of conducting a newspaper, and appointed plaintiff as editor and manager, on a fixed salary Plaintiff acted, but subsequently resigned On a suit being brought by plaintiff, on the Small Cause side of the Subordinate Judge's Court, to recover the amount due to him by way of salary between the date of the trust deed and that of his resignation. *Held,* that the Small Cause Court had no jurisdiction to try the suit If the plaintiff had a cause of action, it was to enforce the performance of the trust in so far as it related to him, and the suit was barred, under cl (18) of Sch II to the Provincial Small Cause Courts Act SUBRAMANIA AYYAR *v* PANDI DORAISAMI, TAVER (1902) . . . I. L. R. 26 Mad. 368

324. ———— *Provincial Small Cause Courts Act (IX of 1887), Sch II, Art 18—Gift, construction of—Hindu law—Suit relating to a trust* A Hindu executed in favour of his daughter an instrument in the following terms "I have hereby given to you to be enjoyed as stridhanam after my death 2,320 fanams out of 6,000 fanams which remain as kanom on the land T . . The proportionate rent on 2,320 fanams is 365 paras This quantity of paddy . shall be enjoyed

invested in some other property, which may be approved of by you and your sons and by my sons, and from that property you may receive income yearly and enjoy the same." In a suit by a grandson of the donee to recover his share of the income. —*Held,* that the suit "related to a trust" within the meaning of the Provincial Small Cause Courts Act, Sch. II, Art 18. KRISHNA AYYAN *v* VYTHIANATHA AYYAN . . I. L. R. 18 Mad. 352

SMALL CAUSE COURT, MOFUSSIL —*contd.*

2. JURISDICTION—*contd*

325. ———— *Provincial Small Cause Courts Act (IX of 1887), Sch II, Art. 18—Suit by temple manager against his predecessor for damage sustained by temple—Suit relating to a trust* A suit by the manager of a temple against

I. L. R. 21 Mad. 245

326. ———— *Suit against*

a meeting of the community, holds them in the

HUSEN . . I. L. R. 22 Bom. 729

327. ———— Wages—*Suit for wages against European British subject.* A suit for wages under R50, alleged to be due from a European British subject to a native, can be tried in a Small Cause Court in the mofussil RAMJAN BEG *v*. COOK
6 B. L. R. Ap. 91 . 14 W. R. 428

328. ———— Wrongful distraint—*Suit to*

ZAMINDAR OF SAITTUR *v* CARUPPEN SERVAI
4 Mad. 401

329. ———— *Provincial Small Cause Courts Act (IX of 1887), Art 35 (j)—Madras Rent Recovery Act (Mad. Act VIII of 1865), s 15—Civil Procedure Code (Act XIV of 1882), s 646B—Suit for the value of property illegally retained—Jurisdiction of Small Cause Courts* Certain moveable property having been distrained under s. 15 of the Rent Recovery Act (Madras), 1865, such distraint was set aside and the property ordered to be restored to the owners. That order not having been carried out, the owners filed suit on the Small Cause side of the Courts of the Subordinate Judge and the District Munsif for the value of the property so illegally retained. *Held,* that the suits were not excepted from the jurisdiction of the Small Cause Courts by Art. 3

SMALL CAUSE COURT, MOFUSSIL
—contd.

2. JURISDICTION—*concld.*

(j) of Sch II of the Provincial Small Cause Courts Act, 1887. CHAKRADHARUDU *v* VENKTIARAMAYYA I. L. R. 22 Mad. 457

330. ———— *Provincial Small Cause Courts Act (IX of 1887), s. 15,*

complete on date of illegal distress A plaint alleged that plaintiffs had for long cultivated certain land as tenants under defendant, that they had raised a crop of paddy, measuring about 6 *garces*, and stored it in three heaps on the land, that one of the plaintiffs had paid all the *kist* that was due to defendant, but that defendant had taken unlawful possession of two of the heaps of paddy, measuring about 5 *garces*, under the pretext that he had distrained them The prayer was for an order directing defendant to deliver to plaintiffs about 5 *garces* of grain, worth R250, at R50 per *garce*, in respect of the two heaps of paddy of which he had taken unlawful possession The distraint was made on 25th January, 1898, and the suit was instituted on 26th July on the same year —*Held*, that the suit was in substance one for compensation for illegal distress or attachment and not for the recovery of specific property, and that, in consequence, it was not a suit of the nature cognizable by a Court of Small Causes, and a second appeal lay *Held*, also, that the suit was barred The wrong was complete and the cause of action arose when the unlawful distress was made *Yamuna Bai Rani Sahiba* v *Solayya Kavundan, I L R 24 Mad. 339*, distinguished PAMU SANYASI *v* ZAMINDAR OF JAYAPUR (1901) . I. L. R. 25 Mad. 540

3 PRACTICE AND PROCEDURE.

(*a*) EXECUTION OF DECREE.

1. ———— **Power of execution**—*Change of jurisdiction* A Small Cause Court in which a decree is passed is competent to entertain an application for its execution, even if the debtor's residence and moveable property are situate in a place which has since the decree been excluded from that Court's jurisdiction. In such execution the course to be pursued was that prescribed by ss 285 and 286, Code of Civil Procedure, 1859 KODOO MUNDUL *v.* SHUSHEE SHIKHUR SIRCAR 16 W. R. 227

See ANONYMOUS.
B. L. R. Sup. Vol. 886 : 9 W. R. 175

(*Contra*) MANSUK MOSUNDAS *v.* SHIVRAM DEVISING . . . . . I. L. R. 2 Bom. 532

GRISH CHUNDER KUR *v* KRISTO CHUNDER GHOSE . . . . . . 18 W. R. 123

ANONYMOUS . . 3 W. R. S. C. C. Ref. 7

2. ———— **Mode of execution**—*Interest in moveable property, power to sell—Act XI of*

SMALL CAUSE COURT, MOFUSSIL
—contd.

3. PRACTICE AND PROCEDURE—*contd.*

(*a*) EXECUTION OF DECREE—*contd.*

1865, ss. 6 and 20. A Small Cause Court can sell the undivided right, title, and interest, of a deceased debtor, to which the defendants succeeded, in the moveable property in satisfaction of a decree obtained against the defendants without infringing the second proviso of s. 6 of Act XI of 1865 ... exhausted that ... to proceed ... rty under ... VENKATA KRISTNAMMA . . . . . 5 Mad. 275

3. ———— *Execution of decree—Suit against member of undivided family.* A Court of Small Causes has not power to do more in execution of a decree against an undivided member of a Hindu family than issue process for the attachment and sale of the defendant's undivided right, title, and interest in the family moveable property. It would be for the purchaser at such a sale to obtain a partition. IYAHVEIN *v.* CHITHAMBARIEN . . . . 5 Mad. 312

4. ———— *Act XI of 1865, ss. 19 and 20—Rights and interests of judgment-debtor under bond pledging immoveable property.* Th ... unc ... im ... of ... of ... is the proper mode of execution. BUDDOO MULL *v* MAHAROOF . . . . 6 N. W. 129

5. ———— *Power of Court to attach salary—Civil Procedure Code, 1882, ss.*

Ally v. *Ashotosh Gangooly, 3 C. L. R. 30,* followed. PARBATI CHARAN *v* PANCHANAND I. L. R. 6 All. 243

6. ———— **Transfer for execution**—*Act XI of 1865, s. 20—Transfer to, and execution by, Munsif's Court—Sale of land—Certificate not filed—Title of purchaser.* A decree passed by a Subordinate Judge's Court on the Small Cause side was, after the abolition of the said Court, transferred by the District Court for execution to a District Munsif's Court. The District Munsif, on the application of the creditor, attached and sold certain land No application was made by the creditor for a certificate as provided by s. 20 of Act XI of 1865, nor was any objection taken to the execution-proceedings by the debtor. The creditor, having purchased the land, sold it to N, who, in attempting to take possession was resisted

SMALL CAUSE COURT, MOFUSSIL —*contd.*

3. PRACTICE AND PROCEDURE—*contd.*

(*a*) EXECUTION OF DECREE—*concld.*

by the debtor In a suit to obtain possession of the land —*Held*, that *N* was entitled to recover. NAGIREDDI *v.* RAMANNA . I. L. R. 7 Mad. 592

7. ———————— *Act XI of 1865, s 20—Civil Procedure Code, 1882, s 223—Small Cause decree of Subordinate Judge—Execution against immoveable property—Co-ordinate jurisdiction of Subordinate Judge and District Munsif—Execution by District Munsif.* The Court of a Subordinate Judge and that of a District Munsif had jurisdiction over certain immoveable property. A Small Cause decree of the former Court having been sent by the Subordinate Judge to the Court of the District Munsif for execution against the said property under the provisions of s. 20 of Act XI of 1865, the application for execution was rejected by the Munsif on the ground that this procedure was illegal *Held*, that s. 20 of Act XI of 1865 was not modified by s 223 of the Code of Civil Procedure, and that the Munsif's Court was therefore bound to execute the decree KAHANARAMA *v* RANGA I. L. R. 8 Mad. 8

(*b*) NEW TRIALS AND REVIEWS.

8. ———— Act XI of 1865, s. 21—*Review—Limitation Act, 1877, Art 173.* S. 21 of Act XI of 1865 held to be in force, notwithstanding the right of review given to Small Cause Courts in the mofussil by s. 623 of the Code of Civil Pro-

9 ———————— *Civil Procedure*

Procedure. SHUMSHER ALLY *v.* KURKUT SHAH I. L. R. 6 Calc. 236 : 6 C. L. R. 549

10. ———————— *New trial of ex parte case—Re-opening of case against all the defendants.* It may be competent to the Judge of a Small Cause Court on hearing one of the defendants

SMALL CAUSE COURT, MOFUSSIL —*contd.*

3. PRACTICE AND PROCEDURE—*contd.*

(*b*) NEW TRIALS AND REVIEWS—*contd.*

to interfere with the decision against others who do not object DOOKHEE KHAN *v* RAJESSUREE RANEE . . . 15 W. R. 371

11. ———————— *Fraudulent confession of judgment—New trial* A Small Cause

12 ———————— *Application for new trial, ground for—Computation of time prescribed for application* An error as to date in the summons to plaintiff's witnesses is sufficient ground for setting aside an order dismissing his suit The time prescribed by Act XI of 1865, s. 21, for an application for a re-trial is exclusive of the date on which the suit was dismissed BIJOY GOBIND DEB *v* MUDDUN RAM PAL 18 W. R. 454

13. ———————— *Third application for new trial.* A third application for a new trial in a Court of Small Causes is not admissible under s 21, Act XI of 1865 DHUNNOO CHOWDHRY *v* BUKSHUN . 12 W. R. 266

14. ———————— *Non-appearance of*

cre

of

in

limited to the first occasion on which a defendant puts in an appearance to a suit Where therefore a case is adjourned from the date fixed in the summons to any later date, and on such later date a defendant is prevented by sufficient cause from appearing, and in default of such appearance an *ex parte* decree is given against him, he may apply under the first part of s 21 for an order to set aside such decree *In the matter of* DOYAL MISTREE *v.* KUPOOR CHUND I. L. R. 4 Calc. 318 : 3 C. L. R. 482

15.———————— *Procedure—Deposit of amount of decree and costs* A defendant desiring a new trial of a case decreed against him in a Small Cause Court must deposit in Court the

from the date of the decision" apply to cases in which the sittings of the Small Cause Court are not held consecutively by reason of the same Judge being the Judge of more than one Court. KAILAS CHANDRA SANNEL *v.* DOWLAT SHEIKH 5 B. L. R Ap. 57 : 14 W. R. 42

SMALL CAUSE COURT, MOFUSSIL —*contd.*

3. PRACTICE AND PROCEDURE—*contd.*

(*b*) NEW TRIALS AND REVIEWS—*contd.*

16. ———————— *Deposit of amount of decree and costs.* If an application for a review of judgment made by a defendant in a Small Cause Court be in the nature of an application for a new trial, the amount of the decree, though made payable by instalments, must be deposited in Court, under s 21 of Act XI of 1865. NAVROJI PESTANJI *v.* MANSUKH JAYACHAND
5 Bom. A. C. 70

17. ———————— *Deposit of costs* Act XI of 1865, s 21, does not require a plaintiff applying for a new trial to deposit the costs of the defendants. MOHIMA CHUNDER ROY *v* HURNATH CHUNGO . . . 18 W. R. 446

18. ———————— *Notice of application*

for a new trial cannot be entertained *In re* PITAMBAR SADHU KHAN 6 B. L. R. 390 note

S C. PETUMBAR SHADOO KHAN *v.* DOYA MOYEE DOSSEE . . . . 12 W. R. 17

19. ———————— *Practice—Notice of application—Review—Civil Procedure Code (Act X of 1877), s 623* The notice clause in s 21,

unnecessary If the grounds upon which the new trial is moved are proper grounds for granting

See ISAN CHUNDER BANERJEE *v* LUCHUN GOPE. KEMP *v.* PREM NARAIN SINGH
I. L. R. 5 Calc. 699 : 5 C. L. R. 539

20. ———————— "*Next sitting of the Court*"—*Judge holding two offices* Where the same person holds the office of Judge in two Small

first day on which the Judge sat again in that Court MADHUB CHUNDER BISWAS *v* OKHOY CHUNDER BISWAS GOPEE MOHUN BANERJEE *v* SREEKANTO BOSE . . 13 W. R. 103

21. ———————— *Application before execution of decree had been taken out for new trial.* An application presented to a Small Cause Court on the 25th May to set aside an *ex parte* decree obtained, on the 14th March, where no process had been executed for enforcing the decree, was *held* to fall within the first of the two provisions in s 21, Act XI of 1865. SHOJONEE DOSSIA *v.* DHURONEE DHUR GHOSE . 16 W. R. 226

22. ———————— *Notice of application—Next sitting of Court.* A judgment-debtor in a Small Cause Court on the day (28th

August and she filed her application on the 2nd.

CHAND GHOSE . . . 15 W. R. 281

23. ———————— *Ex parte decree obtained on forged bond.* Petitioner specially registered a bond, brought it into a Small Cause Court, and, without serving the obligors with any summons, got an *ex parte* decree against them and shortly after took out execution The judgment-debtor appeared within thirty days of the decree and applied for stay of execution on the ground that the bond was a forgery. Execution was

jurisdiction to grant a review and fresh decree, and that the procedure laid down in s. 21 of Act XI of 1865 was followed as far as it was applicable. *In the matter* OF MOHUN SAHOO
11 W. R. 245

24. ———————— *Second application for new trial.* An application having been made to a Small Cause Court Judge to set aside an *ex parte* decree, the Judge found from the record that the defendant had been personally served with a summons He accordingly requested the

25. ———————— *Application for new trial—Deposit of decretal amount or security—Provincial Small Cause Courts Act (IX of 1887), s. 17.* It is a condition precedent to the granting of a new trial that in accordance with the provi-

SMALL CAUSE COURT, MOFUSSIL —*contd.*

3. PRACTICE AND PROCEDURE—*contd.*

(*b*) NEW TRIALS AND REVIEWS—*contd*

sions of s. 17 of the Provincial Small Cause Courts Act, 1887, an applicant should at the time of presenting his application for new trial deposit in Court the decretal amount or tender security for payment of the same *Ramasami* v. *Kurisu, I L R. 13 Mad. 178*, dissented from. JOGI AHIR v. BISHEN DAYAL SINGH . I. L. R. 18 Calc. 83

Reviews of judgment of a Small Cause Court as distinguished from new trials are now governed by s. 623 of the Civil Procedure Code, 1882

26. ———— *Provincial Small Cause Courts Act (IX of 1887), s 17—Deposit of costs—Civil Procedure Code, 1882, ss 623, and 624 —Power of Judge to review order of predecessor.* On 23rd February 1888 the Subordinate Judge of Tinnevelly dismissed with costs a Small Cause suit on the ground that the plaintiff had not secured the attendance of his witnesses On 29th February the plaintiff presented a petition for review on which notice was directed to issue, but he did not deposit in Court the amount of the costs payable under the decree On 17th April the petition having come on for hearing, the Judge directed that the petitioner should "first" deposit the amount of the defendant's costs under s 17 of the Provincial Small Cause Courts Act, which was accordingly done on the following day On 21st April the petition which proceeded on grounds ... f the Code ... before the ... d assumed ... t-mentioned dates; he entertained the petition, but dismissed it The plaintiff preferred a revision petition ...

... I. L. R. 13 Mad. 178

(*c*) REFERENCE TO HIGH COURT

[Reference to the High Court are now made ...

See SUROOP CHUNDER PATRE v. JADOO MOYTEE. 5 W. R. S. C. C. Ref. 7

SMALL CAUSE COURT, MOFUSSIL —*contd*

3. PRACTICE AND PROCEDURE—*contd.*

(*c*) REFERENCE TO HIGH COURT—*contd.*

ANAND CHANDRA MAZUMDAR v. GOBARDHAN KHAN . . . B L R Sup Vol 457 5 W. R. S. C. C. Ref 19

KAMINEE SOONDUREE CHOWDHRAIN v MUDHOO SOODUN MOOKERJEE . . 21 W. R. 376

BANK OF BENGAL v CURRIE 3 B. L. R. 396; 12 W. R. 432

As to what is to be referred—

See GUJENDRO MOHUN SHAHA v. EASTERN BENGAL RAILWAY COMPANY . . 18 W. R. 145

and how the reference is to be made—

DINONATH ADDY v WELLER . 7 W. R. 16

27. ———— **Ground for reference**—*Application of parties* A Small Cause Court should not make a reference on a simple point merely on the application of the parties, unless it entertains a doubt upon the question HURISH CHUNDER TALAPUTTUR v O'BRIEN . 14 W. R. 248

28. ———— **Questions arising on application for new trial**—*Act X of 1867, s 1—Act XI of 1865, s 22* When the judgment of a Small Cause Court is called in question by one of the parties on a point of law, such as that damages have been assessed on a wrong principle, his proper course is to apply for a new trial The facts not being disputed, the Judge may grant a new trial as to what ...

SING v HARAN SIRDAR 3 B L R. A. C. 135; 11 W. R. 525

29. ———— *Act XI of 1865.* A point arising upon the application for a new trial may be referred to the High Court. NOBO COOMAR CHUCKERBUTTY v KOYLASH CHUNDER BAROOREE . . . 17 W. R. 516

30. ———— **Change of Judges pending reference**—*Second reference by successor of Judge in case already decided* Where a case was deter- ...

opinion was expressed, the case was at an end, and that it was irregular for a Judge who had

SMALL CAUSE COURT, MOFUSSIL —*contd.*

3 PRACTICE AND PROCEDURE—*contd.*

(c) Reference to High Court—*concld.*

succeeded to the Judge who referred the case to interfere in the matter. Umanund Roy *v.* Browne **7 W. R. 352**

(d) Miscellaneous Cases.

31. ———— **Act XI of 1865, s. 45 and s. 20**—*Power of clerk of Small Cause Court.* A clerk of Small Cause Court is not authorized to sign the copy of the judgment and certificate alluded to in s. 20, Act XI of 1865 Anonymous **3 W. R. S. C. C. Ref. 7**

32. ———— **s. 51**—*Power to invest Small Cause Court Judge with powers of Principal Sudder Ameen.* S. 51, Act XI of 1865, did not authorize the Local Government to permanently and unconditionally invest the Judge of a Small Cause Court with the powers of a principal Sudder Ameen The section only contemplated an occasional investment of the powers, and one contingent on the state on the business of the Court Bijee Kooer *v* Damodur Dass . . **5 N. W. 55**

33. ———— **s. 51**—*Powers of local Legislature—Judges of Small Cause Courts. Held,* that in permanently investigating under s. 51 of Act XI of 1865, the Judges of the Courts of Small Causes at Agra, Allahabad, and Benares, [illegible]

Judges by name from time to time, with the powers of a Principal Sudder Ameen, may have been the mode of procedure contemplated by the Legislature as the one likely to be ordinarily adopted. *Bijee Kooer v Damodur Dass, 5 N. W. 55,* impugned Crosthwaite *v.* Hamilton **I. L. R. 1 All. 87**

34 ———— *Execution of decree of Small Cause Courts against immoveable property—Powers of Judge of Small Cause Court.* The Judge of a Court of Small Causes, who has been duly invested with the powers of a Subordinate Judge under the provisions of s 51 of Act XI of 1865, has "general jurisdiction" within the meaning of s. 20 of that Act, and can consequently, [illegible]

[illegible]

35. ———— **Power to invest Small Cause Courts with insolvency jurisdiction**—*Civil Procedure Code, 1877, s. 5—Ch. XX, ss. 344—356.* The effect of s. 5 of the Code of Civil Procedure (Act X of 1877), coupled with the second [illegible]

SMALL CAUSE COURT, MOFUSSIL —*concld.*

3. PRACTICE AND PROCEDURE—*concld.*

(d) Miscellaneous Cases—*concld.*

words "any Court other than a District Court" and "any Court situate in his district" which occur in that section. Consequently, the Government Resolution No 2133 of the 3rd of April 1878, investing the Judge of the Court of Small Causes, Ahmedabad, with powers, under the said chapter, to adjudicate in insolvency matters, was *ultra vires* and invalid. Lallu Ganesh *v.* Ranchhod Kahandas . . . **I. L. R. 2 Bom. 641**

By the Civil Procedure Code Amending Act XII of 1879, s 360 is made applicable to Small Cause Courts, so that such a resolution would now apparently be valid.

36. ———— **Presentation of plaint**—*Former order returning plaint—Provincial Small* [illegible]

cessor, who was of opinion that the Court had no jurisdiction to try the suit and returned the plaint to the plaintiff under s. 23 of Act IX of 1887:—*Held,* that, the order returning the plaint being final under s. 27 of the Act, the Judge could not admit and register the plaint until that order had been set aside. *In re* Hausambhai Abdulabhai **I. L. R. 20 Bom. 283**

37. ———— *Jurisdiction—Small Cause Suit—Subordinate Judge invested with Small Cause Jurisdiction—Small Cause Suit tried by a Subordinate Judge under his ordinary jurisdiction—Appeal.* Where a Subordinate Judge invested with Small Cause jurisdiction tried a [illegible]

I. L. R. 25 Bom. 417

SMALL CAUSE COURT, PRESIDENCY TOWNS.

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

See CIVIL PROCEDURE CODE, 1882, s. 111
9 C W N. 748

See CLAIM TO ATTACHED PROPERTY
I. L. R. 18 Calc 296
I. L R 26 Calc. 778
4 C. W. N. 470

See HABEAS CORPUS, WRIT OF.
I L. R. 1 Calc. 78

See JURISDICTION
I. L R. 31 Calc. 340

See SANCTION FOR PROSECUTION—

POWER TO GRANT SANCTION,
I L. R. 27 Bom. 130

See SMALL CAUSE COURT REFERENCE
I. L. R. 31 Calc. 1001

See SUPERINTENDENCE OF HIGH COURT—

CIVIL PROCEDURE CODE, 1882, s 622
I. L. R. 13 Bom. 642

REVOCATION OF SANCTION
I. L. R. 27 Bom. 130

——— *Act XV of 1882, s 20*—

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT
I. L. R. 26 Bom. 235

——— Bombay—

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION, ETC.
I. L. R. 1 Bom. 82

See PLEADER—APPOINTMENT AND APPEARANCE . I. L R. 8 Bom. 105

——— Calcutta—

See PLEADER—APPOINTMENT AND APPERANCE . . 1 B. L. R. A. C. 45
2 Ind. Jur. N. S. 133 : 7 W. R. 228

See CALCUTTA MUNICIPAL CONSOLIDATION ACT (BEN. ACT II OF 1888), s. 135
6 C. W. N. 480

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

——— Madras—

See HINDU LAW—CONTRACT—ASSIGNMENT OF CONTRACT . 4 Mad 176
1 Mad. 150

——— execution of decree of—

See BAILMENT . 5 B. L. R. Ap. 31

——— jurisdiction of—

See ARBITRATION—AWARDS—VALIDITY OF AWARDS, AND GROUNDS FOR SETTING THEM ASIDE . I. L. R. 30 Calc. 397

See ATTACHMENT—SUBJECTS OF ATTACHMENT—TRUST PROPERTY.
I. L. R. 28 Calc. 574

See NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON . 8 B. L. R. Ap. 10

——— jurisdiction over—

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL.
I. L. R. 29 Calc. 498

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, 1882, s 622
7 C W. N. 43
I L. R. 30 Calc. 588

——— law of—

See CONTRACT ACT, s 27.
14 B. L. R. 76

——— practice and procedure of—

See CIVIL PROCEDURE CODE, 1882, s 108.
I. L R 21 Calc. 269
I. L. R. 20 Bom. 380

——— practice and procedure ; new trial—

See WITHDRAWAL OF SUIT.
I. L R. 29 Calc. 239

——— reference to High Court from—

See LETTERS PATENT, HIGH COURT, CL. 10.
8 B. L. R. 418

——— suit on decree of—

See RIGHT OF SUIT—DECREES.
9 W. R. 399
1 Ind. Jur. N. S 220
I L. R 2 Calc. 434
10 B L. R. Ap. 35
I. L. R. 5 Calc 294
I. L. R. 6 Bom. 7 ; 292
I. L. R. 8 Bom. 1

——— summons, book of—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—SMALL CAUSE COURT, PROCEEDINGS IN
6 B. L. R. 729, 730 note
7 B. L. R. Ap. 61

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

1. JURISDICTION.

(a) General Cases.

1. ——— **Extension of jurisdiction by Act XV of 1882**—*Act IX of 1850, s. 53—Abandonment of excess* Whilst the pecuniary jurisdiction of the Small Cause Court was limited to R1,000, the plaintiffs brought a suit for that amount for damages for breach of a certain contract after abandoning the excess, and in that suit they elected a non suit under s 53, Act IX of 1850. *Held,*

I. L. R. 9 Calc. 473

2. ——— **Adding sum to legal claim for purpose of giving jurisdiction**—*Act IX of 1850, s 28—Act XXVI of 1861, s. 2.* A plaintiff cannot give jurisdiction to the Small Cause Court by adding to his claim sums which he could not, under any circumstances, be entitled to recover, *Sikhur Chund v Sooringmull, 1 Hyde 272,* distinguished BONOMALLY NAWN v. CAMPBELL

10 B. L. R. 193 : 19 W. R. 20

3. ——— **Abandonment of excess**—*Claim not within pecuniary limits of jurisdiction* The Court has no jurisdiction to hear a case unless there be an abandonment of any excess above its pecuniary jurisdiction GORACHUND CHUNDER BOSE v. CHARROO CHUNDER GHOSE

Bourke O. C. 3 : Cor. 93

4. ——— **Leave to sue**—*Presidency Towns Small Cause Courts Act (XV of 1882), s. 18—Discretion, exercise of—Refusal of leave to sue—Jurisdiction—Defendant residing outside jurisdiction* A tradesman in business in Calcutta sued his debtor, a resident at Lucknow, to recover a sum of R23 for goods sold in Calcutta and for-

grant such leave, apparently on the ground that the defendant was living at a long distance from Calcutta, and that the suit was one for a small amount *Held,* that, in refusing to grant such

5. ——— **Non-resident foreigner carrying on business by his munim in Bombay**—*Presidency Towns Small Cause Courts Act (XV of 1882), s. 18.* Where a foreigner who did not reside in Bombay carried on business there by his munim —*Held,* that, under s. 18 (*1*) of the Small Cause Courts Act (XV of 1882), the Small Cause Court in Bombay had jurisdiction to try a suit brought against him in that Court. *Per*

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

1. JURISDICTION—*contd.*

(a) General Cases—*contd.*

SARGENT, *C.J.*—*Primâ facie* the word "defendants" in cl (*b*) of s. 18 has the same meaning in each of the three cases in which that clause gives jurisdiction to the Court; and as the word clearly

6. ——— **Splitting claim**—*Omission to abandon excess—Act IX of 1850, s 31. Held,*

7. ——— **Splitting cause of action**—*Act IX of 1850, s. 31* The defendant, as broker for the plaintiffs, guaranteed all transactions entered into by the plaintiffs with native firms through the defendant. Some of these native firms, in respect of such transactions, became indebted to the plaintiffs, and the defendant wrote to the plaintiffs requesting them to sue such defaulting firms. The plaintiffs accordingly sued six of such firms, and sent a letter to the defendant claiming from him payment of the taxed costs

doing so, were splitting their cause of action within the meaning of s. 31 of the Small Cause Courts Act (IX of 1850). BLACKWELL & Co v. SUMAR AHMED

6 Bom. O. C. 88

See CHOCKALINGA PILLAI v VIRUTHALAM

4 Mad. 334

8. ——— *Act IX of 1850,*

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd*

1. JURISDICTION—*contd*

(a) General Cases—*contd.*

in the Presidency towns. Cassum Jooma v. Thucker Liladhur Kissowji
I. L. R. 2 Bom. 570

9. ——— **Valuation of suit**—*Suit for damages under R1,000, on contract of more than* [illegible]

[illegible]

tion, notwithstanding that the original contract was for more than R1,000. Kuppu Chetti v Chidambara Mudali . . . . . 3 Mad. 170

10 ——— *Act IX of 1850,* [illegible]

[illegible]

was forfeited, the vendor could not retain the earnest money and sue for the whole amount of the liquidated damages; but that his proper course was to sue for the difference only, which suit could properly be brought in the Small Cause Court, being R1,000 only Meherwanji Mancharji v Punja Velji . . . . . 5 Bom. O. C 147

11. ——— *Set-off—Deduction of amount of proceeds of goods not accepted.* The plaintiffs consigned goods to the defendant, and drew a bill for R2,711-9-6 against them on the defendant in favour of the Chartered Mercantile Bank. The bill was accepted by the defendant, [illegible]

[illegible]

12. ——— *Part payment—Set-off—Suit for balance of account* The plaintiffs advanced R15,000 against the defendant's grain consigned to Hong-Kong, to be there sold on his account by the plaintiffs' agents. The plaintiffs subsequently gave credit to the defendant for R14,115-3-3, alleged to have been received by them as the proceeds of the sale, and sued him for the balance in the Bombay Small Cause Court, abandoning the excess so as to bring the claim within the Court's extended jurisdiction of R1,000 The defendant disputed the correctness of the account sales forwarded by the agents at Hong-Kong, and [illegible]

[illegible]

as both the plaintiffs and the defendant were bound, by the nature of the transaction, to have the proceeds of the sale applied to satisfy the advance made by the plaintiffs to the defendant, the receipt by the plaintiffs of the amount, for which they gave credit in their particulars of demand, was in the nature of a part payment, and that the suit was therefore on a balance of account, and within the jurisdiction of the Court of Small Causes Ewart, Latham & Co. v Muhammad Siddik
4 Bom. O. C. 133

(b) Army Act

13. ——— **Stat. 44 & 45 Vict C. 58, ss. 148, 151**—*Act XV of 1882, s. 18—Leave to sue.* The jurisdiction given to Small Cause Courts by Act XV of 1882 is not affected by 44 & 45 Vict., c 58, s 151. Wallis v Taylor
I. L. R. 13 Calc. 37

14. ——— *Presidency Towns Small Cause Courts Act (XV of 1882)—Army Act, 1881 (44 & 45 Vict., c. 58), s 151—Army (Annual) Act, 1888 (51 Vict, c 4), s. 7—* [illegible]

[illegible] . . . . I. L. R. 16 Calc. 144

15 ——— *Presidency Towns Small Cause Courts Act (XV of 1882), cl 2, ss. 1, 18—Army Act (44 & 45 Vict, c. 58), sub-s 1, s 151—51 Vict, c. 4, s 7.* The words of s. 7 of 51 Vict., c 4, amending sub-s 1 of s. 151 of 44 & 45 Vict, c 58, are meant to restrict the words "within the jurisdiction, etc" (found in sub-s. 1 of s. 151) to persons resident within it, so as to meet and exclude the case of persons casually within the jurisdiction and not actually resident within it, and are limited to that purpose, and do not therefore affect the powers conferred by s 18 of Act XV of 1882 Wallis & Co v. Bailey
I. L. R. 18 Calc. 372

(c) Breach of Promise of Marriage.

16. ——— *Madras City Civil Court Act (VII of 1892), s 3—Suit for "breach of promise of marriage"—Contract of marriage between intended bridegroom and parent of intended bride—Cognizable by Small Cause Court—Presidency*

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

1. JURISDICTION—*contd.*

(c) Breach of Promise of Marriage—*concld.*

Small Cause Courts Act (XV of 1882), s. 90 (q). The phrase "breach of promise of marriage," which occurs in cl. (q) of s 19 of the Presidency Small Cause Courts Act, has reference to the action as understood in English law, that is, between the

upon the City Civil Court to try all suits of a civil nature except, *inter alia*, suits cognizable by the Small Cause Court By s 19, cl (q), of the Presidency Small Cause Courts Act, the Small Cause Court has no jurisdiction to entertain suits for compensation for breach of promise of marriage A suit was filed in the City Civil Court for compensation for breach of promise of marriage; but the contract alleged to have been broken had been entered into between the parent of the intended bride and the intended bridegroom · *Held*, that the Court had no jurisdiction, inasmuch as such a suit was not exempted from the jurisdiction of the Small Cause Court. Muhammad Ashruff Hussain Saheb *v.* Muhammad Ali (1901) . I L. R. 24 Mad. 652

(d) Damages for Breach of Contract.

17 ———— **Contract for shipment and delivery of goods**—*Divisible contracts—Construction of contract—Separate suits.* Where a contract provided for delivery of goods in two monthly shipments and the defendants refused to take delivery or pay for either of the shipments of the goods in accordance therewith; and it appeared that the total amount of the damages sustained by reason of the two breaches alleged, if added together, exceeded R2,000, whereas, if taken separately, they were less than that amount —*Held*, that on

I. L. R. 19 Mad. 304

18. ———— **Value payable article**—*Breach of contract—Post Office Act (VI of 1898), s 34—Liability of Government to sender when value not collected from addressee—Duty of post*

also registered and insured it for R115 The fees were duly paid, receipts obtained, and the post office

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

1. JURISDICTION—*contd.*

(d) Damages for Breach of Contract—*concld.*

the article. The defendant relied, *inter alia*, upon s. 34 of the Indian Post Office Act, 1898. The proviso to s. 34 runs as follows :—Provided that the Secretary of State for India in Council shall not incur any liability in respect of the sum specified for recovery, unless and until that sum has been

money, when it delivers the article. If, for any

I. L. R. 28 Mad. 21[illegible]

(e) Decree, Suit on.

19. ———— **Suit on decree of Small Cause Court**—*Presidency Small Cause Courts*

I. L. R. 8 Bom.

(f) Immoveable Property.

20. ———— **Question of title**—*Act IX of 1850, s 91 Act (XV of 1882, s. 41)—Summons to show cause on what title occupier holds, without leave of owner.* Upon a summons issued under section 91 of Act IX of 1850 by the Judge of the

Arbai [illegible]

21. ———— *Act IX of 1850, ss 91-93—Difficult or doubtful question of title.* Proof of the existence of a difficult or doubtful question as to the right to possession, *bonâ fide* raised by the person in possession, was *held* to be sufficient cause shown to justify a Presidency Small Cause

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

1. JURISDICTION—*contd.*

(*l*) IMMOVEABLE PROPERTY—*contd.*

Court in refusing a warrant of ejectment under s. 93 of Act IX of 1850. Mere assertion of a title to possession is not sufficient. MUHAMMED ESUF SAHIB *v.* GEORGE . . I. L. R. 4 Mad. 385

ANONYMOUS . I. L. R. 4 Mad. 389 note

22. ——— ——— *Title to immoveable property—Act IX of 1850, ss 25, 91—Act XXVI of 1864, s 2—Practice—Leave to amend summons and plaint* In a suit brought under s. 91 of Act IX of 1850, the Bombay Court of [illegible]

[illegible] under s. 91 of Act IX of 1850, so as to render it conformable with a claim under s 25 of Act XXVI of 1864 if the summons were issued in the mistaken form by the fault of the Clerk of the Court, and not of the plaintiff NOWLA OOMA *v* BALA DHURMAJI I. L. R. 2 Bom. 91

23. ——— ——— *Act IX of 1850, s 91—Equitable defence—Suit for ejectment* The plaintiff in 1879 took out a summons under s 91 of the Presidency Towns Small Causes Courts Act, IX of 1850, calling on his nephew, the defendant, to deliver up possession of certain premises in his occupation belonging to the plaintiff The plaintiff alleged that he had purchased the premises in question in 1870 from one *N*, to whom the defendant had mortgaged them in 1866 with power of sale. The plaintiff produced the deed of mortgage to *N* [illegible]

[illegible] acknowledged that he was occupying the premises in question as the plaintiff's tenant and agreed to pay rent for the same at R25 a month. His [illegible]

[illegible] it had jurisdiction. On reference to the High Court:—*Held*, that the defendant was entitled to set up the defence which he had, and that it ousted the jurisdiction of the Court of Small Cause to proceed further with the action—inasmuch as such defence raised a question of adverse title, which in suits under s 91 of Act IX, 1850, that Court had not jurisdiction to decide LUCKMIDAS KHIMJI *v.* MULJI CANJI . . . I. L. R. 5 Bom 295

24. ——— ——— *Act XV of 1882 s 41—Landlord and tenant—Admission of tenancy—Suit in ejectment* The plaintiff, alleging that the defendant was his tenant at a monthly rental of R52 and had refused to deliver up possession to the plaintiff, took out a summons against the defendant under s 41 of the Small Cause Courts Act, XV of [illegible]

[illegible] applied to the High Court under its extraordinary jurisdiction. *Held*, that the case was within the jurisdiction of the Small Cause Court DAVIDAS HARJIVANDAS *v* TYABALLY ABDULALLY I. L. R. 10 Bom. 30

25 ——— ——— *Presidency Towns Small Cause Courts Act (XV of 1882), ss. 22 and 41—Landlord and tenant—Suit to ejectment—Tender and payment into Court—Transfer of Property Act (IV of 1882), s 114—Costs* The plaintiff, a landlord, relying on a provision in a lease gave the defendants, his tenants, notice to quit. Within seven days the defendants tendered rent, interest, and costs The plaintiff, nevertheless, filed this suit to eject the defendants The defendants [illegible]

[illegible] plaintiff must pay the defendant's costs as between attorney and client under s 22 of that Act. *Held*, [illegible]

26 ——— **Trespass to immoveable property**—*Act XV of 1882, ss. 18, 19, 38, 45.* The plaintiff brought a suit in the Calcutta Court of Small Causes to recover damages for trespass to certain immoveable property of which he proved he was in possession; the defendant contended that such a suit was one for the determination of a right

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

1. JURISDICTION—*contd.*

(*f*) IMMOVEABLE PROPERTY—*concld.*

to, or interest in, immoveable property, and was therefore not maintainable in the Small Cause Court. *Held*, that the Court had jurisdiction to entertain such a suit PEARY MOHUN GHOSAUL *v.* HARRAN CHUNDER GANGOOLY

I. L. R. 11 Calc. 261

27. ————————— *Small Cause Courts Act (XV of 1882), s. 41—Mortgage—Mortgage sale—Ejectment—Suit, brought by purchaser at mortgage sale, to eject mortgagor—Right of purchaser to possession not derived from mortgagee* The defendant, Mowji Dayal, mortgaged the house in question to one Lalji Doongersey in 1890 The

to eject the defendant (mortgagor), contending that he held as tenant-at-will or by permission of the plaintiff or of the mortgagee through whom he (the plaintiff) claimed *Held*, that the case did not come within s 41, and that the Small Cause Court had no jurisdiction to try the suit. A purchaser at a mortgage sale does not claim through the mortgagee for the purpose of s 41 of the Small Cause Courts Act (XV of 1882) That section deals with the right to recover possession, rather than with title, and consequently the derivative claimant must establish that his right to possession is the same as that which was vested in his predecessor (the mortgagee) But the purchaser's right to recover possession is one which came into existence for the first time when he became absolute owner of the property It is one which was not vested in the mortgagee, so that, though his present right to recover possession came into existence by virtue of something done by the mortgagee, it cannot be said that it passed from the mortgagee to him. Therefore, so far as relates to the purchaser's present right to recover possession, the mortgagee is not a person through whom the purchaser claims CHABILDAS LALLUBHOY *v.* MOWJI DAYAL (1901)

I. L. R. 26 Bom. 82

(*g*) INSOLVENCY

28 ————— Madras Small Cause Court —*Civil Procedure Code (Act XIV of 1882), s 8— —Presidency Small Cause Courts Act (XV of 1882), ss 2, 23* The Madras Court of Small Causes

to the Presidency Small Cause Court certain por-

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

1. JURISDICTION—*contd.*

(*g*) INSOLVENCY—*concld.*

tions of the said Code, is repealed by the Presidency Small Cause Courts Act (s. 2 of Act XV of 1882), and consequently the notification of the Governor in Council of Fort St. George, dated 25th February 1879, conferring on the Madras Court of Small Causes jurisdiction in insolvency being repugnant to s 8 of the Code of Civil Procedure, 1882, as amended, if otherwise valid, ceased to have effect when Act XV of 1882 came into force. *In re* WALLER . . . . I. L. R. 6 Mad. 430

(*h*) LEGACY, SUIT FOR.

29. ————————— *Presidency Towns Small Cause Courts Act (XV of 1882), s 19—Suit for legacy—Equitable jurisdiction* A suit to recover a legacy brought in the Small Cause Court in which there is no allegation that the executors were in possession of sufficient assets to

OKHOY COOMAR BONNERJEE *v.* KOYLASH CHUNDER GHOSAL . . . . I. L. R. 17 Calc. 387

(*i*) MAINTENANCE, SUIT FOR.

30. ———— **Presidency Small Cause Courts Act (XV of 1882), s. 18** Presidency Small Cause Courts, constituted under Act XV of 1882, are not debarred from entertaining suits for maintenance not based on contract or declaratory decree. POKALA *v.* MURUGAPPA

I. L. R. 10 Mad. 114

(*j*) MOVEABLE PROPERTY.

31. ———— **Tiled huts**—*Act IX of 1850*,

32. ———— **Fixtures**—*Act IX of 1850, s 85—Seizure of goods and chattels in execution of decree—Engine in flour-mill—Landlord and tenant.* In a suit for damages for the removal of oil and

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

1. JURISDICTION—*contd.*

(*j*) MOVEABLE PROPERTY—*contd.*

nothing to do with the question whether they are seizable in execution as goods and chattels. MILLER *v.* BRINDABUN

I. L. R. 4 Calc. 946 : 4 C. L. R. 460

33. ——— — **Presidency Towns Small Cause Courts Act (XV of 1882), s. 28**—*Presidency Small Cause Court Rules of Practice, 49, 50, 51—Tiled huts—" For the purposes of execution," Meaning of—Question of Title—Res judicata* In execution of a decree of the Calcutta Small Cause Court against *N*, the judgment-creditors attached certain tiled huts which had been mortgaged by *N* to the plaintiff Plaintiff thereupon filed his claim on the mortgage in the Small Cause Court, but his claim was disallowed, that Court being of opinion that the mortgage was a collusive transaction and not genuine. The plaintiff then brought this suit on his mortgage making the judgment-creditors as well as *N* defendants

[illegible]

would not lie, and the suit was dismissed on that objection by the original Court *Held*, that the words of s. 28 (Act XV of 1882), " for the purposes of execution," must mean for all purposes of execution, inclusive of the purposes of determining objections made to attachment Tiled huts for all the purposes of execution are therefore moveable property under that section The Small Cause Court has full power and authority to determine

[illegible]

Held, on appeal by the plaintiff reversing the above decision, that tiled huts are immoveable property. That the words " for the purpose of the execution of the decree " in s 28 of Presidency Small Cause Courts Act (XV of 1882) only mean [illegible]

[illegible]

contemplate that Small Cause Courts should deal, [illegible]

[illegible]

neither the appellant nor the respondents, either or both, could by consent or otherwise give it jurisdiction. That the plaintiff was not estopped from now saying that the Small Cause Court had no jurisdiction to deal with the matter. DENO NATH BATABYAL *v.* ADHOR CHUNDER SETT . **4 C. W. N. 470**

(*k*) REGISTRATION ACT, 1866, ss 52, 53.

34. ——— **Petition and decree under Registration Act.** Small Cause Courts in the Presidency Towns had no jurisdiction to entertain petitions and make decrees under the provisions of ss. 52 and 53, Act XX of 1866 *In the matter of* ACT XX OF 1866 *In the matter of* NIL KAMAL BANERJEE *v* MADHUSUDAN CHOWDRY

6 B. L. R. 177

S C NIL COMUL BANERJEE *v* MUDOOSOODUN CHOWDHRY . . . . . **14 W. R. 478**

(*l*) REVENUE.

35. ——— **Matter concerning revenue** —*Trespass by Collector—Action of Collector in preserving waste land—Act IX of 1850, s 25* The Collector of Bombay, *bonâ fide* believing that certain land upon which a quarry had been opened by the plaintiff was Government waste land, by his servants forcibly stopped the quarrying operations of the plaintiff " for the purpose, the Collector stated in his evidence, of preserving the land for Government, as land from which revenue might in future be collected " In an action for trespass brought against him by the plaintiff, it was *held* that the act of the Collector was not " a matter concerning revenue " within the meaning of s. 25 of Act IX of 1850, and that the jurisdiction of the Small Cause Court was therefore not excluded. NARAYAN KRISHNA LAUD *v* NORMAN

5 Bom. O C. 1

(*m*) SET-OFF.

36. ——— **Claims arising out of the** [illegible]

[illegible]

breach of contract, and claimed judgment for the sum of R1,540-14-6 after giving the plaintiff credit [illegible]

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

1. JURISDICTION—*contd.*

(*f*) IMMOVEABLE PROPERTY—*concld.*

to, or interest in, immoveable property, and was therefore not maintainable in the Small Cause Court *Held*, that the Court had jurisdiction to entertain such a suit. PEARY MOHUN GHOSAUL *v.* HARRAN CHUNDER GANGOOLY

I. L. R. 11 Calc. 261

27. ——————— *Small Cause Courts Act (XV of 1882), s 41—Mortgage—Mortgage sale—Ejectment—Suit, brought by purchaser at mortgage sale, to eject mortgagor—Right of purchaser to possession not derived from mortgagee.* The defendant, Mowji Dayal, mortgaged the house in question to one Lalji Doongersey in 1896. The defendant (mortgagor) remained in occupation of a part of the house, the rest of it being occupied by his tenants, who paid him rent In October, 1900, Lalji Doongersey, the mortgagee, sold that house by auction, under his power of sale, and the plaintiff purchased it and obtained a conveyance on the 20th April, 1901. Subsequently the plaintiff (purchaser) brought this suit in the Small Cause Court, under s. 41 of the Small Cause Courts Act (XV of 1882), to eject the defendant (mortgagor), contending that he held as tenant-at-will or by permission of the plaintiff or of the mortgagee through whom he (the plaintiff) claimed. *Held*, that the case did not come within s. 41, and that the Small Cause Court had no jurisdiction to try the suit. A purchaser at a mortgage sale does not claim through the mortgagee for the purpose of s 41 of the Small Cause Courts Act (XV of 1882) That section deals with the right to recover possession, rather than with title, and consequently the derivative claimant must establish that his right to possession is the same as that which was vested in his predecessor (the mortgagee) But the purchaser's right to recover possession is one which came into existence for the first time when he became absolute owner of the property It is one which was not vested in the mortgagee, so that, though his present right to recover possession came into existence by virtue of something done by the mortgagee, it cannot be said that it passed from the mortgagee to him Therefore, so far as relates to the purchaser's present right to recover possession, the mortgagee is not a person through whom the purchaser claims CHABILDAS LALLUBHOY *v* MOWJI DAYAL (1901)

I. L. R. 26 Bom. 82

(*g*) INSOLVENCY.

28. ——————— **Madras Small Cause Court** —*Civil Procedure Code (Act XIV of 1882), s 8— —Presidency Small Cause Courts Act (XV of 1882), ss 2, 23* The Madras Court of Small Causes has no jurisdiction in insolvency. The second paragraph of s 8 of the Code of Civil Procedure, 1882, which authorized the Local Government, by notification published in the official Gazette, to extend to the Presidency Small Cause Court certain por-

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

1. JURISDICTION—*contd.*

(*g*) INSOLVENCY—*concld.*

Causes jurisdiction in insolvency being repugnant to s. 8 of the Code of Civil Procedure, 1882, as amended, if otherwise valid, ceased to have effect when Act XV of 1882 came into force. *In re* WALLER . . . **I. L. R. 6 Mad. 430**

(*h*) LEGACY, SUIT FOR.

29. ——————— *Presidency Towns Small Cause Courts Act (XV of 1882), s 19—Suit for legacy—Equitable jurisdiction.* A suit to recover a legacy brought in the Small

GHOSAL . . . . I. L. R. [illegible]

(*i*) MAINTENANCE, SUIT FOR

30. ——————— **Presidency Small Cause Courts Act (XV of 1882), s. 18** Presidency Small Cause Courts, constituted under Act XV of 1882, are not debarred from entertaining suits for maintenance not based on contract or declaratory decree POKALA *v* MURUGAPPA

I. L. R. 10 Mad. 114

(*j*) MOVEABLE PROPERTY.

31. ——————— **Tiled huts**—*Act IX of 1850,*

32. ——————— **Fixtures**—*Act IX of 1850, s 85—Seizure of goods and chattels in execution of decree—Engine in flour-mill—Landlord and tenant.* In a suit for damages for the removal of oil and

in execution. The question whether fixtures are removeable by a tenant as against his landlord has

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

1. JURISDICTION—*contd.*

(*j*) MOVEABLE PROPERTY—*contd.*

nothing to do with the question whether they are seizable in execution as goods and chattels. MILLER *v.* BRINDABUN

I. L. R. 4 Calc. 946 : 4 C. L. R. 460

33. ——— — **Presidency Towns Small Cause Courts Act (XV of 1882), s. 28**—*Presidency Small Cause Court Rules of Practice, 49, 50, 51—Tiled huts—"For the purposes of execution," Meaning of—Question of Title—Res*

upon filed his claim on the mortgage in the Small Cause Court, but his claim was disallowed, that Court being of opinion that the mortgage was a collusive transaction and not genuine The plaintiff then brought this suit on his mortgage making the judgment-creditors as well as *N* defendants and praying as against the judgment-creditors that they be restrained from proceeding to a sale or other disposition of the mortgaged premises *A* preliminary objection was taken that such a suit would not lie, and the suit was dismissed on that objection by the original Court *Held*, that the words of s. 28 (Act XV of 1882), "for the purposes of execution," must mean for all purposes of execution, inclusive of the purposes of determining objections made to attachment Tiled huts for all the purposes of execution are therefore moveable property under that section The Small Cause Court has full power and authority to determine the question of title under a mortgage over attached property, and that question is therefore *res judicata* DENO NATH BATABYAL *v* NUFFER CHUNDER NUNDY . . . I. L. R. 26 Calc 778

3 C. W. N 590

Held, on appeal by the plaintiff reversing the above decision, that tiled huts are immoveable property. That the words "for the purpose of the execution of the decree" in s. 28 of Presidency Small Cause Courts Act (XV of 1882) only mean

Court had no jurisdiction to go into the question of the validity of the plaintiff's mortgage, and neither the appellant nor the respondents, either or both, could by consent or otherwise give it jurisdiction. That the plaintiff was not estopped from now saying that the Small Cause Court had no jurisdiction to deal with the matter. DENO NATH BATABYAL *v* ADHOR CHUNDER SETT . 4 C. W. N. 470

(*k*) REGISTRATION ACT, 1866, ss. 52, 53.

34. ——— **Petition and decree under Registration Act.** Small Cause Courts in the Presidency Towns had no jurisdiction to entertain petitions and make decrees under the provisions of ss. 52 and 53, Act XX of 1866 *In the matter of* ACT XX OF 1866 *In the matter of* NIL KAMAL BANERJEE *v* MADHUSUDAN CHOWDRY

6 B. L. R. 177

S C NIL COMUL BANERJEE *v* MUDOOSOODUN CHOWDHRY . . . . 14 W. R. 478

(*l*) REVENUE

35. ——— **Matter concerning revenue** —*Trespass by Collector—Action of Collector in preserving waste land—Act IX of 1850, s 25* The Collector of Bombay, *bonâ fide* believing that certain land upon which a quarry had been opened by the plaintiff was Government waste land, by his servants forcibly stopped the quarrying operations of the plaintiff "for the purpose, the Collector stated in his evidence, of preserving the land for Government, as land from which revenue might in future be collected" In an action for trespass

Small Cause Court was therefore not excluded. NARAYAN KRISHNA LAUD *v.* NORMAN

5 Bom. O C. 1

(*m*) SET-OFF.

36. ——— **Claims arising out of the same transaction**—*Presidency Small Cause Court—Jurisdiction—Equitable right of set-off—Civil Procedure Code (Act XIV of 1882), ss 111, 126—Presidency Small Cause Courts Act (XV of 1882), ss 18, expl 1, 24.* In a suit in the Calcutta Small Cause

breach of contract, and claimed judgment for the

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

1. JURISDICTION—*contd.*

(*m*) SET-OFF—*concld.*

and that of the defendant arise out of the same transaction, although the claim sought to be set-off is not within the provisions of s. 111 of the Code of Civil Procedure. *Quære*. Whether a decree could be passed in favour of the defendant for any balance which might be found due to him. BROJENDRA NATH DAS *v* BUDGE-BUDGE JUTE MILL Co . . . . I L. R. 20 Calc. 527

37. ———— **"Admitted set-off"**—*Presi-* [illegible] (*XV of 1882*), [illegible] (*Act XIV of* [illegible] the Calcutta [illegible] contract, the damages for which breach amounted to R2,148, but they deducted from this sum of R2,148, by way of set off, a sum of R500 which was due by them to the defendant on account of an entirely different transaction, thereby reducing their claim to R1,648 The defendant admitted that the R500 was due to him by the plaintiffs, but did not, either before suit or at the trial, agree to its being set-off against the plaintiffs' claim *Held*, by MACPHERSON and TREVELYAN, *JJ* (PETHERAM, *C J*, dissenting), that the sum of R500 could not, under expl. I of s 18 of Act XV of 1882, be set-off and that the suit must be dismissed as being beyond the jurisdiction of the Court. RAMDEO *v* POKHIRAM

I. L. R. 21 Calc. 419

(*n*) TITLE, QUESTION OF

38. ———— **Questions of title incidentally raised**—*Act XV of 1882, s. 19, cl. (g)—Suit for rent—"Suits for determination of any right or interest in immoveable property"* When a suit is brought in a form cognizable by a Court of Small Causes, that Court cannot decline jurisdiction, because a question of title to immoveable property is incidentally raised It is the nature of the suit as brought by the plaintiff, and not the nature of the defence, that determines whether or not the Court of Small Causes has jurisdiction *Cl. (g)* of s. 19 of the Presidency Small Cause Courts Act (XV of 1882), [illegible]

fazendari land. The defendant pleaded that no rent had been paid for the land since 1846, that the claim was time-barred, and that the plaintiffs had no title to the land in question. The Judges of the Court of Small Causes dismissed the suit, on the ground that the defence raised a *bonâ fide* question of title to immoveable property which ousted their [illegible]

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

1. JURISDICTION—*contd.*

(*n*) TITLE, QUESTION OF—*concld.*

39. ———— *Jurisdiction of —Title suit—Presidency Small Cause Courts Act (XV of 1882), s. 69.* The Presidency Small Cause Court has jurisdiction to try questions of title, which arise incidentally in a suit, and even if such question be the principal, though not the sole one in the suit, the jurisdiction of the Small Cause Court is not ousted. To oust the jurisdiction of the Small Cause Court the question of title must be the sole and only one in the suit. RAJENDRA MULLICK *v.* NANDA LALL GUPTA (1904)

I. L. R. 31 Calc. 1001

40. ———— *Small Cause Court, Presidency Towns—New trial—Tiled huts—Title to immoveable property—Presidency Small Cause Courts Act (I of 1895), s 38—Civil Procedure Code (Act XIV of 1882), s 622.* Ordinarily where [illegible]

distinguished. *Jamnadas* v. *Bai Shivkor, I. L. R. 5 Bom. 572*, followed. AMRITA LAL KALAY *v.* NIBARAN CHANDRA NAYEK (1904)

I. L. R. 31 Calc. 340

(*o*) TROVER.

41. ———— **Action for detinue and trover**—*Gift—Incomplete gift—Suit by executor to recover promissory notes on ground that the gift of them to defendant was incomplete—Presidency Towns Small Cause Courts Act (XV of 1882), s 18.* The plaintiff as executor of *D* sued the defendant in the Small Cause Court of Bombay to recover two Government promissory notes of the nominal value of R2,000, standing in the name of *D*. The defendant, who had been *D's* servant, alleged that the notes had been given to him by *D* as a [illegible]

Court was concerned, the defendant had a right to retain the note. *Held*, by the High Court, that the

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

1. JURISDICTION—*concld.*

(o) Trover—*concld*

Court of Small Causes had jurisdiction to entertain the plaintiff's claim, on the ground that there was an incomplete gift of the notes to the defendant and that it might on that ground pass a decree in favour of the plaintiff for the return of the notes or payment of the value. Khursedji Rustomji Colah v Pestonji Cowasji Bucha

I. L. R 12 Bom. 573

2. PRACTICE AND PROCEDURE.

(a) General Cases.

[The practice and procedure of the Presidency

great portion of the Civil Procedure Code has been extended to these Courts.]

1. ——— **Dismissal of suit for want of jurisdiction**—*Costs—Form of decree.* Where

In such a case the Court has power to award costs to the defendant Freck v. Harley

I. L. R. 6 Calc. 418 : 7 C. L. R. 237

2. ——— **Power to restore case struck off for default in appearance**—*Act IX of 1850, s 42.* A Court of Small Causes, constituted under Act IX of 1850, could, during the same day and at the same sitting of the Court, *ex parte* restore a cause once struck out under s. 42, though the

(b) Leave to sue

3. ——— **Practice as to granting leave**

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

2. PRACTICE AND PROCEDURE—*contd.*

(b) Leave to sue—*concld.*

section, and might be done by the Registrar of the Court of Small Causes, Madras *Held*, that the rule was *ultra vires* and void Rajam Chetti v. Seshayya . . I. L. R. 18 Mad. 236

(c) New Trial.

4. ——— **Application for new trial**—*Fresh evidence—Affidavits* A party who applies for a rule for a new trial and obtains it on particular materials, ought not to be allowed to go into fresh evidence with a view to strengthen his case when the rule comes on for hearing If on hearing both parties the Court thinks further inquiry necessary, it can, of course, make such inquiry in such manner as seems most fit to it. When new trials are moved for on allegation of facts, it would be very convenient that a practice should be introduced of

5. ———

Small Cause

by I of 189

Where the

the Presidency Small Cause Court to deliver his judgment contingent upon the opinion of the High Court under s. 69 of the Presidency Small Cause Courts Act (XV of 1882), but subsequently abandoned the exercise of such right before the question

Held, therefore, that the Small Cause Court had jurisdiction to entertain the application by the plaintiff for a new trial. Protap Chunder Sen v. Tunsook Dass . . I. L. R. 23 Calc. 967

6. ——— **Ground for new trial**—*Want of jurisdiction* A new trial may be granted on the ground of want of jurisdiction in the Court, though such ground was not formally raised or recorded at the original hearing Chundee Churn Dutt v. Eduljee Cowasjee Bijnee

I. L. R. 8 Calc. 678 : 11 C. L. R. 225

7. ——— *Question of evidence—Power to reverse decree.* Where the ques-

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

2. PRACTICE AND PROCEDURE—*contd.*

(c) NEW TRIAL—*contd.*

Kannayya, I. L. R. 19 Mad. 96, followed. SASSOON *v.* HURRY DAS BHUKUT

I. L. R. 24 Calc. 455
1 C W. N. 44

8. ——— *Presidency Towns Small Cause Courts Act (I of 1895), ss 37 and 38—Powers of Bench sitting on application for new trial—Question of evidence.* The fourth Judge of the Presidency Small Cause Court, in a suit tried by him, delivered judgment for the plaintiff. The defendant applied under s 38 of the Presidency Small Cause Courts Act (I of 1895) for a new trial and the Judges (the first and fourth) on such

Court in setting aside the original decree, and exceeded the jurisdiction vested in them by s 38 of the Act, such jurisdiction being a revisional jurisdiction only *Held*, also, that, where the question is one of evidence, the judgment of the original Court could be reversed, and a new trial directed only when such judgment is manifestly against the weight of evidence *Sadasook Gambir Chand* v. *Kannayya, I L R. 19 Mad. 96*, followed. SASSOON *v* HURRY DAS BHUKUT

I. L. R. 24 Calc. 455
1 C. W N. 44

9. ——— **Difference of opinion between Judges as to allowing new trial.** In a case of difference of opinion between two Judges upon the point as to whether there should be a new trial, *no rule* can be granted. JARDINE, SKINNER & Co *v* MONEY . . . . 14 W. R. 312

10. ——— **Application to set aside ex parte decree**—*Presidency Small Cause Courts Act (XV of 1882), s 37—Ex parte decree* S 37 of the Presidency Small Cause Courts Act (XV of 1882) does not apply to an *ex parte* decree An application to set aside an *ex parte* decree passed by a Presidency Court of Small Causes falls within the terms of s 108 of the Code of Civil Procedure. ROSHANLAL *v.* LACHMI NARAYAN

I. L. R. 17 Bom. 507

11. ——— **Power to reverse decree**—*Presidency Towns Small Cause Courts Act (XV of 1882), s 37—Powers of Full Bench of Presidency Small Cause Court—Reversal of decree on question*

a misappreciation of the evidence and reversed the decree. *Held*, by COLLINS, *C.J.* and SHEPHARD *J.* (BEST, *J.*, dissenting), that the Full Bench of the Presidency Small Cause Court had transgressed the limits of the jurisdiction conferred by Act XV of 1882, s. 37, as the case was one on which different minds might not unreasonably have come to different conclusions. SADASOOK GAMBIR CHAND *v.* KANNAYYA . . . I. L. R. 19 Mad 98

12. ——— **Powers of Full Bench**—*Presidency Towns Small Cause Courts Act (XV of 1882), s 37—Presidency Towns Small Cause Courts Amendment Act (I of 1895), s. 13—Appeal*

VASA CHARLU *v.* BALAJI RAU

I L R. 21 Mad. 232

13. ——— **Second new trial.** It is com-

14. ——— *Second application for new trial—Presidency Towns Small Cause Courts Act (XV of 1882), s. 37—Act IX of 1850, s. 53.* The Judges of the Calcutta Small Cause Court have power to entertain in the same suit more than one application for a new trial. There is nothing in s 37 of Act XV of 1882 prohibiting such a practice It is in accordance with the practice of Courts in England to allow such applications *Purson Chund Golacha* v. *Kajooram, 10 B. L. R. 355 : 19 W. R 203*, followed. SURRUT COOMARI DASSEE *v* RADHA MOHUN ROY

I. L R. 22 Calc. 784

15. ——— *Presidency Small Cause Courts Act (XV of 1882, as amended by Act I of 1895), s. 38—New trial of contested cases—Application to set aside order restoring suit dismissed for*

(1902) . . . I. L. R. 26 Mad 183

16. ——— **Jurisdiction of Registrar**. The Registrar of the Presidency Small Cause Court has no jurisdiction to entertain an application for new trial to set aside an *ex parte* decree made by him for default. HALADHAR MAITI *v.* CHOYTONNA MAITI (1903)

I. L. R. 30 Calc. 588
s.c. 7 C. W. N. 547

(d) REFERENCE TO HIGH COURT.

17. ———**Question of law.** Only questions of law in suits can be referred. MOHUN SING *v.* KAREEM OONISSA BEGUM . . 8 Mad. 57

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

2. PRACTICE AND PROCEDURE—*contd.*

(*d*) REFERENCE TO HIGH COURT—*contd.*

The point of law referred should be expressly stated. JARDINE, SKINNER & Co *v* MONEY 14 W R. 312

18 ———————— *Question of fact —Act XXVI of 1864, s 7—Act IX of 1850, s 55* [illegible]

19. ——— Order rejecting application for new trial—*Judgment contingent on opinion of High Court* The decision of a Small Cause Court rejecting an application for a new trial, but making such rejection contingent upon the opinion of the High Court, was not such a judgment as could be referred under s 7, Act XXVI of 1864 HALL *v.* JOAKIM . . . . 12 B. L R. 34

See also MACKINTOSH *v* GILL. 12 B. L R 37 · 20 W R. 358

20 ———————— *Act XV of 1882, s 69—Reference to High Court, question for—New trial, Application for—Difference of opinion between Judges—Contingent judgment* An order [illegible]

that stage form matter for reference NUSSERWANJEE *v* PURSOTUM DASS . I. L. R. 4 Calc 298

[Under the Acts of 1850 and 1864, the Judge in referring a point was bound to make his judgment contingent on the opinion of the High Court

See DOSABHAI KAVASJI *v.* KHERBADJI HORMASJI 7 Bom. O. C. 180

But now under the Act of 1882, s 69, he can either give judgment contingent on the opinion of the High Court or reserve his judgment]

[illegible]

I. L. R. 20 Mad. 536

22. ———— *Presidency Towns Small Cause Courts Act (XV of 1882), ss 37, 69—Application to Full Bench for new trial* The Full Bench of a Presidency Court of Small Causes cannot state a case for the opinion of the High Court on the hearing of an application for a new trial made under Act XV of 1882, s. 37, such hearing not being the " hearing of a suit " within the meaning of s 69 of that Act OAKSHOTT *v* BRITISH INDIA STEAM NAVIGATION COMPANY I. L R. 15 Mad. 179

23. ———————— *Presidency Small Cause Courts Act (XV of 1882), s 69—Case stated for opinions of High Court—Mode of stating case—Question of law or usage* In a suit brought in the Small Cause Court by the plaintiffs against the defendant for damages for breach of contract to deliver goods, the only dispute was as to the principle on which damages were to be assessed. The defendant paid into Court the sum of R779-10 0 At the close of the hearing, and before judgment was delivered, the plaintiffs' attorney informed the Chief Judge that he would require a case to be [illegible]

judgment was delivered He said he could not [illegible]

High Court, and referred the following general question for its opinion . " Whether, on the facts [illegible]

[illegible] the High Court, a preliminary objection was taken as to whether the reference was in proper form, no question of law or usage having the force of law having been formulated for the opinion of the Court. *Held* (FARRAN, J., doubting), that the reference should be sent back to be amended by stating the precise question arising in the case RALLI BROTHERS *v* GOVERDHAN MULCHAND . . . I. L. R. 15 Bom. 278

24 ———————— [illegible]

Presidency Small Cause Courts Act (XV of 1882), the existence of such a question of law or usage or construction as therein mentioned is a condition precedent to a reference to the High Court and if no such question arises, the Small Cause Court has no authority to refer and the High Court no jurisdiction

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

2. PRACTICE AND PROCEDURE—*contd.*

(*d*) Reference to High Court—*contd.*

to deal with the reference. The duty of drawing up the case, where a reference is made, is imposed on the Court, and it is responsible for the form of the case. Ishwardas Tribhovandas *v.* Kalidas Bhaidas . . . I. L. R. 20 Bom. 779

25. ———————— *Presidency Towns Small Cause Courts Act (XV of 1882), s. 69—Requisition for reference, Time for making.* A party requiring a Judge of the Small Causes Court to make a reference to the High Court under s. 69 of the Small Cause Courts Act (XV of 1882) must do so before the Judge has delivered his judgment. Bank of Bengal *v.* Vyabhoy Ganoji I. L. R. 16 Bom. 618

26. ———————— *Judgment contingent upon opinion of the High Court—Presidency Small Cause Courts Act (XV of 1882), s 69—Civil Procedure Code, 1882, ss 373, 617, 618, and 619—Withdrawal of suit, Power to allow* The Small Cause Court passed a decree for the plaintiff, but contingent upon the opinion of the High Court. On the reference the High Court decided that, upon the plaint before the Court, the plaintiffs could not recover. *Held*, that the Small Cause Court, on the receipt of the copy of the judgment of the High Court, was bound to enter judgment for the defendants. Yule & Co *v.* Mahomed Hossain I. L. R. 24 Calc. 129

27. ———— **Defect in reference**—*No question of law referred—Presidency Small Cause Courts Act (XV of 1882), s 69* A reference can only be made under s 69 of Act XV of 1882 for the opinion of the High Court upon some question of law or usage having the force of law or upon the construction of a document if any such question arises in [illegible]

of the High Court is sought *Quære* · Whether s. 617 of the Code of Civil Procedure is to be read as incorporated with s 69 of the Presidency Small Cause Courts Act Benode Lall Roy *v* River Steam Navigation Company . 1 C. W. N. 143

28. ———— **Deposit of security for costs**—*Act XXVI of 1864, s 8.* A case should not be referred to High Court by a Judge of the Small Cause Court until security has been deposited in accordance with s. 8, Act XXVI of 1864, by the party against whom the judgment has been given If such party do not deposit the security "forthwith," he must be taken to submit to the judgment of the Small Cause Court Where, however, a case was sent up without security for costs being deposited, and before the case was heard the plaintiffs tendered a sum as security, which the Judge refused to accept as being too late, the High Court, on the sum being deposited, and it appearing that the defendant would not be prejudiced by such a course, allowed the case to be heard. Fornaro *v.* Ramnarain Sookdeb

14 B. L. R. 180 : 23 W. R. 136

29. ———————— *Act XXVI of 1864, s. 8—Omission to deposit costs—Non-appearance.* Where a case had been referred from the Small Cause Court, for the opinion of the High Court at the request of the plaintiffs, and they neither deposited any security for the cost of the reference, nor appeared in the High Court:—*Held*, that the defendants, who appeared, were entitled to judgment and to an order that the plaintiffs should pay the costs of reference and other expenses connected therewith Dissent *v.* Justices of the Peace for the Town of Calcutta

5 B. L. R. Ap. 24 : 20 W. R. 349 note

In a similar case, however, the reference was *held* not to be properly before the Court, and an application for costs by the defendant was refused. Rajkumar Paramanick *v.* Stewart

5 B. L. R. Ap. 23

[These cases were under the old procedure Under Act XV of 1882, if security is not deposited, the party against whom the contingent judgment has been given is to be taken to have submitted to it]

30. ———— **Case referred at request of party**—*Non-appearance of such party before High Court—Costs.* When a case is referred by the Small Cause Court, for the opinion of the High Court, at the request of one of the parties, and such party does [illegible]

11 B. L. R. 415 : 20 W. R. 349

31. ———— **Costs of reference to High Court**—*Costs—Practice—Presidency Towns Small Cause Courts Act (XV of 1882), s 69—Civil Procedure Code (Act XIV of 1882), ss 220, 617, 620.* Under s. 620 of the Civil Procedure Code, the cost [illegible] ...sarily follow the event of the suit. [illegible] Mathoora Dass Dumani

I. L. R. 15 Calc. 507

32. ———————— *Presidency Small Cause Courts Act (XV of 1882), ss. 69, 70—* [illegible]

SMALL CAUSE COURT, PRESIDENCY TOWN—*contd*

2. PRACTICE AND PROCEDURE—*contd.*

(*d*) REFERENCE TO HIGH COURT—*concld.*

plied with. In a suit for damages, the Officiating Chief Judge of the Presidency Small Cause Court,

defendants, at whose request the contingent judgment was given, did not fully deposit the amount of the judgment and the costs of the reference until November 14, 1900 A preliminary objection having been taken to the hearing of the reference, on the ground that it was not properly before the Court.—*Held*, that, as security for the amount of the judgment and the costs of the reference was not furnished "at once," as required by s 70 of the Presidency Small Cause Courts Act, the preliminary objection must prevail, and that the reference must be dismissed, the defendants paying the costs of the reference *Fornaro* v *Ramnarain Sooldeb, 14 B L R 180,* discussed. *Quære* Whether there is any power in the High Court to extend the time for furnishing such security JUGAL KISSORE v SEWMUK ROY (1901) . I. L. R. 28 Calc. 260

33. ———— Conditions imposed upon Judge of Small Cause Court in stating case for opinion—*Presidency Small Cause Courts Act (XV of 1882), s. 69—Civil Procedure Code (Act XIV of 1882), ss 617 and 621—High Court, power of—Amendment—Remand* Before the High Court can give an opinion upon a matter referred to it by the Presidency Small Cause Court under s 69, three conditions must be complied with.—(i) that the Court referring the matter entertains a reasonable doubt upon some question of law, (ii) that it states what the point is upon which the doubt is entertained, and (iii) that it gives a statement of the facts, containing an expression of opinion on the point which is referred to the decision of the High Court When such a course has not been adopted, the High Court can, under s 621 of the Code of Civil Procedure, return the case to the lower Court for amendment GARLING v SECRETARY OF STATE FOR INDIA (1903)
I. L. R. 30 Calc. 458

(*e*) RE-HEARING

34. ————Re-hearing, application for—*Practice—Presidency Small Cause Courts Act (XV of 1882), ss 38 and 71—Compliance with*

writing A decree was passed against the petitioner by the Court of Small Causes on the 9th December 1887. On the 16th December Counsel on his behalf was instructed to apply to the High Court under s. 38 of Act XV of 1882 for re-hearing of the suit

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

2. PRACTICE AND PROCEDURE—*contd.*

(*e*) RE-HEARING—*contd.*

The Court was then engaged in re-hearing an appeal;

rising, allowed the application to be then formally made, but adjourned the hearing to a subsequent day. When the case came on, it appeared (i) that the petition had not been signed and declared until the 17th December 1887, i e, the day after the application had been made in Court; (ii) that the affidavit in support of the application, as required by s. 38, had not been filed until two days after the application in Court; and (3) that the Court-fees, which by s 71 of Act XV of 1882 should be paid

nominally made on the 16th December, was only provisionally received, and every objection to its reception which could have been taken on that day could be taken at the hearing The subsequent compliance by the petitioner with the requirements of the Act could not place him in a better position than he occupied when the application was made *In re* JAI KISSOONDAS PURSHOTAMDAS
I. L. R. 12 Bom. 408

35 ———————— *Presidency Small Cause Courts Act, s 38—Case in which order for re-hearing granted on ground that decision of Small Cause Court was against weight of evidence*

authorize the High Court to grant an order for a

opinion, and not merely what is termed an inclination of opinion. HASSANBHOY VISRAM v. BRITISH INDIA STEAM NAVIGATION COMPANY
I. L. R. 12 Bom. 579

36. ———————— *Presidency Towns Small Cause Courts Act (XV of 1882), ss 38, 71—Stamp—Petition insufficiently stamped—Deficiency of stamp, power to make good, after period of limitation allowed for presentation of application.* On the 7th April being the last day on which such application could be made under the provisions of s. 38 of the Presidency Small Cause

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

2. PRACTICE AND PROCEDURE—*contd.*

(e) RE-HEARING—*contd.*

value required by s. 71 of the Act. It was con-

expired on the 7th April, and had the application been then considered, it could not have been received, but must have been rejected, as s. 71 requires the proper fee to be paid before the application can be received. Although the considera-

37. ——————— *Miscarriage or failure of justice—Withdrawal before judgment of request to refer case for the opinion of the High Court.* *In a suit in the Court of Small Causes, in which* questions of law and fact were raised, the plaint-

VASSONJI TRICUMJI & CO. *v* SOUTHERN MARATHA RAILWAY COMPANY . I. L. R. 17 Bom. 14

38. ——————— *Presidency Small Cause Courts Act (XV of 1882), s 38—Dismissal for default—Remedy of plaintiff—Civil Procedure Code, 1882, ss. 100, 102, 103—Appear-*

been dismissed for default from applying under s. 103 of the Civil Procedure Code (Act XIV of 1882) to have the order of dismissal set aside. There is no inconsistency between the two sections A plaintiff whose *suit has been dismissed for default* has two separate remedies under different enactments. If he chooses to apply for a new trial under s 38, he must do so within eight days If he professes to apply for an order setting aside the dismissal under

SMALL CAUSE COURT, PRESIDENCY TOWNS—*contd.*

2. PRACTICE AND PROCEDURE—*contd.*

(e) RE-HEARING—*contd.*

s. 103 of the Civil Procedure Code, he can do so within thirty days (Limitation Act XV of 1877, Sch. II, Art 163) A suit and cross-suit between the same parties were on the board of a Judge of the Presidency Small Cause Court for hearing on the 23rd April 1898 On that day *A*, the counsel who was instructed for the defendants in the first suit and for the plaintiffs in the second, was unable

refused, and *B* said he withdrew from

Both suits were then and there disposed of, the

within the category of contested suits as defined

I. L. R. 23 Bom. 41

39. ——————— *Small Cause Court—Presidency Small Cause Courts Act (XV of 1882), ss 9 and 38—Decision by a single Judge on evidence—Reversal of decree by Full Court—Jurisdiction—Practice.* One of the Judges of the Presidency Small Cause Court at Bombay having dismissed the plaintiff's suit on the evidence, the decree of the Judge was reversed by the Full Court (composed of two Judges), as being manifestly

more Judges, of any powers conferred on the Small Cause Court *Held*, that, although the rules of procedure and practice of the Presidency Small Cause Court at Bombay were silent as to the

as to the procedure to be followed, still, by long practice, the procedure had become well-defined

SMALL CAUSE COURT, PRESIDENCY TOWNS—*concld.*

2. PRACTICE AND PROCEDURE—*concld.*

(e) RE-HEARING—*concld.*

and fully known, the practice being that the Full Court should consist of two Judges—the Chief

to be "Rules treated as in force in the Court on 31st December, 1894." under cl. (2) of s. 9 of the Act, and to be validly in force They fall within the principle that an inveterate practice amounts to a rule of law *Held*, further, that the power to alter, set aside or reverse the decree under s 38 of the Act includes the power of the Full Court to pass a decree in favour of the party in whose favour the application is granted. The practice of the Court of Small Causes at Bombay, of reviewing the decree in cases in which the notes of evidence are sufficient

KAIKHUSHRU IRANI *v* ARDESHIR KAVASJI (1903) I. L. R. 27 Bom. 563

SMALL CAUSE COURT, RANGOON.

1. ——— Establishment of—*Act XXI*

Act provided, no Court other than the Recorder's Courts shall have or exercise any civil jurisdiction whatever within the limits for the time being fixed *as aforesaid*" *Act XI of 1865, after declaring* that the words "Local Government" should denote "the person authorized to administer the Executive Government in such part," enacted by

XXI of 1863 By notification dated 1st Septem-

Burma with the powers conferred on a Local Government by that Act. By notification of 2nd October 1869 the Governor General in Council sanctioned the establishment of a Court of Small Causes in Rangoon under s. 3, Act XI of 1865, extended the jurisdiction of the said Court to an amount not exceeding R1,000, and notified that the territorial jurisdiction would be co-extensive

SMALL CAUSE COURT, RANGOON —*concld*

with that of the existing Small Cause Court jurisdiction of the Recorder's Court at Rangoon. *Held*, that the Small Cause Court at Rangoon so established was properly constituted There is nothing to show that the words "Local Government," as used in Act XI of 1865, were intended to include a Chief Commissioner. KO SHOAY DOON *v* SHOAY GAN . 6 B. L. R. 196 : 14 W. R. 331

2. ——— Jurisdiction of—*Foreign ship —Suit by sailor for wages—Mofussil Small Cause Court Act (XI of 1865), s 8 (expl a)* Civil Courts have, as a general rule, jurisdiction to try all civil suits against all persons of any nationality within the local limits of their jurisdiction A ... ng or ... the ... one ... on a voyage from Bremerhaven to East India) for wages in the Small Cause Court of Rangoon *Held*, that the sailor's cause of action arose within the local limits of the Small Cause Court where the defendant was residing when the suit was brought, and that therefore the Small Cause Court had jurisdiction to hear the suit OLNER *v* LAVEZZO I. L. R. 10 Calc. 887

SMUGGLING.

See STOLEN PROPERTY—OFFENCES RELATING TO 18 W. R. Cr. 63
19 W. R. Cr. 37

SNAKE-CHARMERS

——— death caused by—

See MURDER
3 B. L. R. A. Cr. 25 : 12 W. R. Cr. 7
I. L. R. 5 Calc 351 : 4 C. L. R. 580

SOCIETIES REGISTRATION ACT (XXI OF 1860).

table purposes are not restricted to the giving of alms or other charitable reliefs, but the words have a much wider legal meaning *In re White : White* v. *White, [1893], 2 Ch. D 41*, followed *Held*, that a religious society which had for its object the control and management of, and the protection of the property appertaining to, a certain public mosque, was a society, which might legally be registered under the provisions of the Societies Registration Act, 1860 ANJUMAN ISLAMIA OF MUTTRA *v.* NASIR-UD-DIN (1906) I. L. R. 28 All. 384

SOLDIER.

See CANTONMENTS ACT (III OF 1880), s. 14 . . I. L. R. 3 All. 214

SOLDIER—*concld.*

——— residence of—

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN.
I. L. R. 1 All. 51

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MILITARY MEN.
5 W. R. S. C. C. Ref. 21
6 Mad. 83

——— **Army Act, 1881, s. 144**—*Sub-Conductor, Ordnance Department—Service of summons—Civil Procedure Code, s 468.* A Sub-Conductor

dinate, the Commissary of Ordnance returned the summons unserved and referred to s. 144 of the Army Act, 1881, and his reason for such action *Held*, that the Commissary of Ordnance was bound to serve the summons under s 468 of the Code of Civil Procedure, although the defendant might be entitled to the privilege given by s. 144 of the Army Act, 1881. ABRAHAM *v* HOLMES
I. L. R. 11 Mad. 475

SOLEHNAMAH.

See CRIMINAL PROCEDURE CODE, 1882, s. 145 . . . 13 C. W. N 601

See MORTGAGE I. L. R. 34 Calc. 886

——— unregistered—

See LANDLORD AND TENANT
I. L. R. 34 Calc 456

SOLICITOR.

See ATTORNEY.

See ATTORNEY AND CLIENT

See PRIVILEGED COMMUNICATION

——— receiving instructions from client without a solicitor—

See ADVOCATE I. L. R. 34 Calc 729

——— **duty of**—*Attorney and client* It is the *duty of a solicitor who has once undertaken* a cause to carry it to a conclusion *In re* A SOLICITOR . . . 4 B. L. R. P. C. 29

This was an observation made in some remarks addressed by the Judicial Committee to a solicitor who, having obtained a final order in an appeal,

SOLICITOR—*contd.*

——— lien of, for costs—

See COSTS—COSTS OUT OF ESTATE.
I. L. R. 10 Bom. 248

——— suit for costs of—

See ATTORNEY AND CLIENT.
I. L. R. 35 Calc. 171

See HIGH COURT RULES.
I. L. R. 32 Bom. 428

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 178 I. L. R. 32 Bom. 1

1. ——— **Solicitor's lien for costs**—*Summary jurisdiction of Court over suitors—Compromise by parties without knowledge of solicitor—Solicitor's right to oppose motion—Negotiable security—Transfer of Negotiable security by debtor to his creditor—Effect.* By a ... the plaintiff ... 6th de- ... e second ... uld give ... erty and R15,853 in full settlement of her claim and a further sum of R500 for her solicitor's costs. On the 21st February 1904, possession of the immoveable property was given and a sum of R500 paid to Lak ... for the ...

On the 22nd of June, 1904, the plaintiff paid the sum of R5,853 to Lakshmibai, in cash, in respect of the hundi for R5,853, which was dishonoured The plaintiff, thereupon, moved *for an order*, authorizing the delivery to him of certain property alleging that he had settled and satisfied the claims of Lakshmibai. Lakshmibai's solicitor opposed

SOLICITOR—*concld.*

Khetter Kristo Mitter v Kally Prosunno Ghose, I L. R. 25 Calc. 887, followed. *Ramdoyal Serowgee v. Ramdeo, I L R. 27 Calc. 269,* dissented from *Held,* also, that the giving of a negotiable security by the plaintiff to Lakshmibai operated as a conditional payment only and not as a satisfaction of the debt. *In re Romer and Haslam, 1893*] *2 Q. B. 286, 296,* followed CULLIANJI v RAGHOWJI (1904) . . . . I. L. R. 30 Bom. 27

2. ———— **Taxation**—*Work not ordinarily falling upon Solicitors—Work of meritorious character.* K was the solicitor for the defendant in a suit brought to obtain probate of the will of one Damji Lakhmichand The defence set up was that the will was a forgery Being unable to procure the services of an expert, K, after special study for the purpose, himself carefully studied every letter of the alleged will, and despite counsel's opinion that he had no chance of succeeding, he eventually succeeded in satisfying the trying Judge that the will was a forgery. In his bill for attorney and client's costs, K claimed extra payment for the additional and unusual work incurred by him *Held,* in review of taxation, that K was entitled to be separately remunerated for the special work done by him, as it was in fact a charge for work done which would not ordinarily fall upon a Solicitor in the preparation of the brief DAHIBAI v SOONDERJI (1907) . I. L R. 31 Bom. 430

SOLICITORS ACT, 1877 (40 & 41 VICT C. 25), S. 9.

See ATTORNEY I. L. R. 35 Calc. 915

SOLITARY CONFINEMENT.

See SENTENCE—SOLITARY CONFINEMENT.
3 B L R. A. Cr. 49
I. L. R. 6 All. 83

SOMAJ.

See BRAHMO SAMAJ

———— **breach of agreement to join**—

See CONTRACT ACT, S 23—ILLEGAL CONTRACTS—GENERALLY
2 B L. R. S N 4

———— **exclusion from**—

See JURISDICTION OF CIVIL COURT—SOCIETIES . . 3 B. L. R. A. C. 91

SONTHAL PARGANAS.

See GUARDIAN I. L. R. 34 Calc. 569

See SETTLEMENT OFFICER.
6 C. L. R. 555

See TRANSFER OF CRIMINAL CASE—GENERAL CASES . I. L. R. 18 Calc. 247

———— **appeals in cases from**—

See APPEAL—REGULATIONS—BENGAL REGULATION III OF 1872
6 C. L. R. 555

SONTHAL PARGANAS—*concld.*

———— **appeals in cases from**—*contd.*

See APPEAL IN CRIMINAL CASES—ACTS—ACT XXXVII OF 1855 17 W. R. 11
I. L R. 12 Calc. 536

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL.
I L. R. 3 Calc. 298
I. L. R. 10 Calc. 761

———— **trial of suit for land in**—

See JURISDICTION—SUITS FOR LAND—PROPERTY IN DIFFERENT DISTRICTS
I. L. R. 4 Calc. 222

See SUBORDINATE JUDGE, JURISDICTION OF . . 5 C. L R. 128

SONTHAL PARGANAS JUSTICE REGULATION (V OF 1893).

s. 15

See SANCTION FOR PROSECUTION—REVOCATION OF SANCTION
I L. R. 30 Calc. 916

———— s. 24.

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION, s 6
I L R. 26 Calc. 238

SONTHAL PARGANAS SETTLEMENT REGULATION (III OF 1872).

See PARTITION—RIGHT TO PARTITION—PARTITION OF PORTION OF PROPERTY.
5 C. W. N. 185

[illegible]

[illegible]

Sonthal Pergunnahs invested by Local Government with the powers of a Civil Court under s. 4 of Regulation III of 1872 is a Court established under Act XII of 1887 within the meaning of s. 3 of the Regulation. DUNGARAM MARWARY v RAJKISHORE DEO . . I. L. R. 18 Calc. 133

1. ———— [illegible]
Settlement [illegible]
settlement [illegible]
proceedings [illegible]
the Settle[illegible]
possession of certain land, and came before the Subordinate Judge, by whom they were treated as a regular suit. The decision was not pronounced until the settlement had been completed. *Held,* that s. 5 of Regulation III of 1872 did not apply, and that, under the circumstances, the

SPECIAL COMMISSIONER.

——— **register prepared by—**

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—REGISTERS.
I. L. R. 22 Calc. 112

——— **Jurisdiction**—*Beng Reg. III of 1828—Release of resumed lands—Mesne profits.*

received from the Ghatwals during the period of resumption, deeming this question beyond their competency as Special Commissioners. The zamindar having appealed to the Privy Council, complaining of the omission, and contending that the mesne profits should have been wholly adjudged to him:—*Held*, that the Special Commissioners had jurisdiction to decide upon the true title to the whole money in dispute and to direct the payment and disposition of the same with interest LEELANUND SINGH *v* GOVERNMENT OF BENGAL
1 W. R. P. C. 20 ; 9 Moo. I A. 479

SPECIAL CONSTABLE.

——— *Grounds of appointment—Police Act (V of 1861), ss 17, 19* The circumstances, which justify an order under s. 17

disturbances are apprehended Where upon the

refused to receive their letters of appointment, but were afterwards told that their services would not

SPECIAL COURT AT RANGOON

See APPEAL IN CRIMINAL CASES—ACTS—BURMA COURTS ACT.
I. L. R. 4 Calc 667

SPECIAL DAMAGE.

See CIVIL PROCEDURE CODE, 1882, s. 199.
I. L. R. 30 Bom 241

See DEFAMATION **I L. R 34 Calc. 48**

See LIMITATION ACT, 1877, s. 26 (1871, s 27) . **I L. R. 1 Mad. 335**

See RIGHT OF SUIT—OBSTRUCTION OF PUBLIC HIGHWAY

See RIGHT OF WAY **6 C W. N. 197**

See SLANDER **I. L. R. 28 Calc. 452**

SPECIAL DAMAGE—*concld.*

——— **allegation of—**

See JURISDICTION OF CIVIL COURT—ABUSE, DEFAMATION, AND SLANDER.

See JURISDICTION OF CIVIL COURT—PUBLIC WAYS, OBSTRUCTION OF.

See RIGHT OF SUIT—OBSTRUCTION TO PUBLIC HIGHWAY.

See SLANDER.

——— **Damages for loss of reputation caused by defaming wife**—*Special reputation caused by defaming a wife damages—Cause of action* A instituted a suit against *B* for defamation The words used alleged unchastity on the part of *A's* wife *A* alleged (*a*) special damage, (*b*) that the words were defamatory in themselves, (*c*), that he himself was defamed and was therefore entitled to sue. *Held*, that the words used by *B* were defamatory in themselves and did not amount to mere verbal abuse and that, therefore, *A* was entitled to damages without proving special damage. *Girish Chunder Mitter* v. *Jatadhari Sadukhan, I. L. R 26 Calc. 653*, distinguished. *Ibin Hosein* v. *Haidar, I. L R. 12 Calc 106 ; Trailakya Nath Ghose* v. *Chundra Nath Dutt, I. L R 12 Calc. 424 ; Jogeswar Sarma* v. *Dinaram Sarma, 3 C L J. 140*, and *Parvati* v. *Manner, I. L R 8 Mad. 175*, referred to. *Held*, also, that the cause of action having arisen in the mofussil the suit was not governed by the rule laid down in *Bhoonimoney Dossee* v. *Natobar Biswas, I. L R. 28 Calc 452.* SUKKAN TELI *v* BIPAD TELI (1906) . . **I. L R 34 Calc. 48**

SPECIAL DIARY.

——— **copy of statements recorded in—**

See WITNESS **I. L. R. 36 Calc 560**

SPECIAL JUDGE.

See APPEAL—ACTS—BENGAL TENANCY ACT . . **I. L R. 17 Calc. 326**

See BENGAL TENANCY ACT, s 102
I. L. R. 22 Calc. 244

See BENGAL TENANCY ACT, s 108.
I. L R. 21 Calc. 521

See DEKKAN AGRICULTURISTS' ACT, s. 3.
I. L. R. 14 Bom. 387
I L R. 15 Bom 30
I. L. R. 16 Bom. 128

See DEKKAN AGRICULTURISTS' ACT, s. 53.
I. L R. 12 Bom 684
I. L. R. 15 Bom. 180 ; 650
I. L. R. 19 Bom 286
I L. R. 22 Bom. 520
I. L. R. 23 Bom. 321

See REVIEW—GROUND FOR REVIEW.
I. L. R. 15 Bom. 650

See REVIEW—POWER TO REVIEW.
I. L. R. 19 Bom. 116
I. L. R. 20 Bom. 281

SPECIAL JUDGE—*concld.*

—— order of—

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
I. L. R. 16 Calc. 596
I. L. R. 21 Calc. 776; 935
I. L. R. 22 Calc. 477
I. L. R. 24 Calc. 462

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, 1882, s. 622
I. L. R. 16 Calc. 596
I. L. R. 21 Calc. 935
I. L. R. 18 Bom. 347
I. L. R. 19 Bom. 286
I. L. R. 23 Calc. 723
I. L. R. 25 Calc. 34
I. L. R. 26 Calc. 556

SPECIAL LEAVE TO APPEAL.

See PRIVY COUNCIL, PRACTICE OF—SPECIAL LEAVE TO APPEAL.

See OUDH RENT ACT, s. 108
13 C. W. N. 1093

SPECIAL OR SECOND APPEAL.

See APPEAL . 9 C. W. N. 154; 636

See APPEAL—ACTS—BENGAL TENANCY ACT

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL.

See BENGAL RENT ACT, 1869, s. 102

See BENGAL TENANCY ACT, 1885, ss. 103A, 105, 106A, 109A.
I. L. R. 33 Calc. 832
13 C. W. N. 1149

See BENGAL TENANCY ACT, ss. 152, 153
8 C. W. N. 438; 472
12 C. W. N. 835

See CIVIL PROCEDURE CODE, 1882, s. 111.
I. L. R. 30 Bom. 173

See CIVIL PROCEDURE CODE, 1882, s. 244.
13 C. W. N. 105

See CIVIL PROCEDURE CODE, 1882, ss. 311, 312 . I. L. R. 32 Bom. 572

See CIVIL PROCEDURE CODE, 1882, s. 574.
13 C. W. N. 143

SPECIAL OR SECOND APPEAL—*contd.*

See CIVIL PROCEDURE CODE, 1882, s. 584.

See CONTRIBUTION, SUIT FOR.
I. L. R. 30 Mad. 212

See COURT FEES ACT, s 28.
I. L. R. 25 Mad. 380

See CUSTOM . I. L. R. 30 All. 311

See JURISDICTION.
I. L R. 34 Calc. 853

See MORTGAGE. . 8 C. W. N. 690

See PRE-EMPTION.
I. L. R. 33 Calc. 698

See PRIVY COUNCIL, PRACTICE OF—QUESTIONS OF FACT I. L. R. 16 Calc. 753
L R. 16 I. A. 125

See PRIVY COUNCIL, PRACTICE OF—SPECIAL LEAVE TO APPEAL.
12 B. L. R. 107

See PROVINCIAL SMALL CAUSE COURTS ACT, SCH. II, ARTS. 13 AND 31
I. L. R. 26 All. 358

See RECORD OF RIGHTS
I. L. R. 35 Calc. 176

See REVIEW—ORDERS SUBJECT TO REVIEW. 10 B. L. R. 155, 156 note

See REVIEW—POWER TO REVIEW.
W. R. 471
11 W. R. 511
6 B. L. R. 333, 334 note
I. L R. 33 Calc. 1362

See SECOND APPEAL.

See TORT . I. L. R. 31 All. 333

———— application of rule that notice to agent binds principal—

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.
L. R. 29 I. A. 203

———— errors of law or procedure; remand—

See REMAND—CASES OF APPEAL AFTER REMAND . I. L. R. 28 Calc. 324

———— non-exclusion from limitation period of time spent in prosecuting—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.
I. L. R. 29 Calc 626

———— orders subject or not to appeal—

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, 1882, s 622
5 C. W. N. 192

———— plea urged for the first time in—

See RAILWAY COMPANY.
I. L. R. 27 Bom. 597

SPECIAL OR SECOND APPEAL—*contd.*

———— power of High Court in—

See LANDLORD AND TENANT.
I. L. R. 34 Calc. 718

———— Small Cause Court suits; title question of—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION, TITLE, QUESTION OF.

———— under Bengal Tenancy Act—

See BENGAL TENANCY ACT, s 13.
6 C. W. N. 190
7 C. W. N. 591

See RES JUDICATA—

ADJUDICATIONS;
I. L. R. 28 Calc. 471

COMPETENT COURT—REVENUE COURTS . 5 C. W. N. 798

I. ORDERS SUBJECT OR NOT TO APPEAL.

1. ———— **Law applicable to special appeals**—*Civil Procedure Code, 1877, ss. 588, 591.* Second appeals to the High Court must either come within Ch. XLII or ss. 588 and 591 of Act X of 1877 HIRDHAMUN JHA *v.* JINGHOOR JHA
I. L. R. 5 Calc. 711

2. ———— **Order improperly adding plaintiffs to suit**—*Civil Procedure Code, 1882, s. 591.* An appeal lies, under s 591 of the Civil Procedure Code, from an order improperly adding a person as a plaintiff in a suit GOOGLEE SAHOO *v.* PREMLAL SAHOO . I. L. R. 7 Calc. 148

3. ———— **Order for attachment for contempt**—*Civil Procedure Code, 1882, s 591.* An order for [illegible] order in the e[illegible] diction, and [illegible] provisions of s. 591 of the Civil Procedure Code. NAVIVAHOO *v.* NAROTAMDAS CANDAS
I. L. R. 7 Bom. 5

[illegible]

5. ———— **Decision of the District Court on appeal from the Talukdari Settlement Officer.** A decision of the District Court on appeal from the Talukhdari Settlement Officer is subject to second appeal to the High Court. JAMSANG DEVABHAI *v.* GOYABHAI KIRABHAI . . . . I. L R 16 Bom. 408

6. ———— **Order for penalty under Stamp Act**—*Civil Procedure Code, 1877, s. 588—Act VIII of 1859, s. 365.* A decision of a Judge directing a penalty to be enforced under the Stamp Act is not "an order as to a fine" within the meaning of s. 365 of Act VIII of 1859 (with which

SPECIAL OR SECOND APPEAL—*contd.*

1. ORDERS SUBJECT OR NOT TO APPEAL —*contd.*

s. 588 of Ac[illegible]
intended to [illegible]
Act, but on
the Code its[illegible]
JOY SHAHA . . I. L. R. 5 Calc. 311

7. ———— **Order as to compensation for land**—*Land Acquisition Act* (*X of 1870*), *ss 15, 39—Dispute as to right to compensation* Where a dispute as to the right of one of two claimants to certain compensation awarded under the provisions of the Land Acquisition Act has been referred to the Civil Court under s. 15 of that Act, a second appeal will lie to the High Court from the judgment passed in an appeal against the decision of the Court to which the dispute was referred ATRI BAI *v.* ARNOPOORNA BAI
I. L. R. 9 Calc. 838 12 C. L. R. 409

8 ———— **Order directing plaint to be returned for presentation in proper Court** —*Civil Procedure Code, 1882, s 57* A Munsif [illegible]

9. ———— **Order as to execution of decree under R5,000, but with interest, etc., exceeding R5,000**—*Second Class Subordi*[illegible]

[illegible] mulations of interest subsequently exceeded R5,000 The plaintiffs applied in execution to recover the total amount The application was [illegible]

[illegible] Subordinate Judge The plaintiffs filed a second [illegible]

I. L. R. 10 Bom. 200

10. ———— **Regular appeal heard ex parte.** A special appeal lies from a regular appeal heard *ex parte* TARA CHAND GHOSE *v.* ANAN[illegible] CHANDRA CHOWDHRY
2 B. L. R. A. C. 110 : 10 W. R. 45[illegible]

RAMSHET BIN BACHASHET *v.* BALKRISHNA BI[illegible] ABABHAT . . . . 6 Bom. A C. 16[illegible]

PARAN CHUNDER GHOSE *v.* CHUKKUN LAL[illegible] ROY . . . . 20 W. R. 40[illegible]

11. ———— **Appeal from ex parte decree**—*Appeal improperly admitted* Where [illegible] decree is passed *ex parte* in an original suit, the defendant has no right to a special appeal, even though his appeal has been entertained by the Civil Court CHIDAMBARA PILLAI *v.* KAMAN
1 Mad. 18[illegible]

12. ———— **Decree ex parte.** A second appeal lies from an *ex parte* decree of a lower Appellate Court MARUTI *v.* VITHU
I. L. R. 16 Bom. 117

13 ———— **Order refusing to set aside ex parte decree**—*Civil Procedure Code* (*Act X of 1877*), *ss 588, 622* After a decree has been made *ex parte*, the defendant applied to have it set aside. The Subordinate Judge refused the application, but his order was reversed by the District Judge *Held*, that the order of the District Judge was final under s 588, and that no second appeal would lie, nor would the Court interfere under s. 622 of the Code AUBINASH CHUNDER MOOKERJEE *v* MARTIN . . I. L. R. 8 Calc. 832

14. ———— **Order of remand**—*Order under s. 354, Civil Procedure Code, 1859* A special appeal did not lie from an order of remand under s 354, Civil Procedure Code COLLECTOR OF AGRA *v.* BULJEETA . . . . 3 Agra 368
Agra F. B Ed. 1874, 161

[illegible]

High Court under s. 231, a miscellaneous appeal could not be entertained. GOOROO DOSS ROY *v.* PUNCHANUN BOSE . . 9 W R 337

16 ———— **Order refusing to admit appeal presented after time** A special appeal [illegible]

17. ———— *Case decided ex parte* A special appeal does not lie from the orders of a Judge declaring that sufficient cause has not been shown to his satisfaction for presenting after time an appeal from an *ex parte* judgment of a Deputy Collector. ROGHOONATH SINGH *v.* MOHUN LAL MITTER . . . . 7 W. R. 299

(*Contra*) SUDEROODDEEN *v.* HUROSATH [illegible]
8 W. R. 87

SPECIAL OR SECOND APPEAL—*contd.*

1. ORDERS SUBJECT OR NOT TO APPEAL —*contd.*

18. ——— Order dismissing appeal as presented out of time—*Civil Procedure Code, 1882, s 584—Limitation Act, 1877, s. 4* An order dismissing an appeal as being presented out of time under s 4 of the Limitation Act, 1877, is a "decree passed in appeal" within the meaning of s. 584 of the Civil Procedure Code, 1882. A second appeal will therefore lie from such order. GUNGA DASS DEY *v.* RAMJOY DEY **I L. R 12 Calc 30**

19. ——— Refusal to restore appeal withdrawn. No special appeal lies from the order of a Judge refusing an application to restore an appeal that had been withdrawn MODHOOMUTTY DEBIA *v* DHUNPUT SINGH **13 W. R. 167**

20 ——— Order dismissing appeal on failure of appellant to deposit costs of notice—*Act XXIII of 1881, ss. 5 and 6.* A special appeal lay from an order passed under ss. 5 and 6 of Act XXIII of 1861 dismissing an appeal for non-service of notice in consequence of failure to deposit the cost of issuing the same DINOBUNDHOO CHUTTERAJ *v* BEHAREE LAL MOOKERJEE **3 W. R. Mis. 23**

INDUR CHUNDER BABOO *v* OOZEER ALI KHAN. **7 W. R. 338**

21. ——— Order re-admitting appeal dismissed for want of prosecution—*Civil Procedure Code, 1859, s 347.* A special appeal lay from an order under s 347 of Act VIII of 1859 re-admitting an appeal dismissed for want of prosecution DINOBUNDHOO CHUTTERAJ *v* BEHAREE LALL MOOKERJEE . . **3 W R Mis 23**

22. ——— Order rejecting application [illegible]

appeal dismissed for default of prosecution, provided the order be shown to be illegal HALOO *v.* ATWARO . . **7 W R. 81**

23. ——— Order rejecting application for re-admission of appeal dismissed for want of prosecution—*Civil Procedure Code* [illegible]

it appears that the Court below has not exercised the [illegible]

24. ——— Order dismissing appeal for non-appearance of appellant—*Civil Procedure Code, 1859, s. 346.* A special appeal lay to the High Court from an order passed under s 346 of the Civil Procedure Code, dismissing the appellant's regular appeal for non-appearance of the appellant in person or by pleader. *Devappa Setti* v. *Ramanandha Bhatt, 3 Mad 109,* commented on CHINNAPPA CHETTI *v* NADARAJA PILLAI . . **6 Mad. 1**

DEVAPPA SETTI *v.* RAMANANDHA BHATT. **3 Mad. 109**

25 ——— Order dismissing appeal for default—*Civil Procedure Code, 1882, s 584.* No appeal will lie under s. 584 of the Code of Civil Procedure in a case where an appeal has been dismissed for default, inasmuch as an appeal cannot be brought within any of the grounds therein mentioned ANWAR ALI *v.* JAFFER ALI **I. L. R. 23 Calc. 827**

26. ——— Order refusing to admit appeal dismissed for default—*Application for re-admission.* No special appeal lay to the High [illegible]

PERSAD DUTT *v.* COWIE . **W. R. 1864, 315**

27. ——— Order refusing to re-admit appeal—*Dismissal of appeal for default—Pleader asking for time to go on with a case—Civil Procedure Code, 1882, ss. 556, 558.* The provisions of ss. 556 and 558 of the Civil Procedure Code do not apply, when the pleader for the appellant not merely [illegible]

AMBICA DASI . . [illegible] **4 C. W. N. 237**

28. ——— Order refusing to confirm a sale—*Subsisting decree—Code of Civil Procedure (Act XIV of 1882), ss 588, 316, 244* A [illegible]

[illegible] for the order being not one provided for by [illegible]

Sanyal v Kalidas Sanyal, I. L R. 19 Calc. 683; L. R 19 I. A 166, referred to DOYAMOYI DASI *v.* SARAT CHUNDER MOJUMDAR **I. L. R. 25 Calc. 175** **1 C. W. N. 656**

29. ——— Order affirming or reversing order confirming sale—*Civil Procedure Code, 1859, s 257.* No special lay from the decision affirming or reversing an order under s. 257, Act

VIII of 1859, confirming a sale. JACKSON, J., dissented. KOOLDEEP NARAIN SING v. LUCKHUN SING B. L. R Sup. Vol. 917 : 9 W. R. 218

ABDOOL KUREEM v. OGHUN LAL 6 W. R. Mis. 119

30. ——— Order confirming sale complained of for irregularity—*Civil Proce-*

firmed by the Court of first instance, and the order was affirmed on appeal by the Civil Judge *Held*, that a special appeal to the High Court did not lie. VARADHA REDDI v. VENKATA SUBBA REDDI 5 Mad 213

31. ——— Order of Appellate Court confirming a sale—*Civil Procedure Code, 1882, s. 312* An order of an Appellate Court under s 312 confirming a sale cannot be the subject of a second appeal NANA KUMAR ROY v. GOLAM CHUNDER DEY . . . I. L R. 18 Calc. 422

32. ——— Order setting aside sale—*Order on regular appeal* The High Court has no

TOODEY SINGH . [illegible]

33 ——— *Civil Procedure Code, 1882, ss 312 and 622—Superintendence of High Court*

cumstances to interfere under s 622 AUBHOYA DASSI v. PUDMO LOCHUN MONDOL I. L R. 22 Calc. 802

LACHMIPAT v. MANDIL KOER 3 C. W N 333

34. ——— *Order setting*

NARKU ROY . . I. L. R. 21 Calc. 789

35 ——— Order overruling objections to confirmation of sale—*Civil Procedure Code, 1859, s 257* A judgment-debtor having preferred various objections to the Court of the Subordinate Judge which was executing the decree against him, his objections were rejected, and the Court proceeded to sell the property attached in

execution. The judgment-debtor then preferred an appeal to the Judge against the order which threw out his objections, but without expressly objecting to the confirmation of the sale. *Held*, that the Judge was entitled to deal with the case as an appeal against the sale which had taken place before the appeal was preferred, and no further appeal therefore lay to the High Court. SONAMONEE DOSSIA v MOTEE SINGH 14 W. R. 385

36 ——— Order passed in appeal reversing lower Court's order setting aside a sale in execution of decree—*Civil Procedure Code, 1882, s 588.* Under the provisions of s 588 of the Code of Civil Procedure no second appeal lies to

aside on the ground of material irregularity GOPI KOERI v GOPI LAL . I. L. R. 21 Calc 789

the auction-purchaser is a benamidar for the judg-

38. ——— Order made under s. 311 of Civil Procedure Code, 1882, on application to set aside sale No second appeal lies from an order made under s 311 of the Civil Procedure Code. NARAYAN v. RASULKHAN I. L. R. 23 Bom. 531

fore no second appeal lies from an order passed under s 588, cl 16, notwithstanding that it is an

40. ——— *Orders refusing to set aside sale in execution of decree—Civil Procedure Code, 1882, ss. 2 and 588.* A judgment

SPECIAL OR SECOND APPEAL—*contd.*

I.—ORDERS SUBJECT OR NOT TO APPEAL —*contd.*

missed. *Held*, that no second appeal lay to the High Court. DAIVANAYAGAM PILLAI *v* RANGASAMI AYYAR . . . I. L. R. 19 Mad. 29

41. ———————— *Civil Procedure Code, 1882, ss 244, 311, and 588—Decree—Fraud—Question relating to the execution of the decree between parties to the suit—Auction-purchaser a third party* An application was made by the judgment-debtor against the decree-holder and the

application, and refused to set aside the sale On

appeal would lie The question of a right to a second appeal does not turn upon who may happen to be the appellant, but upon whether or nor the case is one within s 244 of the Code. HIRA LAL GHOSE *v* CHUNDRA KANTO GHOSE. I. L. R. 26 Calc. 539

See BHOBA MOHAN PAL *v* NUNDA LAL DEY. I. L. R. 26 Calc. 324

and MOTI LAL CHAKRABUTTY *v.* RUSSICK CHANDRA BAIRAGI . . I. L. R. 26 Calc. 326 note

42. ———————— *Civil Procedure*

43. ———— **Order of remand made under s 562 of Civil Procedure Code, 1882,** —*Order made in an appeal under s. 588 from an order for attachment under s 485* *Held*, that no

Nath Ghose v *Nobin Chandra Kundu Biswas, I. L R 24 Calc 774*, followed JHANDYA LAL *v* SARMAN LAL . . I. L. R. 21 All. 291

44. ———— **Order passed by Appellate Court on appeal from order granting a review of judgment**—*Civil Procedure Code (Act XIV of 1882), ss 624, 626, 629.* No second appeal lies against an order passed under s. 629 of the Civil Procedure Code. An application was made by a plaintiff for review of a judgment dismissing his suit as against all the defendant, which application was granted. Against that order the defendants appealed and the lower Appellate Court confirmed the

See AUKHOY CHURN MOHUNT *v* SHAMANT LOCHUN MOHUNT . . . I. L. R. 16 Calc. 788

and cases there cited

45. ———— **Order on application to review**—*Civil Procedure Code, 1882, s 629—Appeal from decree as amended—Practice.* A second appeal lies against an order of a lower Appellate Court passed under s. 629 of the Civil Procedure Code (Act XIV of 1882) where the appeal to the lower Appellate Court has been, not from the order allowing a review, but from the original decretal order itself as amended by the original Court on the application for review. *Than Singh v Chundun*

apply to the Court which has passed the original decree, but in spirit they would seem properly to apply also to an order of an Appellate Court. BALA NATHA *v.* BHIVA NATHA . I. L. R. 13 Bom. 496

47. ———— **Order setting aside order granting review**—*Civil Procedure Code, 1882, ss 591, 623, and 629* No second appeal to the High Court lies from an order setting aside an order granting a review of judgment KANTI CHUNDER MUKERJEE *v.* SALIGRAM . I. L. R. 24 Calc. 319

IMAM BUX *v.* MAHOMED GOPE. I. L. R. 24 Calc. 319 note

48. ———— **Order imposing fine for avoiding of summons to attend as witness**—*Civil Procedure Code, 1859, s 365—Witness absconding—Right of appeal.* By the words of s. 365 of Act VIII of 1859, the Legislature must have

strictly referable to s. 160 of that Act or not. *In re* GAJADHAR PRASAD NARAYAN SINGH
1 B. L. R. A. C. 187

s.c. GUJADHUR PERSHAD NARAIN SINGH *v.* JUGDEO NARAIN . . . . **10 W. R. 233**

49. — **Order of a District Court under s. 26 of the Succession Certificate Act (VII of 1889)**—*Succession Certificate Act, s. 19—Jurisdiction of High Court and District*

NIANDI PILLAI . . [illegible]

50. — — **Order on application for revival of suit**—*Act LIII of 1860, s 2—Civil Procedure Code, 1859, s 378.* The Zillah Judge reversed a decree in the plaintiff's favour on the ground that the suit was barred by the period of limitation prescribed by s 30 of Act X of 1859;

was final; but being for the revival of a suit under the provisions of the latter law, his order was the subject of an appeal BUNGSHEEDHUR MUNDUL *v* PUDDOLOCHUN ROY **Marsh. 38 : W. R. F. B. 11**
1 Ind. Jur O. S 5 : 1 Hay 90

51. ——— **Decree in rent suit under R100**—*Bengal Rent Act (VIII of 1859), s 102—Bengal Tenancy Act (VIII of 1885), s 5—Effect*

no appeal lay HURROSUNDARI DABI *v* BROJOHARI DAS MANJI . . . **I L R 13 Calc. 86**

52. ——— **Order in suit entertained without jurisdiction**—*Subsequent Act passed giving jurisdiction—Appeal brought after passing of such Act.* A suit had been dismissed by a lower Appellate Court on the ground that the Court of first instance had no jurisdiction to entertain such suit.

Court gave the decision from which the special ap-

that a special appeal would lie, the decision being contrary to a law in force at the time the special appeal was instituted, which law the Court was bound to enforce BULDEO *v.* LUCHMUN
5 N. W. 106

53. ——— **Order in execution of a decree** Under Act VIII of 1859, there was no special appeal from orders passed in execution of a decree. ANONYMOUS . **1 Ind. Jur. O. S. 50**

ANONYMOUS . . **1 Ind. Jur. O. S. 68**

But there is now since the passing of Act XXIII of 1861

See MAHOMED HOSSEIN *v* AFZUL ALLY
B. L. R. Sup. Vol. Ap 1 : Marsh. 296
W. R. F. B. 83 : 2 Hay 293

BAGUBAI *v.* NIZMUDDIN . **6 Bom. A. C. 205**

VIRASAMY MUDALI *v* MANOMMANY AMMAL. VENKATA BALAKRISHNA CHETTI *v.* VIJIARAGUNADHA VALAJI KRISHNA GOPALER **4 Mad. 32**

54. — ——— *Act XXIII of 1861, ss 11 and 44—Act VIII of 1859, ss 257, 269,*

55. ——— *Decree in suit on bond registered under s. 53, Act XX of 1866.*

I. L. R. 11 Calc. 169

56. ——— *Civil Procedure Code, 1877, s 244—Registration Act, 1866, s. 53.*

SPECIAL OR SECOND APPEAL—*contd.*

1. ORDERS SUBJECT OR NOT TO APPEAL —*contd.*

He made an order refusing execution, the decree being one passed, not in a regular suit, but in a summary suit, and governed by the period of limitation prescribed by Art. 166, Sch. II, Act

57. ——— **Appeal from portion of**

without weight. GANAPATI *v* SITHARAMA
I L. R. 10 Mad. 292

58. ——— **Decision as to title to land —Appeal to High Court from decision of District Court on appeal**—*Madras Forest Act, s. 10* An appeal lies to the High Court from a decision of District Court passed under s. 10 of the Madras Forest Act, 1882, on appeal from the decision of a Forest Settlement Officer. KAMARAJU *v.* SECRETARY OF STATE FOR INDIA
I. L. R. 11 Mad. 309

59. ——— **Arbitration**—*Civil Procedure Code, ss. 521, 522, and 582—Revocation of submission—Appellate decree in accordance with award.* By reason of s 582 of the Civil Procedure Code, where a Court of first instance wrongly sets aside an arbitration award and passes a decree against

Court's decree would have been under the last para-

SINGH *v* SADAPAL SINGH I. L. R. 10 All. 6

60. ——— **Order reviewing and setting aside order rejecting objection to execution of decree**—*Civil Procedure Code, s 629.* When a Munsif sets aside on review an order rejecting an objection to the execution of a certain decree, and the District Court on appeal refuse to interfere :—*Held,* that no second appeal lay to the High Court. PAPAYYA *v.* CHELAMAYYA
I. L. R. 12 Mad. 125

61 ——— **Order of Special Judge as to settlement of rents**—*Superintendence of High Court—Bengal Tenancy Act (VIII of 1885), ss. 104, cl (2), 105, 106, 108—Rule 33 of the Rules made under the Act—Jurisdiction—Record-of-right—Civil Procedure Code (Act XIV of 1882), ss. 108, 622.* The High Court has no jurisdiction either to entertain a second appeal from, or to interfere under s. 622 of the Code of Civil Procedure with, an order of a Special Judge in regard to settlement of rents SHEWBARAT KOER *v.* NIRPAT ROY
I. L. R. 16 Calc. 596

62. ——— *Decision of Settlement Officer—Settlement of rent under Bengal Tenancy Act (VIII of 1885), s. 104.* No second appeal lies to the High Court from a decision of a Revenue Officer settling rents under s 104 of the Bengal Tenancy Act. ACHHA MIAN CHOWDHRY *v.* DURGA CHURN LAW
I. L. R. 25 Calc. 246
2 C. W. N. 137

63. ——— *Rent-suit—Bengal Act VIII of 1869, s. 102—Bengal Tenancy Act (VIII of 1885), s. 153—General Clauses Act (I of 1868), s. 6.* The word "proceedings" in s. 6 of Act

I. L. R. 15 Calc. 107

, the question the suits referred a second appeal to the High Court *Held,* that, having regard to the provisions of s 153 of the

these words in the section meaning the total amount of rent annually payable in respect of a holding, and not the amount of rent which may be payable to any particular co-sharer in the property. PRASANNA KUMAR BANERJEE *v.* SRINATH DAS
I. L. R. 15 Calc. 231

65 ——— **Appeal in cases under R100**—*Bengal Tenancy Act (VIII of 1885) s. 153—Cesses, Suit for—Bengal Act IX of 1880*

SPECIAL OR SECOND APPEAL—*contd.*

1. ORDERS SUBJECT OR NOT TO APPEAL —*contd*

66. ——— **Order of Special Judge on appeal from Settlement Officer**—*Bengal Tenancy Act, Ch X, ss 104, cl 2, 106, 107, and 108, cl 2.—Dispute as to entries in record-of-rights—Question as to status of raiyats—Civil Procedure Code, s. 622.* Under Ch. X of the Bengal Tenancy Act, there is to be (i) a framing of the record-of-rights; (ii) a draft publication for a period of one month, during which time objections may be preferred; and (iii) a final publication, previous to which publication "disputes" as to the correctness of the entries in the record-of rights, other than entries of rents settled, are to be heard and decided. Under s. 107, the decisions of the Settlement Officer in all

decided by the Special Judge on appeal from the

Act dealt with the question of the status of the

the order of the Special Judge on appeal from such decision of the Settlement Officer was not one passed in a case under s 106, and therefore no second appeal lay from it to the High Court *Sheubarat Koer v Nirpat Roy, I L R 16 Calc 596, Lala*

I. L. R. 21 Calc. 776

67. ——— Special Judge, order of—*Bengal Tenancy Act (VIII of 1885), ss 106 and 108—Boundary dispute—Bengal Survey Act (Beng Act V of 1875), Part V, s 40—Settlement Officer acting*

I. L. R. 21 Calc. 935

SPECIAL OR SECOND APPEAL—*contd.*

1. ORDERS SUBJECT OR NOT TO APPEAL —*contd.*

68. ——— *Bengal Tenancy Act (VIII of 1885), Ch X, ss. 106 and 108—Record-of-rights, Dispute prior to the preparation of—Standard of measurement, question of* In a proceeding

I. L R 21 Calc 776, referred to ANAND LAL PARIA v SHIB CHUNDER MUKERJEE

I. L. R. 22 Calc. 477

69. ——— *Special Judge, decision of —Revenue Officer, decision of—Bengal Tenancy Act (VIII of 1885), ss 105, 106, and 108 (3)—Record of-rights, dispute prior to completion of—Dispute about proposed entry or omission in the record* The respondent, in the course of pro-

I. L. R. 21 Calc. 776, and Anand Lal Paria v Shib Chunder Mukerjee, I. L. R 22 Calc. 477, so far as they decide that a second appeal would not lie in such a case, overruled. DENOU KAZI v NOBIN KISSORI CHOWDHRANI I. L. R. 24 Calc. 462

1 C. W. N. 294

70. ——— *Bengal Tenancy Act (VIII of 1885), ss 104, 106, 108—Special Judge under the Bengal Tenancy Act—Question of standard of measurement, area of lands and liability to pay rent—Decision of the Special Judge.* Under the terms of s 108 of the Bengal Tenancy Act (VIII of 1885), a second appeal lies from the decision of the Special Judge on questions with

I. L. R. 25 Calc. 34

SPECIAL OR SECOND APPEAL—*contd*

1. ORDERS SUBJECT OR NOT TO APPEAL —*contd.*

71. ———— *Bengal Tenancy Act (VIII of 1885), ss 105, 106, 108—Order of Special Judge as to standard of measurement of lands.* An order of the Special Judge as to the length of the standard of measurement to be used in

Sundari Debi, I. L. R 25 Calc 34, and *Dengu Kazi v. Nobin Kissori Chowdhrani, I. L. R 24 Calc. 462,* distinguished NAROHARY JANA *v* HARI CHARAN PRAMANICK . I. L. R. 26 Calc. 556

72. ———— *Bengal Tenancy Act (VIII of 1885), s 153—Execution of rent decree valued at less than R100—Civil Procedure Code (Act XIV of 1882), s 647* Where the original suit is a

payable by a tenant, no second appeal will lie in respect of an order made in execution proceedings relating thereto. SHYAMA CHARAN MITTER *v* DEBENDRA NATH MUKERJEE I. L. R. 27 Calc. 484
4 C. W. N. 269

73. ———— *Bengal Tenancy*

74 ———— *Suit for rent—Interest on rent—Bengal Tenancy Act (VIII of 1885), ss 3, cl (5), and 153* Interest on rent is not rent within the meaning of s 3, cl. (5), of the Bengal Tenancy Act. Therefore no second appeal would lie in a case where the question is one relating to rate of interest and the value of the subject-matter of the suit is less than R100 KOYLASH CHANDRA DE *v.* TARAK NATH MANDAL
I. L. R. 25 Calc. 571 note

75. ———— *Bengal Tenancy Act (VIII of 1885), s. 153—Rent payable by the*

matter in issue in the second appeal. RAI CHURN GHOSE *v* KUMUD MOHAN DUTTA CHAUDHURI
1 C. W. N. 687

SPECIAL OR SECOND APPEAL—*contd.*

1. ORDERS SUBJECT OR NOT TO APPEAL —*contd.*

In the same case in review:—*Held,* that the question relating to instalments, though it affects the question of interest on the rent, is not a question of "the amount of rent annually payable" within the meaning of s 153 of the Bengal Tenancy Act. Therefore no second appeal would lie in a case where the value of the suit is less than R100, even if there is a question as to the instalment of rent. *Koylash Chandra De v. Tarak Nath Mandal, I. L. R 25 Calc. 571 (note),* referred to. RAI CHARAN GHOSE *v.* KUMUD MOHAN DUTTA CHOWDHRY
I. L. R. 25 Calc. 571
2 C. W. N. 297

76. ———— Appeal from District Judge —*Proceeding to be adopted when a District Court*

less. The Subordinate Judge passed a decree, against which an appeal was preferred to the District Court, but the District Judge returned the appeal for presentation to the High Court The appellants preferred a second appeal to the High Court against the decision of the District Judge, and also presented a petition praying for the revision of his proceedings under the Civil Procedure Code, s. 622. *Held,* that neither a second appeal (which did not lie in such a case) nor a petition under the Civil Procedure Code, s. 622, was the appropriate proceeding to be adopted by the appellants, but an appeal as from an order made under the Civil Procedure Code, ss 57, 582, which would lie under ss. 588, cl (c), and 589. The error of the appellants being one of form merely, the Court amended the second appeal as an appeal from an order of the District Court, and directed to District Judge to receive and dispose of the appeal from the Subordinate Judge. KUNHIKUTTI *v.* ACHOTTI
I. L. R. 14 Mad. 462

ejectment
arrears of
Court, this
visions of
v RAMAN CHAMAR

78. ———— Suit for arrears of rent—

suit for arrears of rent brought under the pro
of the Chota Nagpore Landlord and Tenant Pro-

SPECIAL OR SECOND APPEAL—*contd.*

1. ORDERS SUBJECT OR NOT TO APPEAL —*contd.*

cedure Act (Bengal Act I of 1879) The cases of

MAHTO . . . . I. L. R. 27 Calc. 508
4 C. W. N. 333

(*Contra*) PRIAG NATH SAHA DEO *v* MURA MUNDA
I. L. R. 24 Calc. 249

79. ——— Arrears of rent—*Suit—Act X of 1859, ss. 23, 77, 153, 160, 161—Act VIII of 1859, ss 284, 372—Chota Nagpur Landlord and Tenant Procedure Act (Bengal Act I of 1879), ss. 37, 144.* A second appeal lies to the High Court from an

sions, p 144, followed. *Khedu Mahto* v. *Budhun Mahto, I L. R. 27 Calc. 508*, distinguished. SADAI NAIK *v* SERAI NAIK (1901)
I. L. R. 28 Calc. 532
s c. 5 C. W. N. 279

80. ——— Compensation for illegal

ant had taken unlawful possession of two of the heaps of paddy, measuring about 5 *garces*, under the pretext that he had distrained them The prayer was for an order directing defendant to deliver to plaintiffs about 5 *garces* of grain, worth R250 at R50 per *garce*, in respect of the two heaps of paddy of which he had taken unlawful possession The distraint was made on 25th January, 1896, and the suit was instituted on 25th July of the same year —

barred. The wrong was complete and the cause of action arose when the unlawful distress was made. *Yamuna Bai Rani Sahiba* v *Solayya Kavundan, I. L. R 24 Mad 339*, distinguished. PAMU SANYASI *v.* ZAMINDAR OF JAYAPUR (1901)
I. L. R. 25 Mad. 540

81. ——— Decision of Sub-Judge, where no appeal lies to him—*Appeal—Second*

SPECIAL OR SECOND APPEAL—*contd.*

1. ORDERS SUBJECT OR NOT TO APPEAL —*contd.*

an appeal was preferred to the Subordinate Judge, who set aside the decree of the Munsif on the

82. ——— Discretion of Court—*Appeal*

the facts, and not arbitrarily TULSA KUNWAR *v* GAJRAJ SINGH (1902) . I. L. R. 25 All. 71

83. ——— Order absolute for foreclosure—*Second Appeal—Civil Procedure Code (Act XIV of 1882), ss 244 and 588—Decree, execution of* When an order absolute for foreclosure of

referred to TARA PADO GHOSE *v* KAMINI DASSI (1901) . . . . I. L. R. 29 Calc. 644

84 ——— Order as to costs A second appeal lies, as to costs, against an appellate decree *BHUGOBATI PAL v. MAHOMED ALI (1903)*
7 C. W. N. 647

85. ——— Order dismissing suit for default of appearance—*Decree—Civil Procedure Code (Act XIV of 1882), s 2—Remand.* An order dismissing a suit for default of appearance is not a decree within the meaning of s. 2 of the Civil Procedure Code, and therefore no first or second appeal lies therefrom *Jagarnath Singh* v. *Budhan, I. L. R. 23 Calc. 115; Anwar Ali* v. *Jaffer Ali, I. L R 23 Calc. 827*, and *Gilkinson* v *Subramania, I L R. 22 Mad 221*, referred to. A suit was dismissed for default of appearance. On appeal by the plaintiff, the lower Appellate Court set aside the dismissal of the suit, and as a necessary consequence directed the Court of first instance to proceed to try it. *Held*, that this was not such an order as could be passed under the remand section of the Civil Procedure Code, and, the order of the Court of first instance not being appealable,

SPECIAL OR SECOND APPEAL—*contd*

1. ORDERS SUBJECT OR NOT TO APPEAL —*contd.*

71. ——— *Bengal Tenancy Act* (*VIII of 1885*), *ss 105, 106, 108—Order of Special Judge as to standard of measurement of lands* An order of the Special Judge as to the length of the standard of measurement to be used in

in a case

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order to

v. *Uma Sundari Debi, I L. R 25 Calc 34*, and *Dengu Kazi* v. *Nobin Kissori Chowdhrani, I. L. R 24 Calc. 462*, distinguished NAROHARY JANA v. HARI CHARAN PRAMANICK . I. L. R. 26 Calc. 558

72. ——— *Bengal Tenancy*

suit for rent valued at less than R100 and the decree or order made in it does not decide a question relating to title to land or some interest in land as between parties

4 C. W. N. 269

73. ——— *Bengal Tenancy Act* (*VIII of 1885*), *s 153—Determination of annual*

mination of the annual rent payable, and therefore no second appeal lay. NEIKAJEE v NANDA DULAL 1 C. W. N. 711

74 ——— *Suit for rent—Interest on rent—Bengal Tenancy Act* (*VIII of 1885*),

TARAK NATH MANDAL

I. L. R. 25 Calc. 571 note

75. ——— *Bengal Tenancy Act* (*VIII of 1885*), *s 153—Rent payable by the*

amount of rent payable by the tenant should be a matter in issue in the second appeal. RAI CHURN GHOSE v KUMUD MOHAN DUTTA CHAUDHURI

1 C. W. N. 687

SPECIAL OR SECOND APPEAL—*contd.*

1. ORDERS SUBJECT OR NOT TO APPEAL —*contd.*

In the same case in review :—*Held*, that the question relating to instalments, though it affects the question of interest on the rent, is not a question of "the amount of rent annually payable" within the meaning of s. 153 of the Bengal Tenancy Act. Therefore no second appeal would lie in a case where the value of the suit is less than R100, even if there is a question as to the instalment of rent. *Koylash Chandra De* v. *Tarak Nath Mandal, I L. R 25 Calc. 571* (*note*), referred to. RAI CHARAN GHOSE v. KUMUD MOHAN DUTTA CHOWDHRY

I. L. R. 25 Calc. 571
2 C. W. N. 297

76. ———Appeal from District Judge —*Proceeding to be adopted when a District Court*

against which an appeal was preferred to the District Court, but the District Judge returned the appeal for presentation to the High Court. The appellants preferred a second appeal to the High Court against the decision of the District Judge, and also pre-

and 589 The error of the appellants being of form merely, the Court amended the second appeal as an appeal from an order of the District Court, and directed to District Judge to receive and dispose of the appeal from the Subordinate Judge. KUNHIKUTTI v. ACHOTTI

I. L. R. 14 Mad. 462

77. ——— Suits under Chota Nagpur Landlord and Tenant Procedure Act (Beng. Act I of 1879), ss. 37, 137—*Arrears of rent and ejectment, suit for.* In suits instituted under Bengal Act I of 1879 for arrears of rent and ejectment on account of the non-payment of arrears of rent, a second appeal lies to the High Court, this class of cases not being within the provisions of s. 137 of the same Act RAMJAN KHAN v RAMAN CHAMAR . I. L. R. 10 Calc. 89

78. ——— Suit for arrears of rent—*Chota Nagpore Landlord and Tenant Procedure Act*

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SPECIAL OR SECOND APPEAL—*contd.*

1. ORDERS SUBJECT OR NOT TO APPEAL —*concld*

v. *Uma Sundari Debi, I. L R 25 Calc 31,* referred to. A second appeal lies to the High Court, from a decision of a Special Judge reversing or affirming a decision of a Settlement Officer, who decided under

[illegible]

of the holding, at a sale in execution of a decree against the former tenant, being in the nature of an admission, cannot be used as evidence on his behalf, as such a statement does not come within the exception to s. 21 of the Evidence Act RAMANI PERSAD NARAIN SINGH v MAHANTH ADAIYA GOSSAIN (1904)
I. L. R. 31 Calc. 380

94. ———— **Order setting aside a sale —Fraud, allegation of**—*Civil Procedure Code (Act XIV of 1882), ss 241, 244 (c), 290, 311, 312, and 588—Non compliance with the provisions of s 290 of the Code of Civil Procedure—Limitation —Date of sale* ...

set aside a ...
such an app...
Procedure ...

[illegible]

Roy v. *Dino Nath Sanyal, I L R 28 Calc 4,* distinguished. *Bhuban Mohun Pal* v *Nunda Lal Dey, I. L R 26 Calc 234,* and *Hira Lal Ghose* v *Chandra Kanto Ghose, I L R 26 Calc 539,* followed. Mere noncompliance with the provisions of s 290 of the

[illegible]

95. ———— **Order passed in execution**—*Chutia Nagpur Landlord and Tenant Procedure Act (Bengal Act I of 1879, as amended by Bengal Act V of 1903)*—No second appeal lies from an order passed in execution under the Chutia Nagpur Landlord and Tenant Procedure Act (Bengal Act I of 1879), as amended by Bengal Act V of 1903 ISWAR LAL SINGH v JAGOO SAHU (1905)
I. L. R. 33 Calc. 378

96. ———————— *Suit of the nature* ...

[illegible]

SPECIAL OR SECOND APPEAL—*contd,*

2 RIGHT OF APPEAL.

1. ———— **Appeal by one defendant against another.** A special appeal cannot be entertained by one defendant against another. RAMESSUR GHOSE v AZEEM JOARDAR
17 W. R. 373

2. ———— **Right of parties not appealing from first Court's decisions**—*Ground of appeal* Parties who did not appeal from the deci...

[illegible]

3 ———— **Right of defendant not appearing as respondent on appeal.** A defendant who obtains a judgment in his favour in the ...

[illegible]

against the decree of the lower Appellate Court. *Ex parte* MODALATHA **I. L. R. 2 Mad. 75**

4. ———— **Party dissatisfied with findings in judgment**—*Civil Procedure Code (Act X of 1877), ss 540 and 584* An appellant who has obtained a decree setting aside the decision of the Court of first instance is not entitled to a further

[illegible]

3. ADMISSION OR SUMMARY REJECTION OF APPEAL.

1. ———— **Summary rejection of memorandum**—*Civil Procedure Code, ss 54, 543, 551, 582, 584—Reasons for rejection. Per* EDGE, C.J. —A Judge to whom a memorandum of appeal

[illegible]

applies to appeals which have been admitted. *Per* AIKMAN, J.—When a memorandum of appeal is summarily rejected, whether under s 543 or under s 54 read with s 582 of the Code of Civil Procedure, the reasons for such rejection should be recorded: *sed quære,* whether, unless it appears from the memorandum of appeal taken by

[illegible]

SPECIAL OR SECOND APPEAL—*contd.*

3. ADMISSION OF SUMMARY REJECTION OF APPEAL—*concld.*

a document is not one of the grounds of second appeal contemplated by s. 584 of the Code of Civil Procedure. RUDR PRASAD *v.* BAIJNATH
I. L. R. 15 All. 367

2. ——— **Confirmation of decree in effect**—*Civil Procedure Code* (*1882*), *s. 551.* The decision of the Full Bench in *Puhuvayyangar* v *Seshayyangar, I. L. R. 18 Mad. 214,* where it was held that the jurisdiction of a Court of first instance to amend a decree under s 206 of the Civil Procedure Code is ousted by the confirmation of that decree on appeal, applies equally to second appeals dismissed under s 551 of the Code and to second appeals tried after notice to the respondent. MUNISAMI NAIDU *v.* MUNISAMI REDDI
I. L. R. 22 Mad. 293

4 SMALL CAUSE COURT SUITS

(*a*) GENERAL CASES.

1. ——— **Frame of suit**—*Civil Procedure Code, s. 586* For the purpose of determining whether a second appeal lies or is prohibited by s 586 of the Civil Procedure, what must be looked at is not the shape in which the case comes up to the High Court, but the shape in which the suit was originally instituted in the Court of first instance. KIAM-UD-DIN *v* RAJJO I. L. R. 11 All. 13

2. ——— **Cases in which appeal is taken away**—*Act XXIII of 1861, s. 27—Civil Procedure Code, 1859, s. 387.* S. 27, Act XXIII of 1861, took away special appeal in all those cases that were expressly alluded to therein, thus overriding s. 387, Act VIII of 1859 The provision applied in execution of decree, as well as in suits themselves, and to suits and proceedings in execution commenced before 1861, or even before 1859. RAM JADUB CHATTERJEE *v.* RASH MONEE DOSSEE
8 W. R. 321

MOBARUKOONISSA BEGUM *v.* OZEER JEMADAR.
8 W. R. 107

SOORJO COOMAR SURMA ROY *v.* KRISTO COOMAR CHOWDHRY.
12 B. L. R. 224 : 14 W. R. F. B. 30

3. ——— **Order in execution of decree**—*Suit brought before Act XLII of 1860.* No special appeal lay from a regular appeal from an

12 B. L. R. F. B. 261 : 20 W. R. 421

BHICHUK SINGH *v.* NAGESHAR NATH.
I. L. R. 2 All. 112

4. ——— *Act XXIII of 1861, s. 27—Execution proceedings arising out of decision in regular appeal* S. 27, Act XXIII of 1861, barred a special appeal in execution-proceedings arising out of decisions passed on regular appeal in suits of a nature cognizable by Courts of Small Causes. ANUND CHUNDER ROY *v* SIDHY GOPAL MISSER . . . . . . 8 W. R. 112

DEBEE PERSHAD SINGH *v* DELAWAR ALI
12 W. R. 86

SPECIAL OR SECOND APPEAL—*contd.*

4. SMALL CAUSE COURT SUITS—*contd.*

(*a*) GENERAL CASES—*contd.*

5. ——— *Civil Procedure Code, s. 586—Orders in execution of decrees in Small Cause suits.* No second appeal lies from an order passed in execution of a decree in a suit of the nature cognizable by a Small Cause Court where the subject-matter of the suit does not exceed R500 AITHALA *v.* SUBBANNA . I. L. R. 12 Mad. 116

6. ——— *Suit of the nature cognizable in Court of Small Causes—Civil Pro-*

by the District Judge, revision of both orders was applied for in the High Court. *Held,* that no proceedings by way of revision could be taken, because a second appeal would lie from the order of the District Judge. NAZAR HUSAIN *v.* KESRI MAL
I. L. R. 12 All. 581

HARAKH *v.* RAM SARUP . I. L. R. 12 All. [illegible]

8. ——— *Order in execution of decree in suit cognizable by Small Cause Court.* Where the original suit is a suit of the nature cognizable in Courts of Small Causes and the subject-matter of the suit does not exceed R500 in value, no second appeal will lie in respect of an order made in execution-proceedings relating thereto. *Harakh* v. *Ram Sarup, I. L. R. 12 All. 579,* approved. *Sri Bullov Bhattacharji* v. *Baburam Chattopadhya, I. L. R. 11 Calc. 169,* and *Arithala*

SPECIAL OR SECOND APPEAL—*contd.*

4 SMALL CAUSE COURT SUITS—*contd.*

(a) GENERAL CASES—*contd.*

v. *Subbanna, I. L. R., 12 Mad. 116*, referred to. DIN DAYAL v. PATRA KHAN
I. L. R. 18 All. 481

9. ———— *Suit of nature cognizable in Courts of Small Causes—Execution of decree—Transfer of decree for execution—Civil Procedure Code (Act XIV of 1882), ss 223, 224,*

Munsif passed an order in execution, and the order was confirmed in appeal. *Held*, that the words "suit of the nature cognizable in Courts of Small

See SHYAMA CHARAN MITTER v DEBENDRA NATH MUKERJEE . I. L. R. 27 Calc. 484
4 C. W. N. 269

10 ———— **Case wrongly decided to be not cognizable by Civil Court**—*Act XXIII of 1861, s. 27* S 27, Act XXIII of 1861, which

cognizable by any Civil Court GUREEBOOLLAH v. SYEFOOLLAH . . . . . 7 W. R. 41

11. ———— **Suit instituted in ordinary Civil Court, though cognizable by Small Cause Court**—*Civil Procedure Code, 1877, s 586—Questions incidentally arising* S. 586 of the Code of Civil Procedure precludes a second appeal in a suit for damages under R500, although the suit has been instituted in the District Munsif's

SPECIAL OR SECOND APPEAL—*contd.*

4. SMALL CAUSE COURT SUITS—*contd.*

(a) GENERAL CASES—*contd.*

12. ———— *Civil Procedure Code, 1882, s. 586.* Where a suit, though one cog-

with there would not for that reason admit of a second appeal which in such a case is expressly excluded by s 586 of the Code of Civil Procedure (Act XIV of 1882) KALIAN DAYAL v. KALIAN NAREE
I. L. R. 9 Bom. 259

13. ———— **Suit transferred to regular side**—*Civil Procedure Code, s 585—Provincial Small Cause Courts Act (IX of 1887), s. 23.* A

the plaint to be filed on the regular side under the Provincial Small Cause Courts Act, s 23, on the ground that the suit involved questions of title. A second appeal therefore does not lie in such a case. MUTTUKARUPPAN v SELLAN
I. L. R. 15 Mad. 98

consider the matter of jurisdiction or to deal with it on the merits so as to do substantial justice without

ordinary Civil Court and taken in appeal to the

15. ———— **Character of the suit**—*Small Cause suit—Civil Procedure Code (Act XIV of 1882), s 586* In determining whether no second appeal lies under the provisions of s. 586 of the Civil Procedure Code (Act XIV of 1882), the original character of the suit is to be regarded rather than the character it may subsequently

SPECIAL OR SECOND APPEAL—*contd.*

4. SMALL CAUSE COURT SUITS—*contd.*

(a) General Cases—*concld.*

assume by operation of the findings of the Court. *Ramchandra Gopal v. Sadashib Narayan, (1882) P. J 219,* followed. Lakshmandas v Anna Lane (1904) . . . . I. L. R. 32 Bom. 356

(b) Account.

father acting as agent of the plaintiffs for an amount under R500 was entertained by the Civil Court within the local jurisdiction of a Small Cause Court, a special appeal lay to the High Court, s. 27 of Act XXIII of 1861 only applying to a suit which is properly brought in a Civil Court, because there is no Small Cause Court having jurisdiction to try it. Dyebukee Nundun Sen v Muddee Mutty Goopta I. L. R. 1 Calc. 123 24 W. R. 478

17. ———— **Suit against agent for account**—*Suit for account, or, in default, for damages* Plaintiff, a talukdar, sued her late husband's agent for the delivery of certain account papers and documents, for an account of his agency, and, in default of account, for R500 as damages. *Held,* that the suit was of a nature cognizable by a Small Cause Court, and that consequently no special appeal would lie Hurri Narain Roy Chowdhury v Joy Durga Dassi . . 2 C. L. R. 17

(c) Award.

18. ———— **Decision on award**—*Award of cognizable nature and value* When the subject-matter of an award is as to its nature and value cognizable by a Court of Small Causes, no special appeal will lie to the High Court against the decree of an ordinary Civil Court in respect of such award. Banu v Narayan Sahu

4 B. L. R. Ap. 82 ; 13 W. R. 233

19 ———— **Suit on award**—*Award deal-*

(d) Contract.

20. ———— **Suit to recover collections from co-sharer**—*Agreement to pay share to other co sharers.* A suit by a co-sharer to recover from

SPECIAL OR SECOND APPEAL—*contd.*

4. SMALL CAUSE COURT SUITS—*contd.*

(d) Contract—*contd.*

the defendant collections which are in his charge and which he is under agreement to pay to the other co-sharers is a suit for due under a contract, and, if less than R500, is cognizable by a Small Cause Court. Ali Ahmed v. Oodhraj Ram

10 W. R. 79

21. ———— **Suit against agent for money**—*Money received for plaintiff—Act XXIII of 1861, s 27* In a suit to recover the balance, unaccounted for, of the plaintiff's money in the

for money due under a contract" in Act XI of 1865 s. 6, and that therefore under Act XXIII of 1861, s 27, a special appeal would not lie Joogul Kishore Roy v. Rughoo Nath Seal 20 W. R. 4

22. ———— **Suit on implied contract**—*Suit against co-sharers for share of rent—Civil Procedure Code, 1871, s 586. A* was the proprietor of 9 annas of a mouzah, *B* and his family of 1 anna and *C* and others of the remaining 6 annas. *B* and his family, having occupied and enjoyed, to the exclusion of their co-shareholders, 54 bighas of the mouzah, failed to pay any rent in respect of such

family were entitled to retain as proprietors of a 1 anna share *Held,* that the facts showed an implied contract on the part of *B* and his family to pay to their co-shareholders whatever, upon taking an account, should appear to be due to them ; and that, inasmuch as the total amount sought to be recovered in the suit by *A* did not exceed R500, the suit

23 ———————— *Contract Act (IX of 1872), ss 69, 70—Small Cause Court Act (XI of 1865), s 6—Patni rent—Implied contract.* The

pendently of any express promise, it was one cognizable by a Court of Small Causes and no appeal

SPECIAL OR SECOND APPEAL—*contd.*

4. SMALL CAUSE COURT SUITS—*contd.*

(*d*) CONTRACT—*concld.*

would therefore lie. *Rambux Chittangeo* v *Madhoosoodun Paul Choudhry, B L R Sup Vol 675 7 W R 377*, distinguished Cases falling within the provisions of ss. 69 and 70 of the Contract Act are

I. L. R. 15 Calc. 652

24. ———— *Mofussil Small Cause Courts Act, s 6—Civil Procedure Code, s 586—Suit against sons of Hindu debtor, on a bond executed by father, not cognizable by Small Cause Court—Hindu law—Liability of son for debt of living father* In a suit upon a bond executed by a Hindu, the plaintiff made the debtor's sons defendants along with their father, and a decree was passed against the father and sons jointly for payment of the debt. *Held*, by the Full Bench, that the suit as against the sons was not a suit of the nature cognizable in a Court of Small Causes within the meaning of s 586 of the Code of Civil Procedure *Held*, further, by the Divisional Bench that the decree against the sons was bad NARASINGHA *v* SUBBA **I. L. R. 12 Mad. 139**

25. ———— *Civil Procedure Code, s 586—Provincial Small Cause Courts Act, Sch II, Art 41—Suit relating to contract—Contract Act, s 69—Suit for contribution—Joint property* Lands of which part belongs to the plaintiffs and

(*e*) CONTRIBUTION.

26. ———— **Suit for contribution for revenue paid to save estate** A claim for money below R500 paid as revenue by one partner

suit is less than R500. In determining whether second appeals lie in such cases in execution-pro-

SPECIAL OR SECOND APPEAL—*contd.*

4. SMALL CAUSE COURT SUITS—*contd.*

(*e*) CONTRIBUTION—*concld*

I. L. R. 30 Mad. 212

(*f*) CUSTOMARY PAYMENT

28 ———— **Suit by zamindar against patnidar for dâk expenses**—*Act XXIII of 1861, s 27* A case in which a zamindar sues a

8 W. R. 517

ERSKINE *v.* TRILOCHUN CHATTERJEE **9 W. R 518**

(*g*) DAMAGES

29. ———— **Suit for damages**—*Damages to moveable or immoveable property* No special appeal lies in a suit for damages below R500, whether the damages are on account of moveable or immoveable property BHEENUCK LALL MAHTOON *v.* RUNO LALL MAHTON . **11 W. R. 369**

30. ———— **Suit where claim for damages exceeds R500, but decree is given for less than R500**—*Act XXIII of 1861, s 27.*

MONEE SINGH DEO *v* GORDON, STUART & CO **1 Ind. Jur. N. S. 356 : 6 W. R. 152**

thereupon took out proceedings under s. 204, Act VIII of 1859, had the surety arrested, and realized from him the amount due under the decree The

32. ———— **Suit for damages for assault**—*Absence of pecuniary injury.* No suit for damages occasioned by personal injury will lie in the Small Cause Courts, unless actual pecuniary loss has resulted from such injury to the plaintiff. When there is no such pecuniary loss, the suit for damages will lie in the ordinary Civil Courts, and a

SPECIAL OR SECOND APPEAL—*contd.*

4. SMALL CAUSE COURT SUITS—*contd.*

(*g*) DAMAGES—*contd.*

special appeal will lie to the High Court, although the damages claimed are below R500. ALI BUKSH *v.* SAMIRUDDIN

4 B. L. R. A. C. 31 : 12 W. R. 477

RAJ CHUNDER CHUCKERBUTTY *v.* PUNCHANUN SURMAH CHOWDHRY . . . **4 W. R. 7**

33. ——— **Suit for damages for personal injury**—*Actual pecuniary damage.* The plaintiff, in a suit for damages laid at R200, claimed R50 on account of medical expenses caused by an assault committed on him by the defendants, R50 as the costs of a criminal prosecution which he had

[illegible]

Code, no second appeal in such suit would lie. *Gunga Narain Moitro* v. *Gudadhur Chowdhry, 13 W. R. 434,* referred to. JIWA RAM SINGH *v* BHOLA

I. L. R. 10 All. 49

34. ——— **Suit for money paid by unsuccessful claimant to attached property**—*Civil Procedure Code, 1859, s. 246* A suit for money paid by an unsuccessful claimant, under s 246, Act VIII of 1859, in order to save from sale his share of an estate which had been attached in execution of a decree, is in reality a suit for damages, and (the value being below R500) is in the nature of a Small Cause Court suit in which no special appeal will lie POORSUTTUM CHUNDER *v* GOUR SOONDER PANDEY . . **18 W. R. 283**

35. ——— **Suit to recover money attached**—*Removal of attachment on wrongful objection to attachment of property. C,* a decree-holder, alleging that *K,* a lambardar of a village, had objected to the attachment in his hands of money due as profits to the judgment-debtor, a co-sharer, on the ground that he had paid such money

[illegible]

v CHUNNI LAL . . . **I. L. R. 6 All. 10**

36. ——— **Suit for money lent to redeem mortgage**—*Suit for damages as on breach of contract—Act XXIII of 1861, s. 27.* Defendants borrowed a sum of money below R500 from the plaintiff, with a view to redeem a mortgage on condition that, after redemption, he would sell the property to the plaintiff. He did not, however, redeem the property. *Held,* that plaintiff's suit to recover his dues was one for damages as upon a breach of contract in which, under s. 27, Act XXIII of 1861, no special appeal would lie KHULLEEL MAHOMED *v.* FURZAM ALLY . **12 W. R. 269**

37. ——— **Suit for damages for breach of contract controlling terms of decree** No

[illegible]

38. ——— **Suit for damages to crops by inundation**—*Omission to cut bund—Act XLII of 1860, s. 3.* Under s. 3, Act XLII of 1860, a suit for damages of any kind below R500 (*e.g.*, a suit for damages, for not cutting through a bund whereby plaintiff's crops were destroyed in consequence of accumulation of water) was cognizable by a Small Cause Court; and consequently, under s 27, Act XXIII of 1861, no special appeal lay in such a case GOPEENATH PAUL *v* GEORGE

6 W. R. 7

39 ——— **Suit for damages for inadequate sale of decree**—*Act XXIII of 1861, s. 27.* No special appeal lay under s 27, Act XXIII of 1861, for damages for inadequate sale of a decree. KRISTOMONEE THAKOOR *v.* BISHAMBHUR DOSS

5 W. R. 215

40. ——— **Suit for defamation of character**—*Absence of pecuniary injury* Suits for defamation of character, where there has not been any actual pecuniary loss, were not, under cl. 3, s 6, Act XI of 1865, cognizable by the Small Cause Courts, and therefore in such a suit a special appeal would lie under Act XXIII of 1861, s. 27. BHAIRAB CHANDRA CHUCKERBUTTY *v.* MAHENDRA CHANDRA CHUCKERBUTTY

4 B. L. R. Ap. 59 : 13 W. R. 118

41. ——— *Absence of pecu*

[illegible]

DOSSIA . . . .

42. ——— **Suit for malicious prosecution**—*Absence of pecuniary damage* The defendant laid a charge of assault against the plaintiff

[illegible]

SPECIAL OR SECOND APPEAL—*contd*

4. SMALL CAUSE COURT SUITS—*contd.*

(*g*) DAMAGES—*contd*

a special appeal would lie. PRANKRISHNA BANERJEE *v* NADIAR CHAND CHATTERJEE
4 B. L. R. A. C. 35 note : 10 W. R. 115

43. ———— *Injury to reputation.* The defendant charged the plaintiff with plotting to murder him, and the case came before the Magistrate and was dismissed. The plaintiff then sued in the Munsif's Court for damages on account of the injury "to his reputation and pain of body and mind" caused by the malicious prosecution, and laid the damages at R100. A special appeal to the High Court was dismissed on the ground that it was a suit cognizable by a Small Cause Court. NADIAR CHAND ROY *v* BAIKANT NATH MISSER . **4 B. L. R. A. C. 33 note**

44. ———— **Suit for damages for loss** of [illegible]

to special appeal. BROJO SOONDUR BHADOOREE *v* ESHAN CHUNDER ROY . . **15 W. R. 179**

45. ———— **Suit for money paid as** [illegible]

SPECIAL OR SECOND APPEAL—*contd.*

4. SMALL CAUSE COURT SUITS—*contd.*

(*g*) DAMAGES—*concld*

damages, and, the amount in question being cognizable by a Small Cause Court, no special appeal can be entertained. YACOOB ALI *v.* KOOER SINGH
2 N. W. 111

47. ———— **Suit to recover a share of malikana**—*Act XXIII of 1861, s. 27.* A suit to recover a share of malikana, which the defendant [illegible]

appeal lies from a judgment passed in appeal in such a suit. LASMANIA DEBIA *v* MAHOMED HAFEZULLA
3 B. L. R. Ap. 96

S. C. RASMONEE DEBIA *v* MAHOMED HAFEZOOLLAH . . . . . . **12 W. R. 29**

48. ———— **Suit for profits of land** —*Provincial Small Cause Courts Act (IX of 1887), Sch. II, cl. 31. Civil Procedure Code, s. 586.* The plaintiff sued on the Small Cause side of a Subordinate Court before the Provincial Small Cause Courts Act, 1887, came into operation, to recover with interest from the date of suit R500, the value of [illegible]

was so presented after the above Act had come into operation. The plaintiff obtained a decree, which was reversed on appeal. A petition of second appeal was presented by the plaintiff. The defendant objected that no second appeal lay under the Civil Procedure Code, s. 586. *Held,* that the objection should prevail, since the suit was not excepted from the jurisdiction of the Small Cause Court under the Provincial Small Cause Courts Act of 1887. ANNAMALAI *v* SUBRAMANYAN
I. L. R. 15 Mad. 298

(*h*) DEBTS.

49. ———— **Suit for division of debt** [illegible]

(*i*) DECLARATORY DECREE.

50. ———— **Suit to have property made over to plaintiff on an adjusted account.** Where, on an adjusted account between two parties, one claims from the other some money and some grain which are shown to be due to him and asks in effect that they may be made over to

SPECIAL OR SECOND APPEAL—*contd.*

4. SMALL CAUSE COURT SUITS—*contd.*

(i) Declaratory Decree—*concld.*

him, the suit is not a suit for declaratory decree and a special appeal does not lie in such a suit to the High Court under s. 27, Act XXIII of 1861. Buldeo Singh *v* Ram Surun Lall
25 W. R. 234

(j) Decree

51. ——— **Decree for land under a compromise in a suit cognizable by a Small Cause Court**—*Act XXIII of 1861, s. 27* In a suit for recovery of a sum of money below R500, the parties entered into a compromise, whereby the defendant made over a certain piece of land in lieu of the money claimed, and a decree was passed accordingly In execution of the decree, disputes arose between the parties. Upon special appeal by the judgment-debtor to the High Court.—*Held*, that under s 27, Act XXIII of 1861, no special appeal lay to the High Court Talan Bibi *v* Tenu Bibi
6 B. L. R. Ap. 82 ; 15 W. R. 65

(k) Immoveable Property.

52. ——— **Suit for kattubadi and karnam's emoluments**—*Civil Procedure Code, 1882, s 586—Provincial Small Cause Courts Act (IX of 1887), Sch I, Art. 13* Where plaintiff sued for arrears of kattubadi and karnam's emoluments, the value of the suit being less than R500 —*Held*, that kattubadi and karnam's emoluments are neither a charge on, nor interest in, immoveable property, and that no second appeal lay Mullapudi Balakrishnayya *v* Venkatanarasimha Appa Rau . . **I. L. R. 19 Mad. 329**

See Venkatarama Doss *v* Maharajah of Vizianagram . . . **I. L. R. 19 Mad. 103**

(l) Maintenance.

53. ——— **Suit by widow for maintenance**—*Act XXIII of 1861, s 27* A Hindu widow who had been supported by her father-in-law after his death sued his eldest son for maintenance and obtained a decree for R150, notwithstanding the defendant's objection that, being one of three brothers who inherited their father's estate, he was not solely liable for the maintenance claimed *Held*, that, as this was a Small Cause Court suit, an appeal did not lie. Ramchandra Dikshit *v*. Savitribai . . . **4 Bom. A C. 73**

Judal kom Ranchhod Mulji *v*. Hira Mulji
4 Bom. A. C. 75

(m) Mesne Profits.

54. ——— **Suit for mesne profits**—*Act XXIII of 1861, s 27—Suit under R500* A suit for the recovery of mesne profits (not amounting to R500) is cognizable by a Court of Small

SPECIAL OR SECOND APPEAL—*contd.*

4. SMALL CAUSE COURT SUITS—*contd.*

(m) Mesne Profits—*contd.*

Causes. A special appeal therefore does not lie in such a suit Kakaji Sakharam *v* Gobind Ganesh
8 Bom. A. C. 96

55. ——— *Act XI of 1865,*

the suit being cognizable by the Small Cause Court. *Held*, that, it being merely a suit for mesne profit and no question of right or title arising in it, it was *a suit for damages within s 6, Act XI of* 1865, and therefore cognizable by the Small Cause Court Ram Pyari Debi *v* Dinanath Mookerjee
2 B. L. R S. N. 13 : 10 W. R. 375

56. ——— *Provincial Small Cause Courts Act (IX of 1887), Sch II, Art. 31* Where the plaintiff, after obtaining a decree in a suit for possession of certain land of which he had been dispossessed by the defendants, brought a suit in the Munsif's Court for mesne profits for the period during which he had been kept out of possession, and the suit, though partly decreed by the Munsif, was dismissed by the District Judge .—*Held,*

57. ——— *Suit for mesne ... matter in dispute ... Courts ... Cause* ... ie Full Bench (Ghose and Banerjee, *JJ*, dissenting), that no second appeal lies in a suit for mesne profits where the value of the subject-matter in dispute is less than R500 *Sriram Samanta* v *Kalidas Dey, I L R. 18 Calc. 316*, overruled. Kunjo Behary Singh *v* Madhub Chundra Ghose
I. L. R. 23 Calc. 884

58. ——— *Provincial Small Cause Courts Act (IX of 1887), Sch. II, Art 31—* ... *Civil Procedure*

the Civil Procedure Code, and no second appeal lies from a decision in it Seshagiri Ayyar *v*. Marakathammal . . **I. L. R. 22 Mad. 196**

Lingayya Ayyavaru *v* Mallikarjuna Ayyavaru . . **I L. R. 22 Mad. 196 note**

59. ——— *Civil Procedure Code (Act XIV of 1882), s. 586—Suit of a nature cognizable in a Court of Small Causes—Suit for mesne profits—Provincial Small Cause Courts Act (IX of 1887), Sch. II, cl (31)* A suit for mesne

SPECIAL OR SECOND APPEAL—*contd.*

4. SMALL CAUSE COURT SUITS—*contd*

(*m*) MESNE PROFITS—*concld.*

profits is not a suit for an account, but a suit for damages, and is not exempted from the jurisdiction of the Small Cause Courts under cl. (*31*) of Sch II to the Provincial Small Cause Courts Act. There is no second appeal from a decision in such a suit SUBBA RAO *v* SITARAMAYYA (1900)

I. L. R. 24 Mad. 118

(*n*) MONEY

60. ——— Suit for money had and received for the plaintiff's use *C*, a mortgagee, the mortgage having been foreclosed, sued *D*, the mortgagor, for possession of the mortgaged property and obtained a decree for possession thereof He subsequently agreed with *D* to surrender the mortgaged property to him, if he deposited the mortgage money in Court by a specified day *D* borrowed the money for this purpose by means of a conditional sale of the property to *L*, and deposited it in Court. The deposit was made after the specified day, and consequently *C* took possession of the property. The money deposited by *D* remained in deposit, and while there, *C* caused it to be attached in execution of a money decree he held against *D*, and it was paid to him *L* thereupon sued *C* in the Munsif's Court to recover such money, which amounted to R350. *Held*, that the suit must be regarded as one for money had and received by the defendant for the use of the plaintiff, and was therefore one cognizable in a Court of Small Causes LACHMAN PRASAD *v* CHAMMI LAL . **I. L. R. 4 All. 6**

COLLECTOR OF CAWNPORE *v* KEDARI **I. L. R. 4 All. 19**

61. ——— Suit to recover purchase-money—*Act XXIII of 1861, s 27* *Held*, that the suit to recover R200 paid in respect of the purchase of land which was not completed was a suit of the description cognizable by the Small Cause Court, and a special appeal would not lie KHOOB CHUND *v* HAZAREE LALL . . . **1 Agra 275**

62. ——— Suit for money paid as excess of rent In a suit for recovery of a sum of

2 B. L. R. A. C. 172

S C SHIB SUHAYE SOOKOOL *v* BEER CHUNDER JOOBRAJ . . . . **11 W. R. 30**

63. ——— Suit for money illegally levied on land—*Act X of 1876, s 15*—*Civil Procedure Code, 1876, s 586* The plaintiff sued to

a minor, was represented by the Collector as his administrator The Assistant Judge who tried the suit awarded the plaintiff's claim The District

I. L. R. 7 Bom. 100

64 ——— Suit by lessee for refund of revenue—*Contract to refund excess* In a suit by a lessee upon a contract for a refund of excess not admissible if the amount claimed be under R500 WHITE *v* TRIPOORA SUNKUR MOOKERJEE **W. R. 1864, 287**

65. ——— Suit to recover money paid in excess of share of profits of land.

NARAIN MANJEE *v* MUDDOOSOODUN GORAIT **2 W. R. 134**

1861, no special appeal lay to the High Court COLLECTOR OF TIPPERA *v*. MAFIZUNNISSA BIBEE **4 B. L. R. Ap 46**

(*o*) MORTGAGE.

67. ——— Suit to recover debt charged on immoveable property—*Act*

... so as to exclude a right to special appeal. This is so though the plaint on the face of it seeks recovery in the alternative, either from the mortgagor personally, or from the mortgaged property ATMARAM BALLAL KAOJI *v*. SADASHIV HARI MAHAJANI . **2 Bom. 1**

SPECIAL OR SECOND APPEAL—*contd.*

4. SMALL CAUSE COURT SUITS—*contd.*

(*o*) MORTGAGE—*concld.*

68. ———— Suit for enforcement of hypothecation against moveable property

Act XI of 1865, in which a second appeal would be barred by s. 586 of the Civil Procedure Code. *Surajpal Singh* v *Jairamgir, I. L R 7 All 855,* followed. *Ram Gopal Shah* v. *Ram Gopal Shah, 9 W. R 136,* and *Appavu Pillai* v *Subarya Mupuen, 2 Mad. 47,* referred to. KALKA PRASAD *v* CHANDAN SINGH . **I. L. R. 10 All. 20**

(*p*) MOVEABLE PROPERTY.

69. ———— Suit for price of personal property sold—*Suit by co-sharer* A suit lies in a Small Cause Court by a co-sharer to recover the price of a share of personal property alienated by another co-sharer. RADHANATH SHAHA *v* KAMEENEE SOONDEREE DOSSEE . . **2 W. R. 37**

70. ———— Suit for materials of hut, or their value—*Act XXIII of 1861, s. 27* A suit for the materials of a hut, in which the plaintiff

CHUCKERBUTTY . . . . **10 W. R. 29**

71. ———— Suit to recover possession of share of a boat—*Act XXIII of 1861, s 27.* A suit to recover possession of a share of a boat by establishment of the plaintiffs' right is a suit for personal property within the meaning of Act XI of 1865, s 6, and therefore no special appeal lies in such a case under Act XXIII of 1861, s 27. MAHOMED AZIM BHOOYAH *v* MAHOMED SOMEE

21 W. R. 413

72. ———— Suit for the value of trees and fish—*Trees destroyed by defendant.* A suit to recover the value of a tree destroyed by the defendants and for the value of fish taken from the plaintiff's tank (the claim being under R500) is a suit cognizable by a Small Cause Court, and no special appeal lies to the High Court. SUJJAD ALI *v* BHOLARAM . . . . **5 N W. 24**

73 ———— Suit for recovery of value of fruit from trees. Where a suit was brought for the recovery of the value of the fruit of certain mango trees alleged to have been misappropriated by the defendants —*Held*, that, as the suit was of the nature of a suit cognizable by Courts of Small Causes, a special appeal would not lie. SHAMANUND *v*. NUNDKOOMAR

3 Agra 290 : Agra F. B. Ed. 1874, 153

74 ———— Suit for value of sugar-mill. A stone sugar-mill is moveable property, and a suit for the value of it, if under R500, will

SPECIAL OR SECOND APPEAL—*contd.*

4. SMALL CAUSE COURT SUITS—*contd.*

(*p*) MOVEABLE PROPERTY—*concld*

lie in the Small Cause Court No special appeal lies therefore in such a suit. HURMUNGAL SINGH *v.* ATUL SINGH . . . . . **4 N. W. 15**

75. ———— Suit by widow to recover personal property or its value taken from deceased—*Act XXIII of 1861, s. 27.* The widow

(*q*) PROFITS OF LAND.

76. ———— Suit to recover a certain sum on account of a share in property—*Civil Procedure Code, 1882, s 586—Prayer for account —Question of title.* Plaintiffs sued to recover, on account of their share in produce of certain dhara and khoti properties, R339-14-2, or any other sum

in the alternative, for an account of the profits, a suit cognizable by a Small Cause Court cannot be converted into one of a different nature NARAYAN BHASKER *v.* BALAJI BAPUJI

I. L. R. 21 Bom. 248

77 ———— Suit to recover an ascertained sum as profits of land—*Provincial Small Cause Court Act (IX of 1887), Sch II, Art 31—Jurisdiction of Small Cause Court—High Court—Practice.* The plaintiff sued to recover three specific sums of money amounting to R447-11-0, being her share of the revenues and profits of three sets of lands, alleging in her plaint that the money had been wrongly received by the defendant *Held*, that the suit was one cognizable by a Court of Small Causes; and that, therefore, no second appeal lay. GIRJABAI *v* RAGHUNATH(1905)

I. L. R. 30 Bom. 147

78. ———— *Civil Procedure Code (Act XIV of 1882), s 586—Provincial Small Cause Courts Act (IX of 1887), Sch. I, Art. 31—Suit to recover profits—Suit of Small Cause Court nature—High Court* The plaintiff sued to recover from the defendant a specific sum of money (R120) described in the plaint as his income due to him in respect of his share in certain lands. This right was denied by the defendants in their written statement. The lower Courts dismissed the claim. A second appeal was preferred, but it was objected to on the preliminary ground that

SPECIAL OR SECOND APPEAL—*contd.*

4. SMALL CAUSE COURT SUITS—*contd.*

(*q*) PROFITS OF LAND—*concld.*

no second appeal lay, as the suit was of a nature cognizable by Courts of Small Causes. *Held*, that no second appeal lay. The question of title did arise incidentally, but that did not remove the suit from the cognizance of the Court of Small Causes. *Damodar Gopal Dikshit* v. *Chintaman Balkrishna Karve, I. L. R. 17 Bom. 42*, and *Narayan* v. *Balaji, I. L. R. 21 Bom. 248*, followed. KESRISANG v. NARANSANG (1908) . I. L. R. 32 Bom. 560

(*r*) RENT.

79. ——— Suit for arrears of rent—*Act XXIII of 1861, s. 27.* In suits for arrears of rents of land, when the claim is under R500, a [illegible]

80. ——— *Bom. Reg. XVII of 1827, s. 31, cl. 3—Act XXIII of 1861, s. 27.* The expression "or former year" in Regulation XVII of 1827, s. 31, cl. 3, did not mean the year immediately preceding the current year, but any previous year, and a suit for rent could have been brought before a revenue officer, when Act XI of 1865 was passed, and not before the Small Cause Courts constituted by that Act. A special appeal lay in a suit of this nature. KRISHNARAV RAMCHANDRA v. MANAJI BIN SAYAJI. 11 Bom. 106

81. ——— *Suit by an* [illegible]

CHUNDER BOSE v. NACHIM RAZI
I. L. R. 27 Calc. 827
4 C. W. N. 357

82. ——— *Suit for arrears* [illegible]

83. ——— Suit for zamindari cess—*Suit for payment for use of land—Act XXIII of 1861, s. 27.* Where the plaintiff claimed a sum of money under the name of a zamindari cess, but in point of fact what was claimed was claimed on [illegible]

SPECIAL OR SECOND APPEAL—*contd.*

4. SMALL CAUSE COURT SUITS—*contd.*

(*r*) RENT—*contd.*

84. ——— Suit for Government assessment and local fund cess—*Suit for arrears of rent.* The defendant [illegible] tion of the mulgeni the Government assessment was R56-8-0, but in 1872 it was enhanced to R129-8-0, and a local fund cess of R4-9-0 imposed in addition. The plaintiff sued the defendant to recover from him the enhanced assessment and the cess. On appeal an objection was taken that, the amount claimed by the plaintiff being less than R500, the suit was cognizable by a Court of Small Causes, and that therefore there was no second appeal. *Held*, that the suit might be regarded as one for arrears of rent at an increased rate, and, as such, was not cognizable by a Court of Small Causes. BABSHETTI v. VENKATRAMANA . I. L. R. 3 Bom. 154

85. ——— Suits for rent—*Civil Procedure Code, 1882, s. 586—Provincial Small Cause Courts Act (IX of 1887), s. 15, Sch. II, Art. 8—"Suits of the nature cognizable in Courts of Small Causes."* A suit for the recovery of rent other than [illegible] matter of the original suit does not exceed R500. VEDACHALA MUDALI v. RAMASAMI RAJA
I. L. R. 22 Mad. 229

86. ——— *Civil Procedure Code, 1882, s. 586—"Suit of the nature cognizable in Courts of Small Causes"—Suit for rent other than* [illegible] original suit does not exceed five hundred rupees. So *held* (SUBRAMANIA AYYAR, J., dissenting). *Vedachala Mudali* v. *Ramasami Raja, I. L. R. 22 Mad. 229*, overruled. SOUNDARAM AYYAR v. SENNIA NAICKAN . I. L. R. 23 Mad. 547

87. ——— *Civil Procedure Code (Act XIV of 1882), s. 586—Landlord and tenant—Suit by tenant to recover excess payments of rent—Bengal Tenancy Act (VIII of 1885), s. 144.* A suit between landlord and tenant for the recovery by the tenant of excess payments taken by the landlord in respect of the rent of the holding and not exceeding R500 is a suit cognizable by the Small

SPECIAL OR SECOND APPEAL—*contd.*

4. SMALL CAUSE COURT SUITS—*contd.*

(r) Rent—*concld.*

Cause Court, and under s 586 of the Civil Procedure Code no second appeal lies. There is nothing in s. 144 of the Bengal Tenancy Act to override the provisions of s. 586 of the Civil Procedure Code, as it determines only the revenue and has no bearing upon the nature of the suit. Rango Roy *alias* Rung Lal Roy *v.* Holloway

I L. R. 26 Calc. 842
4 C. W. N. 95

88. ——————— *Suit by landlord against tenant for a certain sum payable by him out of the rent to a third person by assignment—Civil Procedure Code, 1882, s. 586—Suit for rent or for damages. Held* (by the Full Bench), that a suit by a landlord against a tenant for a certain sum of money payable by him out of the rent to a third person under assignment is one for rent, and not for damages and a second appeal lies therefore in such a case *Rutnessur Biswas* v *Hurish Chunder Bose, I. L. R. 11 Calc. 221,* referred to. *Mohabut Ali* v. *Mahomed Faizullah, 1 C W. N. 455* Basanta Kumari Debya *v* Ashutosh Chuckerbutty . . . . **I. L. R. 27 Calc. 67**

4 C. W. N. 3

89. ——————— *Civil Procedure Code (Act XIV of 1882), s. 586—Suit of a small cause nature—Plaint based on muchalka, but containing*

had executed a *muchalka*, which was registered, in respect of certain lands, and that second defendant was in possession of the lands, and that default had been made in the payment of the *kist* referred to in the *muchalka* The plaint contained no other allegations, but prayed for a decree for the arrears of *kist*, and concluded with a prayer as for the enforcement of a charge in respect of the *kist* : *Held*, that the plaint must be read as one for the enforcement of the terms of the *muchalka*, and that the suit was therefore of a small cause nature, and no second appeal lay. *Mullapudi Balakrishnayya* v. *Venkatanarasimha Appa Rau, I. L. R 19 Mad 329,* followed. Harischandra Deo v. Narayana (1901)

I. L. R. 24 Mad. 508

(s) Specific Performance.

90. ———— **Suit for specific performance of contract** A suit (valued at R500) for specific performance of a contract is not cognizable by a Small Cause Court Consequently no special appeal will lie in such a case. Nilkanth Surmah v Bishen Bashee . . . **6 W. R. 322**

(t) Surety

91 ——— **Suit to establish surety's liability for rent**—*Necessity to prove non-payment by principal.* A suit to establish a surety's liability on account of arrears of rent due from a patnidar where the non-payment of the rent by the patnidar would have to be established is not cognizable by a Small Cause Court ; and consequently a special appeal was not barred in such a case by s 27, Act XXIII of 1861. Mahatab Chund Bahadoor v. Brojonath Mitter . . **8 W. R. 111**

92. ——————— *Decree—Execution—Stay of execution on furnishing security—Execution against surety—Surety's liability—Civil Procedure Code (Act XIV of 1882), s. 253.* The execution of a decree passed in plaintiff's favour was stayed pending appeal by the defendant on his furnishing

execution against the surety, the Court passed an order allowing the claim. The order was confirmed in appeal. On second appeal by the surety : *Held*, dismissing the second appeal, that it was not open to the surety to re-open the question as to his liability, he having accepted the finding as to his liability in the prior execution-proceeding and having abandoned the point in the lower Appellate Court in the present proceeding. Waman *v.* Hari (1906) . . **I. L. R. 31 Bom. 128**

(u) Tax.

93. ———— **Suit for arrears of chowkidari tax payable by patnidar under patni settlement**—*Rent—Bengal Tenancy Act (VIII of 1885), s. 3 (5)—Civil Procedure Code, 1882, s. 586* In a suit for arrears of chowkidari tax pay-

... second appeal ... *Radha* ... v. ... *Co.* v. *Sreekristo Bhumic, I. L. R. 21 Calc 132 ; Rutnesser Biswas* v. *Hurish Chunder Bose, I. L. R 11 Calc. 221,* referred to. Assanulla Khan Bahadur v. Tirthabashini

I. L. R. 22 Calc. 680

SPECIAL OR SECOND APPEAL—*contd.*

4. SMALL CAUSE COURT SUITS—*contd.*

(v) TITLE, QUESTION OF.

94. ——— Issues affecting proprietary rights—*Act XXIII of 1861, s 27.* The decision or order mentioned in s. 27 was confined to those decrees which, if made in a Small Cause Court, would be conclusively binding on the parties, and did not include a decree based upon an issue affecting the proprietary relations between the parties, which, if it had properly arisen incidentally in a suit brought in a Small Cause Court, could not then have been finally concluded between the parties. BHOOPNARAIN SAHOO v MAHOMED HOSSEIN
4 W. R. 60

See KISTO COOMAR CHOWDHRY v ANUNDMOYEE CHOWDHRAIN . . . 6 W. R. Mis 128

95. ——— Question of title incidentally raised. When a suit is of a nature cognizable

KALEE DHAMIN . . . 18 W. R. 104

96 ——— Question of title raised and tried—*Act XXIII of 1861, s 27* No special appeal lies to the High Court in a suit cognizable by the Small Cause Court, although a question of title to immoveable property has been raised and tried in the Court below MOHESH MAHTO v PIRU
I. L. R. 2 Calc 470 : 1 C. L. R. 33

97. ——— Failure of Appellate Court to decide necessary question of title—*Act XXIII of 1861, s 27* Where a question of title arises in a suit of a nature triable by a Small Cause Court, which must be determined before plaintiff

B L R, A C. 91 · 10 W. R, 130, distinguished. PACHOO RAREE v GOOROO CHURN DASS
15 W. R. 556

98. ——— Where in a suit

99. —
Appell[illegible]
plaint to
of Small
gone int
appeal,
SHIT [illegible]

SPECIAL OR SECOND APPEAL—*contd.*

4. SMALL CAUSE COURT SUITS—*contd.*

(v) TITLE, QUESTION OF—*contd.*

standing that it involves an inquiry into a question of right No special appeal lies in such a case LUCKHEE DEBIA CHOWDHRAIN v MALICK
W. R. 1864, 237

KHANDU VALAD KERU v TATIA VALAD VITHUBA
8 Bom. A C. 23

101. ——— Suit which may involve question of title—*Suit for damages for detention of materials of house—Act XXIII of 1861, s. 27.* A suit for damages for detention of materials of
Such a suit
urt, if under
-ed by s 27,
DER SHAHA v
1 W. R. 35

a question of title HEDAETOLLAH v KARLOO
7 W. R. 73

RAM DYAL GANGOOLY v. HURO SOONDUREE DOSSIA . . . . . 10 W. R. 272

103. ——— *Suit for price of trees cut down and removed—Damages—Act XXIII of 1861, s 27* A suit for the price of trees cut down and removed is not the less a suit for damages, because the Court, in order to determine whether the plaintiff is entitled as damages to the value of his trees, has to go into evidence as to whether they belong to the plaintiff or not Such a suit is cognizable by a Court of Small Causes, and no special appeal will lie SHIB DEEN TEWARY v. BUKSHEE RAM PROTAB SINGH
W. R. 1864, Mis. 3

104. ——— *Act XXIII of 1861, s 27—Claim by zamindar to wrecked property—Salvage* A quantity of rice having been recovered from the wreck of a boat, a portion was

10 W. R. 78

SPECIAL OR SECOND APPEAL—*contd.*

4. SMALL CAUSE COURT SUITS—*concld.*

(*v*) Title, Question of—*concld.*

105. ———— **Suit for arrears of malikana allowance**—*Act XI of 1865, s. 6.* *S* sold a share in immoveable property to *M* by a registered deed of sale, which contained the following provision: "The said vendee is at liberty either to retain possession himself or to sell it to some one

The representatives of the vendor sued *M* and *B* to recover arrears of malikana, the amount sued for being less than R500. *Held*, upon a preliminary objection made with reference to s. 586 of the Civil Procedure Code, that the intention of the Legislature as expressed in s. 6 of the Mofussil Small Cause Courts Act (XI of 1865), was that suits directly and immediately involving questions of title to immove-

I. L. R. 5 Bom 463: Qutub Husain v. *Abul Husain, I L. R. 4 All 134*, and *Kadaressur Mookerjee* v. *Gooroo Churn Mookerjee, 2 C. L R. 388*, distinguished. Churaman v. Balli

I. L. R. 9 All. 591

106. ———————— *Small Cause*

the question of the title to the land The plaintiff obtained a decree, which was confirmed in appeal.

I. L. R. 25 Bom. 625

(*w*) Trespass.

107 ———— **Suit for damages for trespass**—*Suit cognizable by Small Cause Court.* In a suit for damages for trespass laid at a sum under R100, a special appeal will lie to the High Court if the title to the land trespassed upon has been raised in the Court below. Lukhynarain Chuttopadhya v. Gorachand Gossamy

I. L. R 9 Calc. 116 : 12 C. L R. 89

SPECIAL OR SECOND APPEAL—*contd.*

5 GROUNDS OF APPEAL.

(*a*) Form of.

1. ———— **Requisites for grounds**—*Clearness and distinctness* The grounds of special

2. ———— **Grounds of second appeal**—*Civil Procedure Code (Act XIV of 1882), ss. 584, 585.* The grounds upon which a second appeal lies to the High Court are those set out in s. 584 of the Civil Procedure Code, and s 585 enacts that no second appeal shall lie except on the grounds mentioned in s. 584. The provisions of those sections should be strictly adhered to *Anangamanjari Chowdhrani* v. *Tripura Sundari Chowdhrani, I. L R. 14 Calc. 740 : L. R. 14 I. A 101 ; Pertap Chunder Ghose* v. *Mohendra Nath Purkait, I. L. R 17 Calc. 291 : L. R 16 I A. 233 , Durga Chowdhrani* v. *Jewahir Singh Chowdhri, I. L R. 18 Calc. 23 : L. R 17 I. A. 122 ;* and *Ram Ratan Sukal* v. *Nandu, I L. R. 19 Calc. 249 . L. R. 19 I. A. 1,* refereed to Kameshwar Pershad v. Amanutulla . I. L R. 26 Calc. 53
2 C. W. N. 649

(*b*) Questions of Fact.

3 ———— **Grounds of second appeal**—*Civil Procedure Code, s 584.* Under the Code no second appeal will lie, except on the grounds specified in s. 584. There is no jurisdiction to enter-

deration in support of the finding ... *manjari Chowdhrani* v. *Tripura Sundari Chowdhrani, L. R. 14 I. A. 101 : I. L. R 14 Calc. 740,* and *Pertab Chunder Ghose* v *Mohendra Purkait, L R 16 I. A 233 . I L R. 17 Calc. 291,* referred to and followed. *Futtehma Begum* v. *Mohamed Ausur, I. L R. 9 Calc., 309,* and *Nirath Singh* v. *Bhikki Singh, I. L. R 7 All 649,* overruled. Durga Chawdhrani v Jewahir Singh Chowdhri . I L R. 18 Calc. 23
L. R. 17 I. A. 122

4.———— **Doubtful findings of fact**—*Consideration of evidence.* No Court of second

I. L. R. 19 Calc. 249
L. R. 19 I. A. 1

5. ———— **What are or are not questions of fact**—*Question of custom.* A question of

SPECIAL OR SECOND APPEAL—*contd.*

5. GROUNDS OF APPEAL—*contd.*

(*b*) QUESTIONS OF FACT—*contd.*

custom is a question of fact on which the lower Court alone can pass a decision, and on which the High Court cannot interfere. HUREEHUR MOOKERJEE *v.* JUDOONATH GHOSE . . 10 W. R. 153

ALI *v.* GOPAL DASS . . . 13 W. R. 420

6. ——— *Question of damages—Discretion of Judge.* A Judge has a discretion with respect to the amount of the damages which will not ordinarily be interfered with on special appeal. TEEKARAM KYBUTT *v* RAJKISHEN ROY . . . . Marsh. 495

AHMEDOOLLA *v* HUR CHURN PANDAH 2 W. R. 236

7. ——— *Question of amount of damages—Difference of opinion on evidence between lower Courts* In a suit for damages on account of false charge and consequent arrest, in which the Court of first instance found that there were probable and reasonable grounds for bringing the charge, and the lower Appellate Court took a different view of the evidence, it was *held* that the difference of view was not a subject for special appeal. The amount of damages to be awarded is a question for a jury to decide, and one with which the High Court cannot interfere in special appeal. BANEE MADHUB CHATTERJEE *v* BHOLANATH BANERJEE HEERA CHAND BANERJEE *v* BANEE MADHUB CHATTERJEE . . . 10 W. R. 164

8. ——— *Question of amount of damages—Award of damages under Act X of 1859, s 10* An award of damages by a lower Appellate Court under s 10, Act X of 1859, though excessive, if it is within the legal limit, cannot be interfered with in special appeal as an error of law JOHEEROODDEEN MAHOMED *v* DABEE PERSHAD SINGH . . . . 13 W. R. 22

Affirmed on review . 13 W. R. 391

9. ——— *Refusal to award damages—Beng Act VI of 1863, s 2—Discretion of Court* The refusal of a Court to award damages under s. 2, Bengal Act VI of 1862, is not a ground for special appeal, it being a matter of discretion to award them or not DHEERAJ MAHATAB CHAND *v* DEBENDER NATH THAKOOR W. R. 1864 Act X, 68

GOPAL LAL THAKOOR *v.* MAHOMED KADIR. W. R 1864 Act X, 73

10 ——— *Question of law—Sufficiency of evidence.* It is a question of law for the Court to decide on second appeal whether there is evidence before the Court, on which a Court could properly arrive at any given conclusion of fact. BIDHUMUKHI DABEA CHOWDHRAIN *v* KEFYUTULLAH . . I. L. R. 12 Calc. 93

11. ——— *Jurisdiction, question of* A special appeal will not lie upon a question of jurisdiction depending upon a question of fact, unless the fact has been determined by the lower Court or is admitted by the parties. *Quære:* Whether, if the fact appears, a special appeal will lie unless the error in procedure has affected the merits LUTEEFOONNISSA BEEBEE *v.* POOLIN BEHARY SEIN W. R F. B. 31: 1 Ind. Jur. O. S 10 1 Hay 242

S C POOLIN BEHARY SEIN *v.* LUTEEFOONNISSA BEEBEE . . . . Marsh 107

COURT OF WARDS *v.* ROOP MOONJUREE KOOER. 25 W. R. 260

12. ——— *Question of what passes at sale in execution of decree—Mixed question of law and fact* The question what is actually bargained and paid for at an execution-sale is a mixed question of law and fact, and the High Court on second appeal is not bound by the finding of the Court of first appeal with regard to it. GNANAMMAL *v.* MUTHUSAMI I. L. R. 13 Mad. 47

13. ——— *Existence of legal necessity* Where both the lower Courts found that there was no necessity for a widow to borrow [illegible]

CHOWDHRY . . . . . 1 Hay 2[illegible]

14. ——— *Question of law—Onus probandi* Where each of the parties has gone into evidence upon the issues raised in the lower Courts, no question as to whether the onus lies on the one or on the other can arise in special appeal. HUREE MOHUN MOJOOMDAR *v* ASGUR BEHAREE . . . . 23 W. R. 324

Reversing the decision in ASGUR BEPAREE *v.* HUREE MOHUN MOJOOMDAR . . 23 W. R. 56

15. ——— *Proceeding to enforce decree—Act XIV of 1859, s. 20* The ques- [illegible]

16. ——— *Order finding proceedings to enforce decree not bonâ fide—Act XIV of 1859, s 20.* The question as to whether proceedings which had been taken to execute a decree had been taken *bonâ fide* to keep alive such decree was a question of fact, and no special appeal lay from an order finding that the proceedings taken were *bonâ fide.* BHUBAN MOHUN CHATTOPADHYA *v* SAUDAMINI DEBI . 5 B. L. R. Ap. 59

SPECIAL OR SECOND APPEAL—*contd.*

5. GROUNDS OF APPEAL—*contd.*

(*b*) QUESTIONS OF FACT—*contd.*

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[illegible]

18. ———— *Service of notice of enhancement* A decision that notice of enhancement was duly served cannot be interfered with in special appeal. TARA PROSUNNO MOJOOMDAR *v* BISHO NATH SIRCAR . 23 W. R. 144
Reversing on appeal. BISSONATH SIRCAR *v.* TARA PROSONNO MOZOOMDAR . 22 W. R. 482

19. ———— *Right of way.* In suits to enforce a right of way, the question whether the plaintiff has a right of way or not is a question of fact to be determined by the evidence he produces of user. Where, on the evidence, the Judge found the plaintiff had not a right of way :—*Held*, that there was no error of law which gave the plaintiff a right to a special appeal. MAHOMED ALI *v* JUGAL RAM CHANDRA
5 B. L. R. Ap. 84 : 14 W. R. 124

20. ———— *Finding as to user.* A finding of a lower Appellate Court as to a right of user being proved cannot be interfered with on special appeal, even though not very distinct as to the precise period of enjoyment WUZEEROODDEEN *v* SHEOBUND LALL
11 W. R. 285

21. ———— *Civil Procedure Code, s. 584—Powers of High Court on second*

[illegible]

execution of the muchalka, it was not shown that he dispensed with the pottah," no objection was taken in the memorandum of appeal that the muchalka, which contained a statement that no pottah

[illegible]

I. L. R. 10 Mad. 503

22. ———— Finding of facts—*Decision in regular appeal* When the decision passed in

[illegible]

6 N. W. 172

23. ———— *Consent of parties.* The High Court will not, even with consent of parties, pronounce a decree on the facts in a special appeal. KADAMBINEE DOSSEE *v.* DOORGA CHURN DUTT . . . . . . Marsh. 4

SPECIAL OR SECOND APPEAL—*contd.*

5. GROUNDS OF APPEAL—*contd.*

(*b*) QUESTIONS OF FACT—*contd.*

S.C. DOORGA CHUNR DUTT *v.* KADUMBINEE DOSSEE . . . . . . 1 Hay 25

24. ———— *Inference of fact.* It is not essential in special appeal that the High Court should be very careful in not interfering with inferences of fact drawn by a lower Appellate Court. HAMEER MAHOMED CHOWDHRY *v* FOOL MAHOMED CHOWDHRY . . . 16 W. R. 311

WOOMA MOYEE BURMONYA *v.* KUNUCK CHUNDER MOOKERJEE . . . 17 W. R. 418

Even though it is not an inference, the High Court itself would have drawn, provided the Judge was at liberty to draw it. MAHOMED MANOO BHOOYAH *v.* MAHOMED ASANOOLLAH CHOWDHRY
17 W. R. 349

KALEE DOSS ACHARJEE *v.* KHETTRO PAL SINGH ROY . . . . 17 W. R. 472

25. ———— *Practice—Interference with findings of facts on second appeal.*

[illegible]

circumstances of the case has not been satisfactorily arrived at. GOLUCK NATH *alias* RAKHAL DAS CHUTTOPADHYA *v* KIRTI CHUNDER HALDAR
I. L. R. 16 Calc. 645

26 ———— *Ground for set-*

[illegible]

in special appeal, even if the High Court cannot agree with or support all the reasons given. RUMMEEZOODDEEN BHOOYAN *v.* JOYMALA
15 W. R. 303

27. ———— *Finding of fact, unsupported by reasons* The High Court is not bound, in second appeal, by a finding of fact of a lower Appellate Court, when such finding is not supported by any reason. PURSHOTAM SAKHARAM *v.* DURGOJI TUKARAM . I. L. R. 14 Bom. 452

28. ———— *Finding of the Court of first instance without reasons given where contrary conclusion has been come to by the District Judge.* The District Judge having ex-... a finding without ... which the Sub- ... conclusion :— ... Judge ought ... *v* VENKATASH MANJAYA . I. L. R. 16 Bom. 540

29. ———— *Finding of fact unsupported by reasons—Defect in judgment of lower Appellate Court.* Where no reasons are given by a lower Appellate Court for the conclusions arrived at, such conclusions cannot be accepted as legal findings of fact in second appeal. *Kamat v.*

SPECIAL OR SECOND APPEAL—*contd.*

5. GROUNDS OF APPEAL—*contd.*

(*b*) QUESTIONS OF FACT—*contd.*

Kamat, I. L. R. 8 Bom. 368, 370, and *Roghunath Gopal* v *Nilu Nathaji, I. L R 9 Bom 452, 454*, referred to. NINGAPPA v. SHIVAPPA
I. L. R. 19 Bom. 323

30. ——— Decision on fact,

different conclusion from the lower Appellate Court LOOYEE DHUR ATTOO v PROSUNNO MOYEE DOSSEE . . . . 20 W R 267

31. ——— Error in law

SAGE v MACKAY & Co. . . . 2 Hay 463

BEHAREE LALL NAEK v. SREERAM ROY.
20 W. R. 259

See KRISTO GOBIND KUR v. GUNGA PERSHAD SURMA . . . . 23 W. R. 266

PUTSAHEE KOOER v SHEO PERSHAD RAM OOPADHYA . . . . . . 24 W. R. 61

CHAND MONEE DOSSEE v. ABHOY CHURN MAL
24 W. R. 289

HUNSA KOOER v SHEO GOBIND RAOOT
24 W. R. 431

GOBINDO CHUNDER MOULICK v MUDHOOSUDUN MOULICK . . . . . . 25 W. R. 550

DHOONDH BAHADOOR SINGH v PRIAG SINGH.
17 W. R. 314

KEWAL KANDOO v OMRAO SINGH
25 W. R. 168

32. ——— *Error in Law—Partnership* Where a Subordinate Judge held,

33. ——— *Finding on speculative reasoning* A finding of fact arrived at upon reasons purely speculative amounts to a mistrial which can be set aside by the High Court in special appeal. MAHOMED AIZADDI SHAHA v. SHAFFI MULLA . . . . 8 B. L. R. 26

SPECIAL OR SECOND APPEAL—*contd.*

5 GROUNDS OF APPEAL—*contd.*

(*b*) QUESTIONS OF FACT—*contd.*

34. ——— *Improper assumption of, and inference from, facts* A finding

such facts. SURBESWAR GHOSE v CHOTO ARIZOLLAH MANDAL 8 B. L. R. Ap 78 17 W. R 213

35. ——— *Judgment founded on errors of fact* The High Court reversed on special appeal a judgment which was founded on many errors of fact, and sent it back for a re-trial. POORNO CHUNDER CHATTERJEE v CHUNDER COOMAR ROY . . . . . 24 W. R. 171

36. ——— *Omission to consider important portions of the evidence—Finding based on statements, not on evidence* The lower Court, in its judgment, having omitted to make any mention of certain important documents or their bearing on the terms of a tenancy which were in question —*Held*, that, the lower Court having presumably omitted to consider important portions of the evidence, the findings arrived at by it ought not to be accepted *Held*, also, that the finding of the lower Court as to the plaintiffs' claim being barred by limitation, being based on statements

37. ——— *Decision of Judge not based on evidence given in the case—Finding of fact when binding in second appeal.* In a suit for ejectment for non-payment of enhanced rent the defendants pleaded (i) that they were permanent tenants; (ii) that the plaintiff had no power to enhance; (iii) that the enhancement by the plaintiff was unreasonable The lower Courts held that the defendants were permanent tenants, but were bound to pay a reasonable rent. Their decision was not based on evidence given in the case, but on what was termed a "well-known distinction between the sheri or private lands of an inamdar

SPECIAL OR SECOND APPEAL—*contd.*

5. GROUNDS OF APPEAL—*contd.*

(*b*) QUESTIONS OF FACT—*contd.*

distinction drawn between sheri and khata tenants was correct or that every khata tenant, as such, exercised the rights described by the Subordinate Judge. Under the circumstances, it was clear that the decision of the District Judge was based neither on evidence nor admissions, and was therefore not binding in second appeal. VISHVANATH BHIKAJI *v.* DHONDAPPA . I. L. R. 17 Bom. 475

38. ——————— *Civil Procedure Code (Act XIV of 1882), ss. 584, 585—Findings of fact distinguished from inferences or conclusions of law—Inference of law which the facts found*

conclusions may involve matter of law, and may be questioned by a Court of second appeal. A

a mortgage executed by his mother, with whom he was a sharer by inheritance in the property charged. A higher Appellate Court, on a second appeal, decided that these conclusions were not warranted by the facts found, and reversed that judgment. *Held*, that the third Court had not exceeded its powers under the above sections by reversing the decision of the Court below. The expression "specified" used in cl. (*a*) of s. 584,

of 1877,
grounds
hir Singh
17 I. A.
ATON
I. L. R. 20 Calc. 93
L. R. 19 I. A. 228

39. ——————— *Inference drawn from finding of fact* It is open to the Court in second appeal to question the soundness of an inference drawn from a finding of fact *Ram Gopal v. Shamskhaton, I. L. R. 20 Calc 93*, referred to KRISHNA KISHORE NEOGI *v* MAHOMED ALI
3 C W. N. 255

40. ——————— *Finding of lower Court based on misconception of evidence—Defect in judgment of Appellate Court.* The finding on an issue of a lower Appellate Court which is based on a misconception of what the evidence is, cannot be accepted in second appeal as a legal finding on it. GOVIND *v* VITHAL . I. L. R. 20 Bom. 753

41. ——————— *Finding on the existence of custom or usage, mainly based on irrelevant matters—Evidence Act (I of 1872), s. 13—Mistrial—Remand* In suits by a landlord for ejectment of purchasers from raiyats having only a right of occupancy on the grounds that the holdings of such raiyats were not transferable without the landlord's consent, the defendants pleaded custom or usage in support of the transfers. Questions arose as to the character of the usage required to be proved in such cases and the nature of the evidence required to prove the usage. In second appeal the High Court, upon an examination of the evidence relied on by the lower Court of appeal, and on reference to s. 13 of the Indian Evidence Act (I of 1872):—*Held*, that, the finding of that Court on the existence of the usage having been mainly based or irrelevant matters, the appeal was not properly tried and the case must be remanded for re-trial. *Womes Chunder Chatterjee v. Chundee Churn Roy Chowdhry, I. L R. 7 Calc. 293*, referred to PALAKDHARI RAI *v.* MANNERS . . . I. L. R. 23 Calc. 179

42. ——————— *Proof of custom—Misconception as to mode of proof.* If a decree appealed against is based on wrong views of the law of evidence or on a misconception of the canons which the Privy Council and the High Court have defined as to how a special custom should be proved, the High Court will interfere in second appeal. DESAI RANCHODDAS VITHALDAS *v.* RAWAL NATHUBHAI KESABHAI I. L. R. 21 Bom. 110

In another case the Court on second appeal did not consider it open (where the lower Court had found the existence of a custom) to arrive at an independent finding as to whether the evidence established the existence of such custom. BAI SHRINIBAI *v.* KHARSHEDJI NASARVANJI MASALAVALA . . . . I L. R. 22 Bom. 430

43. ——————— *Remand to the Appellate Court—Additional evidence in Appellate Court—Finding of fact upon evidence taken after remand—Procedure in the second Court of appeal—Civil Procedure Code, 1882, ss 568, 584, 585,*

Appellate Court tried the case, not as an original
the powers
in second
he Code
of Civil Procedure from going into facts, and that restriction of power is not confined only to cases where evidence is taken in the first Court. *Gopal Singh v Jhakri Rai, I. L. R. 12 Calc. 37*, followed. *Balkishan v Jasoda Kuar, I. L. R. 7 All. 765*, referred to. *Hinde v. Brayan, I. L. R. 7 Mad. 52*, not followed. BENI PERSHAD KUARI *v.* NAND LAL SAHU . . I. L. R. 24 Calc. 98

SPECIAL OR SECOND APPEAL—*contd.*

5. GROUNDS OF APPEAL—*contd.*

(*b*) QUESTIONS OF FACT—*contd.*

44. ——————— *Enhanced rent on irrigated land—Implied contract.* A zamindar tendered to raiyats on his estate pottahs providing (*inter alia*) for the payment of rent in which the land assessment was consolidated with a water-cess in respect of certain land irrigated under the Kistna anicut. This had not been sanctioned by the Collector under the Madras Rent Recovery Act, s. 11, but it was found that it had been paid by the raiyats for many years The Court of first appeal held on this finding that there were implied contracts on the part of the raiyats to pay it *Held*, that the finding as to the existence of an implied contract to pay the enhanced rent was a finding of fact, and must therefore be accepted on second appeal. SIRIPARAPU RAMANNA *v* MALLIKARJUNA PRASADA NAYUDU . I. L. R. 17 Mad. 43

45 ——————— *Civil Procedure Code, 1882, ss. 584 and 585—Inference of law which the facts found are insufficient to justify* Where the lower Appellate Court arrives at a conclusion which is an inference based upon an erro- [illegible]

L R 19 I A 228, referred to ISHAN CHUNDER DAS SARKAR *v* BISHU SIRDAR

I. L. R. 24 Calc 825
3 C. W. N. 665

46. ——————— *Civil Procedure Code (Act XIV of 1882), ss 584, 585—Second appeal—Finding of fact by lower Court* One Ragho died prior to 1856, leaving a widow Anpurnabai, and one son Babaji, who was Anpurnabai's step-son. On Ragho's death, Anpurnabai took pos- [illegible]

for her life by way of maintenance. The lower Court dismissed the suit. On appeal the District Judge reversed the decision and passed a decree for the plaintiffs. In his judgment he said: "The plaint states that Anpurnabai had this land for [illegible]

SPECIAL OR SECOND APPEAL—*contd.*

5. GROUNDS OF APPEAL—*contd.*

(*b*) QUESTIONS OF FACT—*concld.*

the High Court could not interfere in second appeal. BALKRISHNA *v.* GOVIND BABAJI AGASHE (1902)

I. L. R. 26 Bom. 617

47. ——————— *Civil Procedure* [illegible]

(*c*) EVIDENCE, MODE OF DEALING WITH.

48 ——————— Evidence generally—*Error in legal presumptions from facts—Decision without legal evidence* A Judge in this country is Judge both of law and fact, but if in deciding upon the acts he deals improperly with the presumptions which the law would raise, he commits error in law which the High Court can correct in special appeal. When a Judge decides without legal evidence, he commits an error in law. SURNOMOYE *v.* LUCHMEEPUT DOOGUR . . 9 W. R. 338

49. ——————— *Assumption made without evidence.* Where an assumption is made by the Court without any evidence that is an error of law warranting a special appeal. HIMMUT ALI KHADIM *v.* NYAMUTOOLLAH KHADIM

23 W. R. 250

Upholding on appeal NIAMUTOOLLAH KHADIM *v.* HIMMUT ALI KHADIM . . . 23 W. R. 519

50. ——————— *Drawing unwarranted conclusions* Special appeal allowed, and case remanded for re-trial, where the lower Appellate Court had drawn conclusions from the evidence not warranted by law or reason, and had failed to try a material issue in the case MAHARAM SHEIKH *v.* NAKOWRI DAS MAHALDAR 7 B. L. R. Ap. 17

51. ——————— *Civil Procedure Code, s 584—Substantial error in a first Appellate Court's finding without any evidence to support it* The Court of first instance dismissed the [illegible]

to support it, being a substantial error in the proceedings, and good ground of second appeal within the meaning of s. 584, sub-s. (*c*), of the Civil

SPECIAL OR SECOND APPEAL—*contd.*

5. GROUNDS OF APPEAL—*contd.*

(c) EVIDENCE, MODE OF DEALING WITH—*contd.*

Procedure Code HEMANTA KUMARI DEBI *v.* BROJENDRO KISHORE ROY CHOWDHRY
I. L. R. 17 Calc. 875
L. R. 17 I. A. 65

52. ———— *Error in legal conclusion or inference from evidence.* In a suit to enforce a right to share in the profits of a ferry, the defendant set up an exclusive title and adverse possession. *Held,* that, the decision that the defendant's possession had been adverse having been an inference from a fact in the Courts below, [illegible]

53. ———— *Omission of Appellate Court to consider presumption of facts material to case.* When an Appellate Court appears not to have taken into its consideration a presumption of facts arising out of the circumstances in evidence, and materially affecting the decision of the case, that is such an omission and defect (ss. 354 and 372, Act VIII of 1859) as the High Court will remedy on special appeal by directing an issue NILATATCHI *v.* VENKATACHALA MUDALI
1 Mad. 131

S.C. ANONYMOUS . 2 Ind. Jur. O. S. 13

5[illegible] ———— *Omission to* [illegible]

[illegible] . . . . 20 W. R. [illegible]

55. ———— *Documentary evidence—Construction of document or inference to be drawn from its term—Civil Procedure Code, s. 584—Question of law.* The question of what is the proper inference to be drawn from the terms of a document is a question of law within the meaning of s 584, Civil Procedure Code, and can be considered in second appeal. CHOCKALINGAM PILLAI *v.* MAYANDI CHETTIAR
I. L. R. 19 Mad. 485

56. ———— *Omission to consider evidence—Error in decision on the merits.* Every Judge of a question of fact is bound to take into consideration all the allegations and proofs upon the record bearing upon that question, as well as the material presumptions arising therefrom, and to overlook them is a defect in law. But before such defect can constitute a good and valid ground of special appeal, it must be of such a character that it may have caused an error in the decision of the case on the merits. GUNEE BISWAS *v.* SREEGOPAL PAUL CHOWDHRY . 8 W. R. 305

SPECIAL OR SECOND APPEAL—*contd.*

5. GROUNDS OF APPEAL—*contd.*

(c) EVIDENCE, MODE OF DEALING WITH—*contd.*

57. ———— *Decision of lower Courts as to credit to be given to particular proofs.* It is the province of the Court which has to decide issues of fact to determine the amount of credit to which each particular proof offered is entitled; and with the fair exercise of its discretion in this respect by such Court, the High Court, as a Court of special appeal, is not at liberty to interfere. MUTHRA DOSS *v* MAGH SINGH . 2 N. W. 207

58. ———— *Weight of reasons given for decision.* No special appeal will lie on a ground relating merely to the weight of the reasons given by the lower Appellate Court for the conclusion arrived at. DOORGA CHURN SETT *v.* SHAMANUND GOSSAIN . . . 12 W. R. 376

Or as to the worth of testimony. MACKENZIE *v.* JOWAHIR MAHTOON . . . 25 W. R. 137

59. ———— *Weight of evidence—Discretion of Court under Act XL of 1858.* Weight of evidence is not a point on which the [illegible]

60. ———— *Giving credit to evidence* Where the lower Appellate Court has dealt with the evidence on both sides, has weighed it, and come to the conclusion that one side ought to be believed, the giving-in the course of his observations a bad reason for believing it is not a ground of special appeal. SHEO GOLAM SAHOY *v.* MOHADEO LALL SAHOO . . 18 W. R. 110

61. ———— *Difference between lower Courts on question of evidence* Where the first Court and the lower Appellate Court differ as to questions of evidence, it is not a ground of special appeal, nor are the parties entitled to argue in special appeal whether the former or the latter is right. TARA PROSUNNO MOZOOMDAR *v* BISHONATH SIRCAR . . . 23 W. R. 144

Reversing on appeal BISSONATH SIRCAR *v.* TARA PROSONNO MOZOOMDAR . . 22 W. R. 483

62. ———— *Ground for dis-* [illegible] Where it was [illegible] the High Court ordered a consideration of the evidence. AMEERUN *v.* CHERAG ALI
24 W. R. 343

MACKENZIE *v.* JOWAHIR MAHTOON.
25 W. R. 137

63. ———— *Erroneous dealing with evidence.* Whether or not a lower Appellate Court commits such an error in dealing with a case on the evidence before him as would

make his conclusion on the facts bad in law, if he does not treat the evidence otherwise than reasonably, he gives no room for special appeal MOHUR MATOON *v.* UMATUM . . . 18 W. R. 499

64. ———— *Improper mode of dealing with evidence—Remand.* On special appeal it appearing that the Judge had dealt with the evidence in the case in an improper manner, it was pointed out, where he had committed errors and the case was remanded, that he might pass a fresh decision upon it RAM DAS SAHA *v.* MANMAHINI DASI . . . 7 B. L. R. Ap. 4

65. ———— *Judgment showing want of consideration of evidence.* A judgment which shows on the face of it want of due consideration of evidence and the introduction of foreign matters into the case may be brought up before the High Court in special appeal SOORAJ KANT ACHARJE *v* KHOODEE NARAIN MANNA 22 W R. 9

KOOLDEEPNARAIN SINGH *v.* RUMMON SINGH 22 W R. 278

66. ———— *Civil Procedure*

witnesses or documentary proof upon capricious or unsustainable grounds, or has stated no intelligible reasons for arriving at its findings of fact,

questions of fact should be absolutely final By "specified law" in cl. (a) of s 584 is meant the statute law, and by "usage having the force of

or have come to a wrong conclusion as to what is the customary law of the country or community, with reference to questions at issue between the parties. Cl. (b) can only refer to mistakes in law and does not extend the operation of cl (a). The term "procedure" in cl (c) means the practice followed by the Courts in the trial of cases, and cannot be construed as including the mental pro-

appeal; and a judgment of a Court of first appeal which falls short of due compliance with the various clauses of s 574 is essentially defective, and may properly

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Singh v

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of s 584 must be understood in its most generic sense, including all the rules contained in the Civil Procedure Code or any other law regulating the investigation of cases by the Civil Courts. When the Court of first appeal, after having entered into the merits of the case, has considered the evidence and adjudicated upon the merits in the manner required by s 574, the mere circumstance that the conclusions at which the Court has arrived

inadmissible by law, or proceed upon an erroneous view of the legal effect of any material part of the evidence, or are arrived at under a misconception either of the rules of evidence or of any other law, such conclusions, though they purport to be distinct findings of fact, would lay the judgment of

67. ———— *Finding on issue*

by the High Court in second appeal cannot be challenged upon the evidence as in first appeals

but objections to these findings must be restricted to the limits within which the original pleas in second appeal are confined. *Nivath Singh v. Bhikki Singh I. L. R. 7 All. 649,* referred to. *Per* PETHERAM, *C.J.*, and TYRRELL *J.*—Ss. 565 and 566 of the Civil Procedure Code are, as far as may be, incorporated in Ch XLII of the Code relating to second appeals, and when the evidence for disposing of the real issues in the case has been taken and exists on the record, it is the duty of the High Court, on the hearing of a second appeal, to itself fix and determine such issues on the evidence on the record, and not to put the parties to the expense and delay involved by a remand *Per* STRAIGHT, *J.*—S 587 of the Civil Procedure Code does not mean that the provisions of Ch. XLI relating to first appeals are to be applied indiscriminately or in their entirety to second appeals, and implies no warrant for the decision by the High Court of questions of fact in any shape or at any stage of a second appeal. *Ramnarain* v. *Bhawanidin, All Weekly Notes (1882) 104,* and *Sheoambar Singh* v *Lallu Singh, All Weekly*

appeal may not be entertained on grounds of fact, but under the circumstances of s 566 of

evidence upon the record sufficient for that purpose In cases where the Court still acting under s 566, has been obliged in the absence of evidence on the record to supplement the defect through the agency of the Court below, its jurisdiction in respect of such evidence does not become limited thereby or by reason only of the circumstance that the evidence is accompanied by a "finding" of the inferior Court,—the term "finding" being used in s 566 in its restricted sense of an answer to the proposition referred for inquiry, and not for an award of decision of the issue before the Court. BALKISHEN *v* JASODA KUAR . . I. L. R. 7 All. 765

68. ——— *Findings of fact —Procedure of the High Court.* Where the lower Appellate Court has clearly misapprehended what the evidence before it was, and has thus been led

69. ——— *Question of fact —Findings on evidence.* The finding of a fact by a lower Appellate Court upon evidence, a portion of which was inadmissible, is not such a finding of fact as cannot be interfered with in special appeal. GURU DAS DEY *v* SAMBHUNATH CHUCKERBUTTY . . . 3 B. L. R. A. C. 258

70. ——— *Giving undue weight to inadmissible evidence.* Where the lower

71. ——— *Error in law —Rejection of evidence.* There is a material differ-

the judgment, and a case in which the essential question, or one of the essential questions to be decided, rests upon the evidence believed or dis-

ROY *v* WOMATARA DEBEE
I. L. R. 7 Calc. 263 : 8 C. L. R. 449

72. ——— *Error in procedure—Finding of fact by lower Court not accepted by High Court where the District Judge, in consequence of a mistake as to a date, was biassed in dealing with the defendant's evidence* Where a Judge, under a mistake, thought that a bond, which was really dated 19th November 1885, was dated 8th November 1886, and consequently treated the deposition of the defendants in which he stated

I. L. R. 15 Bom.

73. ——— *Error in dealing with question of admissibility of evidence and burden*

of proof. Per Mahmood, J.—It is the duty of the Court, when dealing with second appeals and in considering the conclusions at which the lower Appellate Courts have arrived, to consider whether or not those conclusions have been arrived at in due compliance with the rules of law governing the admissibility of evidence, and which involve questions of the burden of proof; especially in cases in which a title is asserted by a plaintiff who seeks to oust a defendant and that defendant denies the title and asserts that the plaintiff has no title at all. Wali Ahmad Khan *v* Ajudhia Kandu

I. L. R. 13 All. 537

74. ——————— *Suit for ejectment —Proof of title—Inference of title from acts of ownership—Finding of lower Court on such question—Mixed question of law and fact—Finding of fact.* In an ejectment suit the evidence of the

High Court in second appeal may correct erroneous conclusions drawn by the lower Appellate Court

would be open to the High Court in second appeal to come to a different conclusion from the lower Appellate Court But where the question upon

19 I A 48, and *Ram Gopal* v. *Shamskhaton, I. L. R. 20 Calc 93 : L. R. 19 I A 228*, referred to. Rajaram *v.* Ganesh Hari Karkhanis

I. L. R. 21 Bom. 91

75. ——————— *Misdirection—Ground of special appeal—Error of law.* The

Rajo Kore . . . . 5 C. L. R. 64

76 ——————— *Disregard of evidence.* Where the lower Appellate Court's judgment

Abdul Rohman *v.* Sofy Mikhayesh Sahera

24 W R. 293

Mohun Singh *v* Jugbutty Kooer

24 W. R. 297

77. ——————— *Disregard of evidence—Error in law* A complete disregard of evidence which although not conclusive and an estoppel, is of such a nature that a judgment in opposition to it cannot be allowed to stand, amounts to an error in law Heera Lall Ghose *v* Kalee Dass Mookerjee . . . 23 W. R. 65

Anund Chunder Chuckerbutty *v* Rutnessur Doss Sen . . . . 25 W. R. 50

78. ——————— *Irregular dealing with evidence.* Where an Appellate Court ignores the great body of evidence on the record and places reliance on what can be shown either to be no evidence at all or which points almost exclusively the other way, and here it lays down, as positive dicta of law, points which are not law, the High

79. ——————— *Improper dealing with evidence* In this case departing from its

important particulars, and, on the other hand,

which had produced error in the decision on the merits It accordingly reversed his judgment and remanded the case for re-trial. Shibo Soonduree Dossee *v.* Chunder Kant Ghose 21 W. R. 217

Ameer Beparee *v.* Hurree Mohun Kurmokar . . . . . . 23 W. R. 87

80. ——————— *Improper and erroneous dealing with evidence—Error in law.*

is to be dealt with discussed. MATHURA PANDEY, v. RAM RUCHA TEWARI

3 B. L. R. A. C. 108 : 11 W. R. 482

81. ——— *Partial consideration of evidence.* It is a ground for special appeal, if the Appellate Court disregards one side of a case, and turns its attention exclusively to the evidence on the other; but it is no error of law merely to pronounce no objection upon the evidence on the former side. DEO SURUN POORY v. MAHOMED ISMAIL . . . . . 24 W. R. 300

82. ——— *Ground for setting aside decision on facts* The lower Appellate Court has quite as much authority to decide upon facts as the Court of first instance, and the High Court is not at liberty to interfere with verdicts setting aside judgments of the Court of first instance, simply because such judgments are more detailed or even more satisfactory on the evidence. DOIBO CHUNDER ROY v WOOMA MOYEE DEBIA

19 W. R. 321

83. ——— Documentary evidence—*Reasons for rejecting documentary evidence* The reasons of a Judge for not giving any weight to documents offered as evidence cannot be questioned in special appeal. MUNEE DUTT SINGH v CAMPBELL . . . . 11 W. R. 278

But see SUROSUTTY DOSSEE v UMBIKA NUND BISWAS . . . . . 24 W. R. 192

84. ——— *Finding as to sufficiency of documentary evidence. Per* BAYLEY, *J*—The omission in the first Court to enquire or specify in the judgment as to whether a pottah, which is admittedly 100 years old, and which is supported by the evidence of old witnesses, comes from proper custody or not, is not a sufficient reason to invalidate the finding that the pottah is proved; nor is it a defect in the investigation affecting the merits of the case which would justify the interference of the High Court in special appeal. *Per* GLOVER, *J*—The question as to proper custody is not in issue, the judge having found the pottah proved by the evidence of witnesses BUDDIOODDEEN v. GOLAM PEER . . . 17 W. R. 279

85. ——— *Error of Judge in not giving proper effect to evidence.* In order to [illegible] special appellant to show not only that the evidence is calculated to support certain conclusions, but that these conclusions alone flowed from it. SHAM NARAIN v. COURT OF WARDS . 20 W. R. 197

86. ——— *Finding as to genuineness of deed from copy put in evidence.* The finding of a lower Appellate Court pronouncing, on evidence, on the genuineness of a deed on the production of a copy (the original having been lost) is not open to interference in special appeal. BHUGWAN CHUNDER BANERJEE v. DUKHINA DEBIA . . . . 8 W. R. 356

87. ——— *Finding as to genuineness of document.* A decision that a document was not genuine cannot be interfered with on special appeal. TARA PROSUNNO MOJOOMDAR v. BISHO NATH SIRCAR . . . 23 W. R. 144

Reversing on appeal BISSONATH SIRCAR v. TARA PROSONNO MOZOOMDAR . . 22 W. R. 482

88. ——— *Use of probabilities against direct evidence.* Where the lower Appellate Court merely on the appearence of a document discarded the evidence of witnesses who testified to the making and signing of it, the High Court reversed its decision, on the ground that probabilities which are useful as aids in considering the true value of direct evidence can seldom be safely had recourse to alone for the purpose of entirely invalidating direct evidence LALLAH JHA v. TULLEBMATOOL ZUHRA . . 21 W. R 436

89. ——— *Erroneous and unnecessary presumption of fact* Where the Court concluded against the genuineness of a document on a presumption erroneous or one which did not necessarily arise his decision was set aside on special appeal. AKJOO BIBEE v. KOONJO BEHAREE LALL

19 W. R. 288

WISE v RUBAA KHATOON . . 19 W. R. 299

GOPAL CHUNDER GHOSE v TINCOWREE MUNDUL

19 W. R. 349

MEHER BANOO v. KERAMUT ALI 22 W. R. 402

90. ——— *Comparison of signatures in unusual manner leading to erroneous conclusion.* Where the lower Appellate Court [illegible] its decision and remanded the case for re-trial. PHOODEE BIBEE v. GOBIND CHUNDER ROY

22 W. R. 273

[illegible] The Court of first instance disbelieved this evidence and gave a decree for the plaintiff. The Judge on appeal compared the signature of the plaintiff on the receipts with his signature to a document not in evidence in the case, and reversed

SPECIAL OR SECOND APPEAL—*contd.*

5. GROUNDS OF APPEAL—*contd.*

(c) EVIDENCE, MODE OF DEALING WITH—*contd.*

the decree and dismissed the suit *Held*, that the decision of the Judge, proceeding upon the point as to the credibility and weight of evidence, could not be objected to on special appeal. RAM SOONDER SIRCAR *v* KISTOBAG BAG Marsh. 322: 2 Hay 421

92. ——— *Receipts for rent —Civil Procedure Code, 1859, s. 372—Error in investigation of case.* In a suit for arrears of rent the defendant pleaded payment and filed receipts. The Collector distrusted the receipts, and gave a decree in favour of the plaintiff saying that as to three of the receipts evidence had been given which he did not believe; and that with respect to the other receipts no evidence had been offered. The Judge, on appeal, reversed the decree, and [illegible]

[illegible] receipts in support of which no evidence had been offered, the plaintiff was entitled to a decree for the rents to which they applied, and that the finding of the Judge that such rents had been [illegible]

93. ——— *Misapprehension of, and irregular dealing with, evidence by Appellate Court—Ground for reversing decision.* Where the lower Appellate Court misapprehended the documentary evidence, mistook the statements of witnesses, and without recording clearly its [illegible]

94. ——— *Error in law—Misconstruction of document* The misconstruction of a document is an error in law sufficient to form a ground of appeal. ODIT NARAIN *v* MAHESHUR BUX SINGH . Agra F. B. 52: Ed. 1874, 39

95. ——— *Misconstruction of document—Error on facts.* Where the Court in recording the words of a document on which it relies puts one term for another, it is a misconstruction "affording ground for special appeal," but where for reasons given it places a particular boundary mark in a particular spot, its decision, even though wrong on the facts, would not be a misconstruction unless incompatible with the wording of the document KALEE CHURN PATTIE *v.* CHUNDEE CHURN MUNDUL. . 9 W. R. 388

96. ——— *Misconstruction of documents* Per AIKMAN, J.—*Semble*. That a ground of appeal to the effect that the lower Appellate Court has misconstrued a document is not one of the grounds of second appeal contemplated by s. 584 of the Code of Civil Procedure. [illegible] PRASAD *v.* BAIJNATH . . I. L. R. 16 All. 387

97. ——— *Question of fact—Erroneous use of admission by lower Courts* [illegible]

[illegible] MAH . . . . . . 13 W. R. [illegible]

98 ——— [illegible] *meaning of evidence—Misconstruction of document* [illegible]

99. ——— [illegible] *struction and dealing with* [illegible]

HURUCKRAJ JOSHEE *v.* [illegible]

100. ——— [illegible] *depositions of witnesses* [illegible] deposition of witnesses [illegible] therefore not a ground [illegible] ALI KHADIM *v* NYAM[illegible]

Upholding on appeal [illegible] *v.* HIMMAT ALI KHA[illegible]

101. ——— [illegible] *document—Question of* [illegible] of the lower Appellate [illegible] the contents of a [illegible]

SPECIAL OR SECOND APPEAL—*contd.*

5. GROUNDS OF APPEAL—*contd.*

(c) EVIDENCE, MODE OF DEALING WITH—*contd.*

of its correct construction, but also upon all the facts of the case and the whole conduct of the parties :—*Held*, that it was not open to special appeal. BUNOSHEE DHUR MAHATA *v.* MUDHOO SOODUN CHOWDHRY . . . . . 23 W. R. 406

102. ———— *Decision without sufficient evidence* In a suit on a kabuliat, the Court of first instance found that the kabuliat had not been signed by the defendant, but by a third party, and that there was no evidence that such third party was authorized to sign it. The Judge on appeal reversed the decision. *Held*, that the decision of the Judge holding the defendant responsible for the signature of a person of whose authority there was no evidence was erroneous in point of law, and was a ground of special appeal. SHAM CHAND BYSACK *v* BUNGO CHUNDER CHATTERJEE . . . Marsh. 556 : 2 Hay 663

103. ———— *Finding of fact as to Ameen's report* Where the lower Appellate Court finds as a fact that the Ameen's report is untrustworthy and his map wrong, the finding cannot be interfered with by the High Court in special appeal. SHEO DYAL SINGH *v.* HODGKINSON 24 W. R. 342

104. ———— *Omission to record opinion on evidence.* The omission to record an opinion on one of many items of evidence (*e g.*, an Ameen's report) is not such an error in law as to come within the scope of the provisions for special appeals. BUNDHOO SOOKOOLANY *v.* JOY PROKASH SINGH . . . . . . W. R 1864, 367

HIMMUT ALI KHADIM *v* NYAMUTOOLLAH KHADIM 23 W. R. 250

Upholding on appeal under the Letters Patent the decision of KEMP, J., in NIAMUTOOLLAH KHADIM *v.* HIMMUT ALI KHADIM . . 22 W. R. 519

105. ———— *Entry in account book—Error in law.* The improbability of plaintiff having received payment for one bill whilst another and older one remained unpaid was no [illegible]

106. ———— *Document improperly admitted.* Where a Judge is influenced in his estimate of parol testimony by the result of his consideration of documents which he ought not to have dealt with as evidence, there was *held* to have been no proper trial of the case. The High Court on special appeal remanded the case. BOIDONATH

PAROOYE *v.* RUSSICK LALL MITTER 9 W. R. 274

PURAN CHUNDER CHATTERJEE *v.* GRISH CHUNDER CHATTERJEE . . . 9 W. R. 450

107. ———— *Debutter—Words of dedication—Second appeal—Construction of document—Grounds.* Where a document of title, which was the foundation of the whole of the plaintiff's claim in the suit, was misconstrued by the Lower Appellate Court :—*Held*, that it was open to the [illegible] SUNDAR MAJUMDAR *v.* BASUNTA KUMAR ROY (1905) . . . . . 9 C. W. N. 154

108. ———— Oral evidence—*Difference of opinion between lower Courts as to credibility of witnesses.* Where the Courts differ as to the credibility of witnesses, such difference does not form a ground of special appeal. SREEKANT GHOSE *v.* BHUWAN CHUNDER SEN . . 24 W. R. 13

109. ———— *Finding as to materiality of evidence or witnesses.* Though a Judge has a right to say that in the absence of a witness he considers material he cannot give the [illegible]

110. ———— *Discrediting witnesses for general reasons—Error in law.* For the lower Appellate Court to discredit witnesses [illegible]

111. ———— *Disbelief of witness as interested party.* A special appeal will not lie merely on the ground that the lower Appellate Court has disbelieved a witness by reason of his being an interested person or for any other reason within its discretion. DWARKANATH DOSS BISWAS *v.* MUDDUN MOHUN CHUCKERBUTTY 6 W. R. 293

112. ———— *Omission to give reasons for believing witnesses disbelieved by lower Court.* The omission of a lower Appellate Court to give its reasons for believing witnesses disbelieved by the first Court does not constitute a ground of special appeal. LUCKHEE MONEE DOSSIA *v.* RAJKISHORE PAUL . 4 W. R. 106

SPECIAL OR SECOND APPEAL—*contd.*

5. GROUNDS OF APPEAL—*contd.*

(c) EVIDENCE, MODE OF DEALING WITH—*contd.*

Nor the omission to give reasons for confirming the decision of the lower Court SHAMEE MOHAMED v. PRODHAN PALEE . . . 5 W. R. 178

113. ———— *Omission to give reasons for believing witnesses.* No general rule can be laid down as to when the reasons should be stated by an Appellate Court for believing one set of witnesses rather than another, and the omission of a lower Appellate Court to state such reasons is not a ground for special appeal SHUMSHUROODDY v JAN MAHOMED SIRDAR

21 W. R. 260

MUKDOOMUNNISSA v. NOKHY SINGH

24 W. R. 296

114. ———— *Omission to remind witness of former contrary statement—Reference to statement in judgment.* When witnesses under examination make statements which are contrary to statements previously made by them, the Court ough to draw their attention to the contradiction; but an omission to do so does not make the judgment bad in law, because he has remarked on those contrary statements in his judgment SHAM LALL *alias* SHAMA v. ANUNTEE LALL

24 W. R. 312

115. ———— *Putting onus of proof on wrong party—Irregularity affecting merits—Error in law* A suit instituted in the Court of the Principal Sudder Ameen was transferred [illegible]

Principal Sudder Ameen; and the District Judge reversed the Munsif's decree, not on this ground, but on the merits The plaintiff then appealed [illegible]

proper sense, and so as to be an error in law, as the Judge did not hold that the defendant was entitled to succeed without giving any evidence, unless the plaintiff disproved the allegation of the

SPECIAL OR SECOND APPEAL—*contd.*

5. GROUNDS OF APPEAL—*contd.*

(c) EVIDENCE, MODE OF DEALING WITH—*contd.*

want of *bonâ fides.* NARANBHAI VRIJBHUKANDAS v NAROSHANKAR CHANDRO SHANKAR

4 Bom. A. C. 98

116. ———— Admission or rejection of evidence—*Error in admission of document insufficiently stamped* An error in the admission of an insufficiently stamped promissory note was *held* not to be an error affecting the decision of the case on its merits MAKBUL AHMAD v IFTIKHARUNNISSA BEGUM . . . . 7 N. W. 124

117. ———— *Order under s 20, Stamp Act XVIII of 1869—Discretion*— [illegible]

118. ———— *Error in ad-* [illegible]

119. ———— *Refusal to admit secondary evidence of lost deed* All that it [illegible]

secondary evidence, as would have to be paid if the deed itself were produced. If the Court does not do that but allows secondary evidence to be given of the contents of the deed, it is not an error which affects the merits of the decision or is a ground for special appeal HARAN CHUNDER BHOOREE v. RUSSICK CHUNDER NEOGY

20 W. R. 63

120. ———— *Refusal to allow additional evidence—Discretion of Court.* The parties in an appeal are not entitled as of right to put in additional evidence. The Appellate Court [illegible]

KULPO SINGH v THAKOOR SINGH.

15 W. R. 429

121. ———— *Refusal to allow additional evidence—Civil Procedure Code, 1859, s. 355.* The High Court on special appeal cannot interfere with the refusal of a lower Court to comply

(c) EVIDENCE, MODE OF DEALING WITH—contd.

with an application, under s. 355, Act VIII of 1859, to file additional exhibits MOESH CHUNDER SHAH v. SHOSHEE MOOKHEE DEBIA. . 6 W. R. 196

122. ——— *Taking of additional evidence by Appellate Court—Civil Pro-*

Code of Civil Procedure, the High Court will interfere on special appeal; but where this does not appear to be the case, and there is simply an omission on the part of the Appellate Court to record its reasons for allowing additional evidence to be taken, the High Court will not interfere. HAFIZ ABDUL KURRIM v SRI KISSEN RAI

I. L. R. 11 Calc. 139

123. ——— *Omission to give reasons for admission of additional evidence.* A sued *B* for rent, making *C* a defendant: the suit was dismissed and *A* appealed. Then *C* sued *B* for rent; *A* intervened and was made a defendant; a decree was passed in favour of *C*, and *A* again appealed. On appeal the Subordinate Judge tried both suits on the same evidence though there was evidence in the second case which was not before

it had been raised before the Subordinate Judge. PRANNATH SANDYAL v RAM COOMAR SANDYAL

2 C. L. R. 33

124. ——— *Improper rejection of evidence.* The improper rejection of evidence affecting the decision of the case on the merits is an error in law which may be set aside on special appeal. HURO CHUNDER CHOWDHRY v GOBIND CHUNDER MOITREE . . . 17 W. R. 255

125. ——— *Rejection of*

2 Mad. 418

126. ——— *Admission or rejection of evidence—Civil Procedure Code, ss 584, 568—Appeal—Admission of additional evidence in appeal—Discretion of Court* The refusal by an Appellate Court to exercise the discretion vested

(c) EVIDENCE, MODE OF DEALING WITH—concld.

additional evidence is undoubtedly not such an error or defect. RAM PIARI v. KALU (1900)

I. L. R. 23 All. 121

127. ——— *Leaving out an important portion of evidence—Enhancement of rent—Bhaoli Nakdi—Bengal Tenancy Act (VIII of 1885), s. 29—Evidence* Enhancement of rent under the Bengal Tenancy Act must mean an

128. ——— *Civil Procedure Code, s 584—Second appeal—Exclusion of evidence, an error of law—Civil Procedure Code (Act XIV of 1882), s 584.* Where in a rent suit, the Court of first appeal found as a fact that a certain amount was payable by the tenant as rent:—*Held*, that the High Court on second appeal can set aside the finding when the Court of first appeal wrongly excluded the settlement proceedings from its consideration and disregarded the evidence of road-cess returns filed by the tenants, and thereby committed errors of law. MOHIM CHANDRA ROY v. KALI TARA DEBYA (1907) . . . 11 C. W. N. 1028

129. ——— Where in a second appeal the question was whether certain lands appertained to plaintiff's tenure:—*Held*,

lower Appellate Court had erred in law in disregarding certain evidence without giving sufficient reasons for rejecting it. TRAILOKYA MOHINI DASI v KALI PROSANNA GHOSE (1907)

11 C. W. N. 380

6. OTHER ERRORS OF LAW OR PROCEDURE.

(a) APPEALS.

1. ——— Appeal wrongly admitted—*Orders and proceedings thereon without jurisdiction.* Where an appeal was allowed from an order

9 W. R. 489

2. ——— *Appeal heard and decided without objection where no appeal lay* Although Act XXIII of 1861, s. 26, barred an appeal from an order or decision passed in a suit instituted under Act XIV of 1859, s 15, yet where

SPECIAL OR SECOND APPEAL—*contd.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*contd.*

(*a*) Appeals—*concld.*

[illegible]

decree having given the plaintiff what the first Court ought to have given. Hurdyal Singh *v* Kunhya Lall . . . . **19 W. R. 247**

3. ———— *Appeal heard ex parte without respondent being aware of hearing—Application for rehearing barred before he was aware of decree against him—Civil Procedure Code, ss 560 and 584(c)—Limitation Act, 1877, Sch II, Art. 169—Power of High Court to interfere on special appeal* Where an appeal was heard *ex parte* by a lower Appellate Court and the decree of the Court of first instance reversed in the absence of the respondent, on whom notice of appeal had not been duly served, and who was not aware of the proceedings till after the time for applying for a rehearing under s 560 of the Civil Procedure Code and Limitation Act, Sch. II, Art. 169, had expired —*Held*, that the High Court in second appeal had power to interfere under s 584 (c), Civil Procedure Code Balaji Rau *v* Sithabhoy . . . . **I. L. R. 19 Mad. 414**

4. ———— *Order rejecting appeal not presented in time without sufficient cause for delay—Discretion of Judge—Exercise of discretion not to be interfered with* Where an appeal has been dismissed as barred by limitation, the lower Court holding that there was no sufficient cause for not presenting it within the prescribed time, the High Court can only interfere in second appeal if that decision is contrary to law, that is, if the lower Court has exercised its discretion capriciously or arbitrarily or without proper legal material to support its decision Parvati *v* Ganpati Rokdaji Naik **I. L. R. 23 Bom 513**

5. ———— *Civil Procedure Code* (*Act XIV of 1882*), *s 584—Second appeal—Procedure* Case where in a second appeal the [illegible]

6 C. W. N. 357

(*b*) Costs

6. —— [illegible] **costs.** [illegible] of costs o[illegible] Sein Kha[illegible] . . . . . [illegible]

7. ———— **Question of costs.** There may be circumstances which would justify an appeal upon a mere question of costs. Chitrayil *alias* Kunath Ahmed Koya *v.* Irumanom Vittil Kanhamath Haji . . . . . **3 Mad. 279**

(*b*) Costs—*contd.*

8. ———— *Mode of awarding costs.* The question of how costs have been awarded is not a point for special appeal Beer Pershad *v.* Doorga Pershad . **W. R. 1864, 215**

9. ———— *Appeal from portion of decree relating to costs* *Held*, in conformity with a Full Bench ruling of the late Sudder [illegible] of a decree which relates to costs in any case where any legal ground for special appeal is shown to exist. Assa Ram *v* Kashmeeree Dass

Agra F. B. 90: Ed. 1874, 68

10. ———— *Discretion in assessing costs—Civil Procedure Code, 1859, s. 187.* Where no appeal is made against the judgment passed on the subject-matter of the suit, the discretionary power of assessing costs given by s 187 of Act VIII of 1859 should not, unless in a very exceptional case, be interfered with by the Appellate Court Kuppusvamiayyan *v* Nannuvayyan

1 Mad. 74

11. ———— *Improper exercise of discretion in awarding costs* An improper exercise of discretion in awarding costs against which a regular appeal would lie is no ground for allowing a special appeal, unless the award is contrary to some particular law on the subject Amirsaheb Hafizulla *v.* Jamshedji Rustamji

4 Bom. A. C. 41

Desaji Lakhmaji *v.* Bhavanidas Narotamdas.

8 Bom. A. C. 100

12. ———— *Improper exercise of discretion in awarding costs* There is no foundation for the opinion that an Appellate Court has no authority to interfere with the discretion of the lower Court as to costs To assess the defendant in a suit with the plaintiff's costs, when plaintiff's suit is dismissed for want of any cause of action, is irregular and unreasonable. Dantuluri Narayana Gajapati Razu Garu *v* Surappa Razu . . . . . . **3 Mad. 113**

13. ———— *Erroneous order as to costs.* The Court below gave the plaintiff a decree in a suit for mesne profits for such an amount as should be ascertained to be due, and ordered that the plaintiff should have his costs on the amount claimed. *Held*, that this constituted [illegible]

Marsh. 503

14. ———— *Error in improper exercise of discretion as to costs* Where the first Court's discretion is improperly exercised in

(*b*) Costs—*concld.*

the matter of costs, the error may be rectified in regular appeal; but, if this is not done by the lower Appellate Court, the error is not such as would justify the High Court's interference in special appeal. Ooma Churn *alias* Gopal Chunder Roy Mozoomdar *v* Girish Chunder Banerjee

25 W. R. 22

15. ———— *Order in discretion of lower Court* Where, in a suit for defamation, a decree was given for the plaintiff for nominal damages, but he was ordered to pay the defendant's costs.—*Held*, that the order as to costs was in the discretion of the Court below, and therefore no special appeal would lie from such order: the rule, as laid down in *Gridhari Lal Roy* v *Sundar Bibi, B. L. R Sup Vol 496*, being that an order as to costs cannot be interfered with in special appeal unless it is illegal Futeek Parooee *v* Mohender Nath Mozoomdar

I. L. R. 1 Calc 385: 25 W. R. 226

Reversing on appeal under the Letters Patent the decision in Mohendro Nath Mojoomdar *v.* Futtick Parooee . . . . **24 W. R. 319**

Achumbit Singh *v.* Kunhya Lal Mohajun.

7 W. R. 208

(*c*) Discretion, Exercise of, in Various Cases

16. ———— **Order for security for costs**—*Appeal struck off in default—Absence of error in law* When the Civil Procedure Code gives to a Court of regular appeal a discretionary power, and that discretionary power has been fairly ex-

this is true, and am not aware of the terms under which the land is held in Jhansi, if indeed the appellant holds any land there, the excuse cannot in its present

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from the Judge's orders, the respondent objected that no special appeal would lie. *Held*, that the

investigation of either of the issues of fact touching the appellant's residence and property had been defective, or that there had been error in law, the High Court had no power to interfere in special appeal *Held*, also, that, if the appellant had,

sion, the Court would have interfered in special appeal. Gopal Khundee Rao *v.* Deokee Nundun

6 N. W. 172

17. ———— **Exercise of discretion not to be interfered with**—*Civil Procedure Code (Act XIV of 1882), s 584—Limitation Act (XV of 1877), s 5—Appeal rejected as not presented in time without sufficient cause for delay—Discretion of Judge.* Where an appeal has been dismissed as barred by limitation, the lower Court holding that there was no sufficient cause for not presenting it within the prescribed time, the High Court can only interfere in second appeal if that decision is contrary

I. L. R. 23 Bom.

18. ———— *Limitation Act (XV of 1877), s 5—"Sufficient cause" for not presenting appeal within prescribed period—Inter-*

been exercised by the lower Appellate Court in admitting an appeal, is in itself no ground of interference by the High Court. *Per* Sir Arnold White, *C.J.* (Moore, *J.*, concurring) —The test is, has the discretion been exercised after appreciation and consideration of all the facts which are material for the purpose of enabling the Judge to exercise a judicial discretion, and after the application of the right principle to those facts? If a discretion is exercised under these conditions,

SPECIAL OR SECOND APPEAL—*contd.*

6 OTHER ERRORS OF LAW OR PROCEDURE—*contd.*

(c) Discretion, Exercise of, in Various Cases—*contd*

applied a wrong principle The material question

... before the Collector were ... *Per* Benson, *J* —There is a wide distinction between the law of limitation in respects of suits and in respect of appeals The "sufficient cause," referred to in s. 5 of the Limitation Act, apparently means, not only those circumstances which are expressly recognized as extending time, but also such circum- ... which ... ichi-

I. L. R. 25 Mad. 166

19. ———— Execution of decree—*Discretion of Court executing decree—Civil Procedure Code, 1859, s 207* It is entirely in the discretion of the Court executing a joint decree to make arrangements under Civil Procedure Code, s 207, regarding its execution by one of the decree-holders and to take necessary steps for the protection of the interests of the rest, and if it does not choose to do that, it cannot be pronounced wrong in special appeal Hera Roy *v* Gujadhur Parshad Narain Singh . 24 W. R 286

20 ———— Refusal to grant fresh summons—*Delay* An exercise of the discretion of the Court in refusing to grant a fresh summons on account of delay in applying for it cannot be interfered with on special appeal. Brojo Lall Mookerjee *v* Aughor Lall Ghosal 25 W R. 71

21. ———— Order for payment of decree by instalments without providing for interest or penalty agreed upon on default —*Discretion, arbitrary exercise of—Civil Procedure Code, 1859, s 194* When the lower Courts *ordered the decree to be paid by instalments which* were hardly sufficient even to cover the interest and did not provide for the interest and penalty conditioned in case of default —*Held*, that they had exercised the discretion vested in them by s 194, Act VIII of 1859, arbitrarily and without due caution, and their order could be interfered with and set side on special appeal. Hur Gobind *v.* Hurkho . . . . . 1 Agra 116

Jafree Begum *v* Ahmed Hossein Khan 1 Agra 270

22. ———— Refusal to allow application to amend plaint—*Discretion to allow amend-*

23. ———— Interest, award of—*Interest on decree, Discretion of Court in allowing* The Court executing a decree has a discretion in allowing interest. which will not be interfered with in special appeal Pares Nath Mukhopadhya *v.* Kistomohan Saha

3 B. L. R. Ap 105: 12 W. R. 50

(d) Issues, Omission to decide

24. ———— Omission to consider material facts—*Remand of appeal heard by a Subordinate Judge to District Judge—Act XIV of 1882, s 566* If on second appeal it is found that certain

25. ———— *Omission to try question of possession when material.* When the

26. ———— Omission to decide on limitation. An omission by the Judge on appeal to decree according to the law of limitation applicable to the case as stated by the plaintiff, although the

27. ———— Omission to inquire into

omission of the Court to inquire into the alleged

Singh . . . . . . 8 W. R. 477

28. ———— Omission by Appellate Court to decide on the question of ownership—*Suit before Subordinate Judge depending on issues of ownership as well as on a rent-note.* Where it appeared that an issue was raised as to ownership, and that both parties at the trial before the Subordinate Judge gave evidence on such issue

SPECIAL OR SECOND APPEAL—*contd.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*contd.*

(d) ISSUES, OMISSION TO DECIDE—*concld.*

(although the claim was based, in the main, on a

GOPALJI *v* GANGARAM . **I. L. R. 16 Bom. 545**

(e) JUDGMENTS.

29. ——— **Reversal of judgment without reasons**—*Difference of opinion as to facts* A special appeal lies from an Appellate Court's judgment, in which the decree of the lower Court is reversed without any reasons given for differing as to facts GOBURDHUN *v* SADHOO **1 W. R. 244**

30. ——— **Omission to state reasons in judgment**—*Civil Procedure Code (Act XIV*

BAIDYANATH MANDUL . **I. L. R. 12 Calc. 199**

31. ——— *Finding of fact —Civil Procedure Code, 1882, s. 204.* A finding

32. ——— The Judge de-

occupied by certain suits brought for the same property, in which he was non-suited *Held*, that it was no ground of special appeal that the judgment was silent on the subject of the claim to deduction, and that, whether the point was urged in the lower Court or not, the plaintiff had no ground of special appeal in respect of omission of all notice of it in the judgment RAMSOONDER DOSS *v.* MAHOMED ABBED . . . . **1 Ind. Jur. O. S. 102**

33. ——— *Error of procedure—Civil Procedure Code, 1859, s. 359* A lower Appellate Court's omission to give reasons cannot be considered a ground for special appeal

stated, the proper course is to retain the case on special appeal, but to return the proceedings and require the omission to be supplied DOOLEE CHUND *v.* OOMDA BEGUM . . **18 W. R. 473**

SPECIAL OR SECOND APPEAL—*contd.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*contd.*

(e) JUDGMENTS—*contd.*

34. ——— **Omission to state points for decision and reasons in judgment**—*Omission to follow direction in Civil Procedure Code, 1859, s. 359.* S. 359, Act VII of 1859, requires the points for determination—those in appeal as well as those in the original pleadings—to be stated, and the reasons upon which the decision was arrived at thereon : an omission to do this is ground of special appeal. ROOR CHAND ROY *v* RAM KANT KOBEERAJ . **W. R. 1864, 98**

35. ——— **Omission to give reasons in judgment until after appeal.** The fact of a Judge not writing a judgment containing the reasons for his decision until after the decree in appeal was passed was *held* not to affect the decision of the case on the merits, and was therefore not a ground of special appeal. BHAGVATSANGJI JALAMSANGJI *v.* PARTABSANGJI AJJABHAI GANPATRAM LAKHMIRAM *v.* JAICHAND TALAKCHAND **4 Bom. A. C. 105, 109**

be set aside and the case remanded RAM DOOR BANERJEE *v.* KALEE PERSHAD HAJRAH **19 W. R. 267**

37. ——— **Decision for plaintiff on ground not alleged by him**—*Civil Procedure Code, 1859, s. 350—Error not affecting merits.* In a suit for possession of a quantity of land, where the first Court gave plaintiff a decree on the ground that he had proved title by purchase, and the lower Appellate Court, in confirming the decision on the substantial issue raised, went further, and found that one of the defendants was plaintiff's raiyat, contrary to the allegation set up by the plaintiff himself :—*Held*, in special appeal, that the error did not affect the merits of the case or the jurisdiction of the lower Court ; and the High Court could not therefore interfere under s. 350 of the Code of Civil Procedure RAM CHUNDER CHATTERJEE *v.* RAM JEEBUN DASS . . **14 W. R. 141**

38. ——— **Decision founded on issues not raised in the suit**—*Error of law.* In a suit for the recovery of land upon an alleged lease found to be not genuine, the defendants set up a sale by plaintiff's father. The lower Court found that there had been a sale in fact, but held it to be invalid according to Hindu law, as having been without the concurrence of the plaintiff, the son of the vendor. *Held*, that the validity of the sale not having been

SPECIAL OR SECOND APPEAL—*contd*

6. OTHER ERRORS OF LAW OR PROCEDURE—*contd.*

(*e*) JUDGMENTS—*concld*

questioned by the plaintiff, who had rested his case on entirely different grounds, and no issues having been raised as to the validity of the sale,

(*f*) LOCAL INVESTIGATIONS.

39. ——— Order directing local investigation—*Discretion of Court* Directing a

1 W. R. 180

POORNO PERSAD ROY *v* CHUNDER NATH CHATTERJEE . . . . . 1 W. R. 249

RAJKISHEN MOOKERJEE *v.* HURO MOHUN MOOKERJEE . . . 5 W R. 248

40. ——— Order as to local inquiry—*Discretion of judge* It is within the discretion

41. ——— Omission to direct local investigation—*Error in law* It is not an error in law in the investigation of a case where the Courts below do not direct a local investigation of their own motion when they are not asked by the parties to do so MACDONALD *v* MUNAR ROY

B. L. R. Sup. Vol. 358: 3 W. R., Act X, 153

42. ——— Local inquiry in suit as to enhancement of rent—*Discretion of Judge to order local inquiry in suit to contest notice of enhancement—Order of Judge* In a suit brought to contest a notice of enhancement, a Judge is not bound to order a local inquiry, merely because he incidentally states such an inquiry to be the best

1 Hay 229

GUNGADHUR SUNNAPUTTY *v.* HERALOLL SEAL Marsh. 60

43. ——— Irregularity in local inquiry—*Civil Procedure Code, 1859, s. 180—Appointment of improper officer.* Though s. 180, Act VIII of 1859, makes it imperative on a Court to employ in the first instance the regular officer of

SPECIAL OR SECOND APPEAL—*contd.*

6 OTHER ERRORS OF LAW OR PROCEDURE—*contd.*

(*f*) LOCAL INVESTIGATIONS—*concld.*

DHUR . . . . 5 W. R. 6

44. ——— *Disregard of report on local investigation—Disputed boundary—Grounds of appeal—Civil Procedure Code (Act XIV of 1882), s 584* The Court of first instance accepted as correct a boundary line mapped by an Ameen, dividing the estates of the opposite parties The lower Appellate Court, after remand-

cil, that to have dealt with the appeal as a regular appeal was in excess of the Court's jurisdiction,

ed the only grounds of second appeal LUKHI NARAIN JAGADEB *v.* JODU NATH DEO

I. L. R 21 Calc 504
L. R. 21 I. A 39

45. ——— *Hearing and deciding case after granting commission for local investigation, without awaiting return of such commission—Ground of appeal—Civil Procedure Code, s 584* Where a Court on the application of a party or otherwise has issued a commission for a local investigation, it is a substantial error in procedure and therefore a ground of special appeal, under s 584 of the Code of Civil Procedure, if the Court proceeds to hear and determine the case without having the return of such commission before it. MADHO SINGH *v.* KASHI SINGH

I. L. R. 16 All. 342

(*g*) MISTAKES

46. ——— Mistake in account—*Review, Application for.* A mistake of account not being an error in law or procedure is not a ground for special appeal. The remedy lies in an application for review RAM KANTH ROY CHOWDHRY *v* KALEE MOHUN MOOKERJEE . . 22 W. R. 310

PROSUNNO COOMAR DUTT *v* CHYTUNNO CHURN BIDYALUNKAR . . . . 25 W. R. 74

47. ——— Error in description of defendant as a minor—*Appeal by guardian treated as appeal by minor.* The father of a defendant filed an appeal from the judgment of the first Court, describing his son as a minor. It afterwards appeared that the defendant was not a minor; and

SPECIAL OR SECOND APPEAL—*contd.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*contd.*

(*g*) MISTAKES—*concld.*

the lower Appellate Court refused to pass an order, allowing the appeal by the father to stand as an appeal by the defendant *Held*, that the lower

GHOSE v TARAK NATH MUKHOPADHYA
3 B. L. R. Ap. 115

48. ——— Decree proceeding on mistake as to applicability of law—*Mistake of Judge not affecting merits* The Court will not interfere on special appeal with a decree proceeding on a mistake as to the applicability of a law when such error does not affect the decision of the case. KUREEM KHAN v MUHFOOZ
W. R. F. B. 16 : 1 Ind. Jur. O S. 77
1 Hay 226

S C. JUGOBUNDOO MOZOOMDAR v GOORROO PERSHAD ROY . . . . **Marsh. 52**

ESSAN CHUNDER DUTT v PRANNAUTH CHOWDHRY . . **Marsh. 270 : 2 Hay 236**

AKBUR ALLY v. HOSSAN ALLY
1 Ind. Jur. N. S. 101 : 5 W. R. Mis. 29

(*h*) MULTIFARIOUSNESS.

49. ——— Misjoinder of causes of action. Misjoinder of causes of action is not alone a valid ground of special appeal. SHUNKUR PATUKH v. LALA SHEO CHURN LAL
2 N. W. 443 : Agra F. B. Ed. 1874, 238

50. ——————— *Absence of material injury* Misjoinder of claims, without proof of substantial injury sustained thereby, is no ground for special appeal. DURSHUN PANDEY v. SAMINAH BEBEE . **1 W. R 114**

51. ——————————— *Material irregularity.* Where a plaint containing separate causes of action on the part of distinct plaintiffs, though but one prayer—*viz* , for the delivery up of certain nekasi papers—was filed and tried as a single suit, the Court trying the case was *held* to have committed not a mere technical irregularity, but an incorrect proceeding liable to lead to injustice and a ground for interfering with the judgment on special appeal. RAMCOOMAR SIRKAR v KALEE COOMAR DUTT . . . **10 W. R. 279**

52. ——— Objection on ground of misjoinder. Where an objection on the score of misjoinder is disallowed by the first Court, but rightly allowed by the lower Appellate Court, the fact that the latter Court holds the objection to be good is no ground of special appeal. MAHOMED HOSSEIN v. POTUN . . . . . **20 W. R. 147**

SPECIAL OR SECOND APPEAL—*contd.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*contd.*

(*i*) PARTIES.

53. ——— Adding parties—*Discretion of Court* The exercise of the discretion a Court had to add parties under s. 73, Act VIII of 1859, could not be interfered with on special appeal unless it was manifestly unjudicial and wrong. GYARAM SEAL v ISSUR CHUNDER CHUCKERBUTTY
2 W. R. 158

PORAN MUNDUL MOLLAH v. SHAM CHAND GHOSE
1 W. R. 228

54. ——————————— *Error in adding party as plaintiff—Civil Procedure Code, 1877, s. 591* In a suit for rent where the defendant alleged that a person not on the record had a joint interest with the plaintiff in the property in respect of which the rent was due, and where the plaintiff disputed this and the third person was added by the Court as a co-plaintiff .—*Held*, that this would be an error

taken in the

of Act X of

SAHOO .

55. ——————————— *Unappealed order —Civil Procedure Code, 1882, s. 591—Order making person respondent.* S 591 of the Code enables the Court, when dealing with an appeal from a decree, to deal with any question which may arise as to any error, defect, or irregularity in any order affecting the decision of the case, though an appeal from such order might have been and has not been preferred *Goglee Sahoo* v. *Premlall Sahoo, I. L R 7 Calc 148*, referred to. During

iff The Court passed an order making *K* a joint respondent with *H* To this *H* objected but he did not appeal from the order. Ultimately the Court dismissed the appeal, and passed a decree that the money claimed in the suit was payable to the two respondents *Held*, that, on appeal from the decree of the Court below, *H* was entitled to object to the order adding *K* as a respondent, though he had not appealed from the order itself. HAR NARAIN SINGH v. KHARAG SINGH
I. L. R. 9 All. 447

56 ——————————— *Erroneously making intervenor party to suit.* An error in allowing an intervenor to be made a party to the

57. ——— Refusal to add party—*Discretion of Court in refusing to add party under s 73, Civil Procedure Code, 1859* The High Court

SPECIAL OR SECOND APPEAL—*contd.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*contd.*

(i) PARTIES—*concld.*

will not on special appeal interfere with the discretion of a Court in refusing to add a party under s 73, Act VIII of 1859, unless it is clear the discretion was exercised capriciously, or it appears absolutely necessary to add the party. JAGADAMBA DASI *v* HARAN CHANDRA DUTT
10 W. R. 108 : 6 B L. R. 526 note

58. ———— **Misjoinder of parties**—*Irregularity producing error or defect on the merits* Where a suit was brought in the Court of the Subordinate Judge by joining as parties defendants who ought not to have been joined, and if they had not been joined the suit would have been cognizable by the Munsif —*Held*, that the irregularity of the course by which the matter of the suit was brought before another Court than which would otherwise have had cognizance of it was calculated to produce error or defect in the decision on the merits and therefore a ground of special appeal GUNGA RAI *v.* SAKEENA BEGUM . **5 N. W. 72**

59. ———— **Death of party**—*Filing plaint in name of dead person—Irregularity* Where a plaint was filed in the name of a deceased party of whose death the person filing the plaint was ignorant, and the heir and representative of the deceased was at once put upon the record as plaintiff in his room, the irregularity (if any) was *held* in special appeal to be immaterial and not such as the Court would take notice of GOLUCK CHUNDER DUTT *v* COURT OF WARDS **10 W. R. 127**

60. ———— **Objection of non-joinder of parties**—*Error causing wrong decision* The objection of non-joinder of parties cannot be made a ground of special appeal unless the want of parties has caused a wrong decision to be given HEERA LALL CHOWDHRY *v* BISTOO LALL CHOWDHRY
22 W. R. 288

(j) REMAND

61. ———— **Order of remand irregularly made**—*Error in law—Civil Procedure Code, 1859, s 351* It is an error in law for a lower

62. ———— *Remand of case under s. 351, Civil Procedure Code, 1859—Irregular procedure* A special appeal does not lie

2 W. R. 101

Or instead of framing issues on which the case might be tried. JUGOBUNDHOO HALDAR *v.* SREENARAIN MITTER . . . . **20 W. R. 188**

SPECIAL OR SECOND APPEAL—*contd.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*contd.*

(j) REMAND—*contd.*

But *see* RAM KANT PANDEY *v* GUNESHEE KOONWUR . . . . **6 W. R. 47**

63 ———— *Improper remand under s 351, Civil Procedure Code, 1859—Error in procedure* Where a lower Appellate Court instead of keeping a case on its file and either calling for further evidence or remitting issues under s 354 of Act VIII of 1859, improperly remanded it under s 351, but its decision on the merits was not prejudiced by the error in procedure, the High Court refused to interfere in special appeal BULDEO PERSHAD *v* GOLAB KHAN . . **6 N. W. 101**
GHASI SINGH v BUDH SINGH . **7 N. W. 193**

64. ———— *Civil Procedure Code, 1859, s 351* It does not necessarily follow, when a lower Appellate Court remands a suit under s 351 of Act VIII of 1859 instead of s 354, that the order of remand is void and reversable in special appeal Where, however, a lower Appellate Court directing certain persons to be made parties to the suit, erroneously remanded it under s 351 for the trial of a particular issue —*Held*, that, if the case went back under s 351, inasmuch as the error, by

65 ———— **Irregularity in remanding case**—*Civil Procedure Code, 1859, ss. 351, 354.*

was not one which affected the merits of the case or the jurisdiction of the Court, so as to justify interference with the Judge's decision in special appeal. GUNGA MONEE DOSSEE *v.* ISSUR CHUNDER SHAHA
17 W. R. 465

66 ———— *Error in trial of case.* In a suit for a pottah, the Deputy Collector

decision was reversed. *Held*, that the Judge may have been so far in error, in that, while remanding the case, he did not direct the lower Court to send the case back to him with the additional evidence;

(*m*) WITNESSES—*concld.*

The plaintiff's evidence was recorded and that of one of the defendants; the defendants being unable to produce further evidence, the Court recorded that the case was closed, and that judgment would be delivered on the following day, the 31st December. On the day following the defendants produced certain witnesses and asked that they might be examined This application was rejected, and judgment was subsequently delivered in favour of the plaintiffs. *Held per* PETHERAM, *C.J.*—That the omission to examine the defendant's witnesses on the 31st December was a substantial error in procedure, and that the Munsif had therefore exercised his discretion wrongfully *Per* GHOSE, *J.*—That although there was some doubt whether the

arrived at by the Chief Justice MONI LAL BANDOPADHYA *v.* KHIRODA DASI

I. L. R 20 Calc. 740

See TAYLOR *v.* SARAT CHUNDER ROY CHOWDHRY

I. L. R. 20 Calc. 745 note

(*n*) MISCELLANEOUS CASES

89. ——— Final order in regular appeal—*Civil Procedure Code, 1859, ss 342, 372—Question of fact—Exercise of discretion—Error in law.* The term "decisions passed in regular appeal" in s 372, Act VIII of 1859, might embrace orders rejecting or dismissing an appeal, although such orders were passed before an appeal was heard on the merits, and might not necessitate the preparation of a decree GOPAL KHUNDEE RAO *v.* DEOKEE NUNDUN . . . 6 N. W. 173

90. ——— Appeal dismissed on default of appearance—*Refusal of postponement.* Where an appellant is refused postponement and his appeal is dismissed in his absence, the case must be looked upon as one of default, even though the Judge looked into the facts and found the appeal was not to be upheld. The appellant in such a case might apply for a re-hearing or for a review of judgment, but is not entitled to a special appeal. BULDEO MISSER *v.* AHMED HOSSEIN

15 W. R. 143

91. ——— Refusal to give decree on terms—*Discretion of Court* Though it would have been more satisfactory if the lower Appellate Court, instead of declining to give plaintiffs a decree for possession of certain mortgaged lands on the ground that the sum tendered by them was insufficient to liquidate the mortgage-debt, had made a decree in favour of plaintiffs, contingent upon their paying such sum as should be found due, yet the plaintiffs had no strict right to such a decree, and it cannot be said that the lower Appellate Court had committed an error in law in refusing to make such a decree BOISTUB DOSS KOONDOO *v.* HUROO NARAIN HALDAR . 17 W. R. 408

92. ——— Omission to apportion to every part of the land its own rent—*Suit for enhancement of rent.* In a suit for enhancement the omission of the Ameen or Judge to appropriate to every portion of the land which varies in quality its own rent is no ground of special appeal. GOOROODOSS ROY *v.* HURRONATH ROY

W. R. 1864, 61

93. ——— Irregularity in exercise of jurisdiction—*Absence of error in decision* A

BUTTY *v.* ELIAS . . 5 W. R., Act X, 29

94. ——— Giving relief inconsistent with plaint—*Plaint wrongly framed.* A reversioner sued to set aside alienations made by an

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decree only for such relief as the plaintiff was entitled to. *Held*, that there was no error or defect in the investigation of the case with which the Court would interfere in special appeal. BAMA SOONDUREE DOSSEE *v* BAMA SOONDUREE DOSSEE

10 W. R. 133

the plaintiff was a party to the deed under which the defendant claimed, when in fact the deed showed he was no party to it, this constitutes a defect "in the procedure and investigation of the case producing error in the decision of the case upon the merits" within Act VIII of 1859, s 372, and a special appeal will lie. ABDOOZ SALAM *v.* IMRALOONISSA BEBEE . Marsh. 6 : 1 Hay 28

96. ——— Failure to obtain certificate of administration after adjournment of case for that purpose—*Dismissal of case—Debt due to deceased person—Suit by legal representative—Act XXVII of 1860* The plaintiffs in this suit sued the defendants on a bond, claiming as the heirs of the deceased obligee The defendants denied that the plaintiffs were the heirs of the deceased obligee, and contended that they should have obtained a certificate under Act XXVII of 1860 before suing. There being good reason to doubt the validity of the title of the plaintiffs, the lower Appellate Court postponed the decision of the case for a certain time in order to give the plaintiffs an opportunity of obtaining such certificate.

SPECIAL OR SECOND APPEAL—*contd.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*concld.*

(n) MISCELLANEOUS CASES—*concld*

The plaintiffs failing to avail themselves of this opportunity, the lower Appellate Court dismissed the case. The High Court on second appeal refused to disturb the lower Appellate Court's decision. BATASI *v* MAHESH **I. L. R. 5 All. 555**

97. ———— *Error* An erroneous view of evidence involves an error of law. ISWAR CHUNDER SANTRA *v* SATISH CHUNDER GIRI (1902)

I. L. R. 30 Calc. 207 : s c 7 C. W. N. 126

98. ———— **"Substantial error or defect of procedure"**—*Grounds of appeal—Reversal by High Court on second appeal of Lower Appellate Court's decision—Civil Procedure Code (Act XIV of 1882), ss 584, 585—Suit to set aside adoption—Question whether adoption was real and binding* In a suit in which the plaintiff prayed that it might be declared that the defendant was not her properly and legally adopted son, that the ceremony of adoption did not take place, and

not, and was not intended to be a real adoption, but was a sham transaction entered into by collusion for the purpose of deceiving the Government, a case which was not set up by the parties, nor warranted by the evidence *Held* (affirming the decision of the High Court), that such a disposal of the suit was a "substantial error or defect of procedure" within the meaning of s 584 of the Civil Procedure Code (Act XIV of 1882), and that the High Court therefore had jurisdiction to set aside the finding on second appeal *Annangamanjari Choudhrani* v. *Tripura Soondari Choudhrani, L R 14 I A 101*, and *Durga Choudhrani* v *Jewahir Singh Choudhri, L R 17 I A 122*, referred to SHIVABASAVA *v* SANGAPPA (1905)

I. L. R. 29 Bom. 1
s.c. L. R. 31 I. A. 154

7 PROCEDURE IN SPECIAL APPEAL.

1. ———— **Filing memorandum of appeal**—*Copy of decree—Civil Procedure Code, 1877, ss 541 and 587* The Code of Civil Procedure, Act X of 1877, does not require the appellant in second appeal to file a copy of the decree of the Original Court with the memorandum of appeal PIRATHI SINGH *v* VENCATRAMANAYYAN

I. L. R. 4 Mad. 419

2. ———— **Extension of time for pre-**

W. ... F. B. 116

SPECIAL OR SECOND APPEAL—*contd.*

7. PROCEDURE IN SPECIAL APPEAL—*contd.*

On due cause being shown for delay. FLOWEST *v.* KOOTUB HOSSEIN

Agra F. B 100 : Ed. 1874, 75

3. ———— **Recording findings unnecessary for disposal of case**—*Appellate Court—Judgment—Findings unnecessary for disposal of case—Appeal by successful party—Civil Procedure Code, 1882, s 203* When a suit has been dismissed on the merits in the Court of first instance, and that decision is upheld by the District Judge on appeal, merely on the ground of non-joinder,

appeal to the High Court, be expunged from the record. NANDA LAL RAI *v* BONOMALI LAHIRI

I. L. R 11 Calc. 544

4. ———— **Objections by respondent**—*Civil Procedure Code, 1859, s 348 (1882, s 561).* S. 348, Act VIII of 1859, was as applicable to special as to regular appeals NARAYAN AYYAR *v* LAKSHMI AMMAL . . . . **3 Mad. 216**

5. ———— *Right of respondent to urge objections under s 348, Civil Procedure Code, 1859* In a special appeal, as well as in a regular appeal, it is competent for the respondent to show that points decided against him ought to have been decided in his favour. In an appeal in a suit for enhancement of rent, where the tenant is appellant and seeks to reduce the amount, the respondents may show, on other points of law, that it ought to have been enhanced beyond that which the decree gave him HILLS *v* ISHORE GHOSE . . . . . . **Marsh. 151**

s c ISHORE GHOSE *v* HILLS . **W R. F. B. 48**
1 Ind. Jur. O. S. 25 : 1 Hay 350

(*Contra*) MAKUDU RAVULLAN *v* MASTAN SAHIB **1 Mad. 102**

6 ———— **Changing issues on special appeal.** A party was not allowed on special appeal to go behind the issues by which he was content to abide in the lower Court. AHMED MUNDUL *v.* SONAOOLLAH . . . . **8 W. R. 5**

7. ———— **Direction of trial of issue**—*Right of respondent to take objection—Civil Procedure Code, 1859, s 372, and Act XXIII of 1861, s 25.* Where an issue has been directed, and the

1 Mad. 250

8. ———— **Omission to determine material issue**—*Civil Procedure Code, 1877, s 565, applicability of.* Where a Court of first appeal omits to determine a material issue of fact, the High Court as a Court of second appeal is not competent, under s. 565 of the Civil Procedure

to a share by inheritance, if not as denmohur, no case of that kind having been made in the Courts below, and no inquiry asked for into the state of the family, or whether any and what share came to the widow. AMBIKA CHARAN DUTT *v.* NADIR HOSSEIN . . . . 2 B. L. R. A. C. 258

s c. UMBIKA CHURN DUTT *v.* NADIR HOSSEIN 11 W. R. 133

31. ——— Rules for special appeal—

same may be applicable. The question whether evidence on the record is legally or reasonably suffi-

32 ——— Omission after favourable finding of law to appeal against adverse finding of fact in lower Court—*Power of High Court reversing judgment on law to decide on fact without remand.* The Court of first instance found against the defendant on a matter of fact, but decreed in his favour on a point of law, and on appeal by the plaintiff the defendant omitted to file a memorandum of objections to the adverse finding of fact of the Court of first instance. The Appellate Court, without going into the question of fact, confirmed the decree of the Court of first instance on the point of law. *Held,* that the High Court, in special appeal, could under these circumstances give judgment in favour of the plaintiff without a remand. WAIGANKAR *v.* WADEKAR 5 Bom. A. C. 194

33. ——— Power of High Court to draw inference of fact from evidence. The High Court is not at liberty in a special appeal to draw any inference of fact from the evidence in the case. DWARKADAS LALUBHAI *v.* ADAM ALI SULTAN ALI . . . . . . 3 Bom A. C. 1

34. ——— Mode of obtaining record of facts where ground of appeal is misconduct of Judge in not hearing a pleader. The Court on special appeal is bound to take the facts from the Judge's statement. Where, therefore, a party desires or intends to make the misconduct of a Judge a ground of appeal to the High Court, he ought always to draw the Judge's attention to that matter, either by presenting a petition or otherwise, so that a proper record may be at once made of the facts which he desires to establish in appeal. RAM KOOMAR KYBURTO DASS *v.* SONATUN DASS PORAMANICK . 3 C. L. R 23

35. ——— Appeal to Chief Court, Punjab—*Civil Procedure Code, 1882, s 584—Questions of fact.* An appeal from an Appellate Court to the Chief Court of the Punjab is not limited, as such appeals are under the Civil Procedure Code, 1882, s. 584; but evidence may be dealt with, and questions of fact are open for decision. BUDHA MAL *v.* BHAGWAN DAS I. L. R. 18 Calc. 302

36. ——— Treatment by High Court of finding of fact—*Suit for wrongful dismis-* ... ques- ... the ... the

RANGACHARRY . . . . . 4 Mad. 63

37. ——— Power of High Court as to facts—*Appeal from order of remand—Civil* ... 28. On ... the Civil ... the High Court cannot consider the facts on which the lower Appellate Court passed the order of remand All that it ca... whether, ... pellate Cc... the case

NARAIN MOONSHEE . I. L R. 8 Calc. 614

38. ——— Effect on special appeal of recording further evidence by Appellate C...

nounced a judgment on the evidence recorded, which had not been considered by the first Court as described in s. 353. LALLA HEERA LALL *v.* GOUREE BYJNATH PERSHAD . . . 4 W. R 43

39. ——— *Civil Procedure* ...

admitted additional evidence, the hearing in the second Court of Appeal will not be treated as a first appeal, so as to allow the pleaders to go into the facts GOPAL SINGH *v.* JHAKRI RAI I. L R. 12 Calc 37

40. ——— *Right to examine evidence taken by lower Appellate Court under s. 355, Civil Procedure Code, 1859.* The High Court is not entitled in special appeal to examine the evidence of a witness summoned by the lower Appellate Court under Act VIII of 1859, s. 355, which was not before the first Court, nor treat the appeal as a regular appeal MAHOMED KAMIL *v.* ABDOOL LUTEEF . . . . . 23 W. R. 51

Reversing decision in ABDOOL LUTEEF *v.* MAHOMED KAMIL . . . 20 W. R. 369

41. ——— Right to go behind order of remand—*Omission to apply for review of order.*

Where a suit was remanded for assessment of mesne profits on the principle laid down in a certain case, if the plaintiff was himself found to have culti-

as to mesne profits, the High Court on special appeal *held* that the special respondent, if dissatisfied with the order of remand, ought to have

ANDERSON . . . . 10 W. R. 120

See RAMKUVARBAI *v.* DAMODHAR NARBHERAM. 6 Bom. A. C. 146

42. ——— Objection to previous order in the case to be taken in memorandum of appeal—*Civil Procedure Code, ss. 562, 591.* Unless such objection is taken in his memorandum of appeal, it is not open to an appellant at the hearing of an appeal from the decree to question the validity of an order of remand previously made in the case under s 562 of the Code of Civil Procedure. TILAK RAJ SINGH *v* CHAKARDHARI SINGH

I. L. R 15 All. 119

43 ——— Order adding defendant—*Civil Procedure Code, 1882, s 32* Where an order adding a defendant under s 32 of the Code of Civil Procedure was not appealed against and no objec-

44 ——— Power of High Court to deal with evidence—*Necessity for remand—Evidence of existence of legal necessity* *Held*, by

Act VIII of 1859, the Court in special appeal cannot

the Judge for a clear finding on that question. RAM PERSHAD SOOKUL *v.* RAJUNDAR SAHOY

6 W. R. 262

45. ——— *Civil Procedure Code, 1882, ss 565, 566—Determination of case by High Court* In a suit for pre-emption, based on the wajib-ul-urz of a village, the Court of first in-

question of fact *viz.* the amount of the cons...

had never asserted, inasmuch as he had treated the right of pre-emption which was in issue as one arising from custom, and not, as alleged by the plaintiffs, as arising from a contract between the ancestors of the parties All the evidence necessary to the determination of the case was on the record *Held per* PETHERAM, *C.J*, and OLDFIELD and TYRRELL, *JJ*, that the High Court was competent, in second appeal from the Judge's decree, to look into the evidence already on the record for the purpose of finding whether a right of pre-

referred to. *Per* STRAIGHT and BRODHURST, *JJ.*, (*contra*). *Bal Kishen* v. *Jasoda Kuar, I. L. R. 7 All. 765*, referred to. DEOKISHEN *v.* BANSI

I. L. R 8 All. 172

46. ——— Second appeal from order of remand—*Civil Procedure Code, s. 562—Effect of findings of facts and findings of law.* On an

question of law in an appeal from an order under

SPECIAL OR SECOND APPEAL—*contd*

7. PROCEDURE IN SPECIAL APPEAL—*contd.*

s 562 of the Code, that decision of the question of law will be final for all purposes in the suit and in any appeal which may subsequently be made to the High Court. *Deo Kishen v Bansi, I. L. R. 8 All. 172*, referred to. GAURI SHANKAR *v.* KARIMA BIBI . . . . . I. L. R. 15 All. 413

47. ——— Appeal from order of an Appellate Court—*Civil Procedure Code, 1882, ss 562, 588—Findings of fact of the Court below* In an appeal from an order of an Appellate Court

48 ——— Determination of issues of fact by High Court—*Civil Procedure Code, ss 565, 566, 587. Held*, by the Full Bench, that s 587 of the Civil Procedure Code does not make

49. ——— Power of High Court to look into ground for admitting appeal after

50. ——— *Limitation Act*

2 *B L R. A. C. 184*, followed CHUNDER DOSS *v* BOSHOON LALL SOOKUL
I L. R. 8 Calc. 251 : 11 C. L. R. 177

51. ——— Power of High Court to vary order for execution—*Giving relief not*

DOSS *v.* PEARY CHOWDHRAIN
I. L. R. 8 Calc. 174 : 9 C. L R. 453

52. ——— Decrees made without jurisdiction—*Suit cognizable by Small Cause Court—Order sending case on terms to Small Cause Court.* Where the decisions of the lower Courts

trial, upon the appellant (plaintiff) paying within three months all the costs of the litigation. DHUN MONEE CHOWDHRAIN *v.* WOOMA CHURN ROY
23 W. R. 445

53. ——— Objections under s. 567 raised for the first time in second appeal by plaintiffs—*Practice—Remand by lower Appellate Court under Civil Procedure Code, s. 556.* Objections which might have been, but were not, made under s 567 of the Civil Procedure Code in a lower Appellate Court to the findings on remand of the Court of first instance, cannot be raised for first time as grounds of second appeal from the lower Appellate Court's decree. MUHAMMAD ABDUL HAI *v.* SHEO BISHAL RAI
I. L. R. 10 All 28

54. ——— Filing one appeal from four separate decrees—*Amendment of appeal.* In execution of a decree in a District Munsif's Court, certain property having been sold, a balance, after satisfying the decree, remained in favour of the judgment-debtor *X*. After the date of sale, but before the whole of the purchase-money had been paid into Court, *X* applied to the Court by petition, praying that the amount due to him might be paid to *A*, to whom, he alleged, he had assigned it. Before any order was made on this petition, *B, C, D*, and *E*, in execution of separate decrees against *X*, attached the sum in Court. The District Munsif ordered that *B, C, D*, and *E*

aside the order and declared the plaintiff to be entitled to the amount. *B, C, D*, and *E* severally appealed against this decree, and the District Court passed a decree in each appeal, dismissing *A's* suit. *A* presented one second appeal, making *B, C, D*, and *E* parties thereto, against the four decrees of the District Court. *Held*, that *A* was bound to file a separate appeal against each of the decrees passed by the District Court; he was, however, allowed by the Court to amend his second appeal and file three more second appeals. CHATHU *v* KUNSHAMED . . I. L. R. 11 Mad. 280

55. ——— Change of pleading in

wife and the sale by her to defendant ...

SPECIAL OR SECOND APPEAL—*contd.*

7. PROCEDURE IN SPECIAL APPEAL—*contd.*

I. L. R. 10 All. 495

56. ——— Omission to examine witnesses—*Second appeal, objection on, on the ground of such omission* A Subordinate Judge, after examining some only of the plaintiffs' witnesses, was of opinion that there was no necessity for further evidence, and passed a decree for the plaintiffs Ten witnesses whom the plaintiffs had summoned were not examined The defendant appealed to the District Judge At the hearing of the appeal the plaintiffs did not inform the Judge that some of their witnesses had not been examined, nor did he become otherwise aware of the fact He reversed the lower Court's decree, being of opinion, on appeal, that the plaintiffs' evidence had not proved their case The plaintiffs appealed to the

appeal, to set aside the decree The plaintiffs ought to have brought the facts to the notice of the lower Appellate Court, and, not having done so, they could not on second appeal take the objection in order to have a chance of a second trial GULAM v BADRUDIN . . I. L. R 18 Bom 336

57. ——— Defective judgment of Appellate Court, reversing Munsif's decision on credibility of witnesses—*Practice —Procedure—Judgment, form of.* Case in which

PURMESHUR CHOWDHRY v BRIJOLALL CHOWDHRY I. L. R. 17 Calc. 256

58. ——— Objection to suit on ground of want of certificate—*Suit under*

time in second appeal, as it was an objection affecting the jurisdiction of the Courts below NYAMTULA v. NANA VALAD FARIDSHA

I. L. R 13 Bom 424

59. ——— Change in nature of suit

eject a more recent purchaser. The plaintiffs failed to prove division as alleged. One of the

I. L. R. 12 Mad. 282

60. ——— Powers of Appellate Court —*Question of fact—Civil Procedure Code, 1882, ss 584, 585* The limitation to the power of the Appellate Court in hearing a second appeal under ss 584 and 585 of the Code of Civil Procedure, 1882, must be attended to, and the appellant cannot be allowed to question the finding of the first Appellate Court on a question of fact. PERTAP CHUNDER GHOSE v MOHENDRANATH PURKAIT

I. L. R. 17 Calc. 291
L. R. 16 I. A. 233

61. ——— Objection taken for first time on appeal—*Misjoinder of causes of action—Civil Procedure Code, s 44* Where an objection under s 44 of the Code of Civil Procedure as to misjoinder of causes of action was raised for the first time on appeal, the High Court on second appeal declined to entertain it *Dhondiba Krishnaji Patel v Ramchandra Bhagvat, I L R 5 Bom. 554,* followed MAULA v GULZAR SINGH

I. L. R. 16 All. 130

62 ——— Objection to jurisdiction on ground of wrong valuation of suit—*Suits Valuation Act (VIII of 1889), s 11* The High Court *held* that it was not at liberty to entertain an objection taken for the first time on second appeal that the suit was not within the pecuniary limits of the District Munsif's jurisdiction, as it appeared on the merits that the appellant had not been prejudiced MUTHUSAMI MUDALIAR v NALLAKULANTHA MUDALIAR . I. L. R. 18 Mad. 418

63 ——— Objection taken for first time in second appeal that preliminaries to suit had not been taken—*Practice.* In a suit for a declaration of the plaintiffs' right to have their names registered as purchasers, an objection having been raised, in second appeal, that the Court had no jurisdiction to entertain the suit, as the plaintiffs had not previously asked the Collector to place them on the register.—*Held,* that this circumstance was not necessary to give jurisdiction, although it might be a reason for treating the suit as premature That objection, however, being taken for the first time in second appeal, was disallowed BHIKAJI BAJI v. PANDU

I. L. R. 19 Bom. 43

64. ——— Objection based on point of law. An objection based upon a point of law

SPECIAL OR SECOND APPEAL—*contd.*

7. PROCEDURE IN SPECIAL APPEAL—*contd*

65. ——— **Objection taken on appeal from final decree to order of remand not appealed from.** The contention that a map was admissible in evidence was *held* to be open to the appellant, on second appeal, although he had not appealed against an order of remand made by the lower Appellate Court, rejecting the map as not being admissible. *Savitri* v *Ramji, I L R 14 Bom. 232*, and *Rameshur Singh* v *Sheodin Singh, I. L. R 12 All. 510*, followed. KANTO PRASHAD HAZARI *v* JAGAT CHANDRA DUTTA
I. L. R. 23 Calc. 335

66. ——— **Offer to pay stamp-duty and penalty in second appeal not allowed.** An instrument which is not duly stamped will not be admitted on second appeal on payment of stamp and penalty when there is no evidence that the stamp and penalty were tendered and refused on the hearing of the first appeal *Ramkrishna Gopal* v *Vithu Shivaji, 10 Bom 441*, referred to LAKSHMANDAS RAGHUNATHDAS *v* RAMBHAU MANSARAM . . I. L. R. 20 Bom 791

67. ——— **Wrong issue framed by lower Court**—*Finding in judgment on the point*

have been raised if the correct issue had been framed, the High Court in second appeal refused to remand the case for a new finding on that issue. VISHNU RAMCHANDRA *v* GANESH APPAJI CHAUDHARI . . . I. L. R. 21 Bom 325

68 ——— **Amendment of plaint by putting new plaintiff on the record on second appeal.** Where plaintiffs had sued as executors by implication under a will which provided that the plaintiffs should take care of the estate during the minority of a son who was to be adopted to the testator, which adoption had been made:—*Held*, under the circumstances of the case, that the plaint should be amended on second appeal by substituting the adopted son as plaintiff with one of the original plaintiffs as his next friend SESHAMMA *v.* CHENNAPPA I. L R. 20 Mad. 467

69. — **Apportionment of mortgage-debt**—*Question of apportionment first raised in second appeal—Practice* A plaintiff, who had purchased part of certain mortgaged property and

remedy by suit for contribution. YADAO BABAJI SURYARAV *v* AMBO . I. L. R. 21 Bom. 567

70. — — **Appeal to lower Appellate Court by respondent in High Court insufficiently stamped**—*Court Fees Act (VII of 1870), s 10.* Where it was discovered in second appeal in the High Court that the respondent, when appellant in the lower Appellate Court, had not paid a sufficient court-fee on his memorandum of appeal in that Court and up to the date of the hearing of the appeal in the High Court, though

be paid. NARAIN SINGH *v.* CHATURBHUJ SINGH
I. L. R. 20 All. 362

71. ——— **Objection as to improper admission of document in evidence.** An objection that a document which *per se* is not ad-

DRA CHANDRA GANGULI *v.* RAJENDRA NATH CHATTERJEE . . . . 1 C. W. N. 530

72. ——— **Inferences of fact or of law**—*Civil Procedure Code (Act XIV of 1882), s. 584* Case in which the High Court in second appeal reversed the judgment of the lower Appellate Court, and considered the inferences of facts and also certain facts found by the first Court and not displaced by the lower Appellate Court, which set aside the judgment of the former. In second appeal the High Court has the power of considering whether the procedure adopted by the lower Appellate Court in dealing with the facts is proper or not; and whether the inferences of fact or law derived by that Court from facts established to the satisfaction are well founded or not PROTAP NARAIN SINGH DEB *v.* RAGHU RAM HAZRA (1901)
6 C. W. N. 185

73 ——— **Limitation**—*Limitation Act (XV of 1877), Sch II, Art. 179—Where second appeal preferred, time runs from date of order finally disposing of such appeal.* Where a second appeal is preferred and an order is made by the Court to which the appeal is preferred which has the effect of finally disposing of the appeal, time runs from the date of such order; and it makes no difference that such second appeal was withdrawn by the appellant *Pattoji* v. *Ganu, I. L. R. 15 Bom 370*, dissented from. *Abdul Rahiman* v. *Maiden Saiba, I. L R 22 Bom. 506*, dissented from. PERIA KOVIL RAMANUJA PERIYA JEEYANGAR *v* LAKHSHMI DOSS (1906)
I. L. R. 30 Mad. 1

74. ——— **Substitution of parties in second appeal**—*Limitation Act (XV of 1877), Sch. II, Art. 175C.* Where one of the plaintiffs respondents in a second appeal against a decree for rent passed in their favour had died and no

SPECIAL OR SECOND APPEAL—*concld.*

7. PROCEDURE IN SPECIAL APPEAL—*concld*

application was made to bring in his heirs within the period allowed by Art. 155C, Sch. II of the Limitation Act :—*Held*, that the appeal had abated so far as the deceased respondent was concerned, but that the appellants were entitled to go on with the appeal as against the other respondents. *Chandarsang Versabhai v Khimabhai Raghabhai, I L R 22 Bom 718*, referred to. UPENDRA KUMAR CHAKRAVARTI *v* SHAM LAL MANDAL (1907) . I L. R. 34 Calc. 1020

75. ———— **Evidence not placed before lower Appellate Court not receivable in second appeal.** A party cannot, on second appeal let in evidence which was not placed before the lower Appellate Court. *Ramachandra v Krishnaji, I L R 28 Bom 4*, referred to *Raru Kutti v Mamad, I L R 18 Mad 480*, referred to SECRETARY OF STATE FOR INDIA *v* MANJESHWAR KRISHNAYA (1904) . I. L. R 31 Mad. 415

76. ———— **Jurisdiction**—*Second Appeal* The Court will allow a question of jurisdiction to be raised for the first time in second appeal, but the contention must be substantiated on the facts already found, or else fail. PURKHIT PANDA *v* ANANDA GAONTIA (1908) . 12 C. W N. 1036

77. ———— **Decree against respondent against whom no first appeal**—*First appeal* In a second appeal no decree can be passed against a respondent against whom there was no first appeal. RAM RATAN CHUCKERBUTTY *v* JOGESH CHANDRA BHATTACHARYA (1907)
12 C W. N. 625

SPECIAL POLICE OFFICER.

See POLICE ACL (V OF 1861), ss 17, 19
I L. R. 28 Calc 411

SPECIAL TRIBUNAL.

———————— *Barristers—Vakils—Right of exclusive audience—Special Tribunal—Criminal Law Amendment Act (XIV of 1908),—High Court Charter Act of 1861 (24 & 25 Vict., c 104), ss 1, 9, 13 and 14—Letters Patent, 1855,* [illegible]

Special Tribunal formed to try cases sent up for trial to the High Court under the provisions of the Criminal Procedure Amendment Act, 1908 *Re* BARRISTERS AND VAKILS (1909) 13 C. W. N. 605

SPECIFIC APPROPRIATION.

See INSOLVENCY—ORDER AND DISPOSITION . 1 B. L. R. O. C. 114, 131
2 B. L. R. O. C. 56

SPECIFIC LEGACY.

See PROBATE AND ADMINISTRATION ACT (V OF 1881), ss 105, 108
10 C. W. N. 38

SPECIFIC PERFORMANCE.

See ARBITRATION—AWARDS—ENFORCING AWARDS . I L. R. 23 All. 285
I. L R. 24 All. 164

See COMPROMISE—CONSTRUCTION, ETC, OF DEEDS OF COMPROMISE
7 C. W. N. 158

See DECREE—ALTERATION OR AMENDMENT OF DECREE
I L. R. 12 Bom 174
I. L. R. 15 Calc. 211

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . . 8 B. L. R. 89
7 C. L. R. 577

See EXECUTION OF DECREE
10 C. W. N. 345

See GUARDIAN . 10 C. W. N. 763

See GUARDIAN AND MINOR
I. L. R 29 All. 213

See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT
I. L R. 14 Mad. 18
I. L R 18 Bom 702
I. L R. 19 Bom. 764

See JURISDICTION
I. L. R. 33 Calc. 1065

See JURISDICTION—SUITS FOR LAND—GENERAL CASES I L. R. 5 Calc 82
Bourke O. C. 218
I. L R. 19 Calc. 358
I. L. R. 14 Bom. 353

See LANDLORD AND TENANT.
I. L R. 29 Bom. 580

See LEASE . I. L. R. 36 Calc. 675

See LIMITATION ACT, 1877, SCH II, ART. 113 (1871, ART. 113).

See MANAGEMENT OF ESTATE BY COURT
I. L. R. 15 Calc. 253

See MINOR—LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS.
I. L R. 20 Calc. 508
I. L. R. 18 Mad. 415
I. L R. 27 Calc 276
I. L. R. 34 Calc. 163

See PARTIES—PARTIES TO SUITS—CONTRACTS, SUITS ON.
I. L. R. 5 Bom. 177
6 B. L. R. 486
I. L. R. 10 Calc. 1061

See PARTIES—PARTIES TO SUITS—SPECIFIC PERFORMANCE.
I. L. R. 18 Mad. 415
I. L. R. 19 Mad. 211
2 C. W. N. 42
I. L. R. 22 Bom. 46

SPECIFIC PERFORMANCE—*contd.*

See REGISTRATION ACT, 1877, s 48.
I. L. R. 13 Mad. 324
I. L. R. 6 Calc. 534
I. L. R. 10 Calc. 710
I. L. R. 27 Calc. 468

See REGISTRATION ACT, 1877, s 49.
1 B. L. R. F. B. 58
I. L. R. 12 Mad. 505
I. L. R. 13 Mad. 308
I. L. R. 14 Mad. 55

See REGISTRATION ACT, 1877, s 77 (1866, s 83)

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM
L. R. 28 I. A. 221

See RIGHT OF SUIT—POSSESSION, SUITS FOR—CO-DEFENDANTS
6 C. W. N 314

See SPECIFIC RELIEF ACT

See SPECIFIC RELIEF ACT, 1877, s 27
I. L. R. 1 All. 555

See SPECIFIC RELIEF ACT, 1877, s 31
I. L R. 30 Bom. 457

See VENDOR AND PURCHASER—BILLS OF SALE . . 2 B. L R. P. C. 111

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER
I. L. R. 17 Calc. 919

See VENDOR AND PURCHASER—PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER . . . 15 W. R. 44
I. L. R. 24 Calc. 897
I. L. R 21 Bom. 827

See VENDOR AND PURCHASER—TITLE
I. L. R. 15 Bom. 657

———— of agreement to refer to arbitration.

See CONTRACT ACT, s 28
I. L R. 1 Calc. 42; 466

———— of contract, suit for—

See CHAUKIDARI CHAKRAN LANDS
I L. R. 35 Calc 346

———— of contract of sale—

See LIS PENDENS . 13 C. W. N. 226

———— of contract to give in marriage

See INJUNCTION—UNDER CIVIL PROCEDURE CODES . I. L. R. 1 Calc. 74

1 GENERAL CASES.

[illegible]

12 W. R. 148

SPECIFIC PERFORMANCE—*contd.*

1 GENERAL CASES—*contd.*

2. ———— **Requisites to entitle party to specific performance**—*Ability of plaintiff to perform his part of agreement—Absence or default.* A Court of equity will not decree specific execution of an agreement in favour of a party who is not competent to perform his part of the agreement. To entitle a party to specific performance, he must show that there has been no default on his part, and that he has taken all proper steps towards performance on his own part. BUNGSHEEDHUR MULLICK *v* CALCUTTA AUCTION COMPANY . 1 Hyde 45

RAM TUNOO KOONDOO *v* MULLICK DOSSEE
14 W. R. 338

3. ———— *Readiness to carry out agreement.* One who asks the Court for a decree for specific performance of an agreement must show that he is willing and able to carry it out in all its material parts so far as he is concerned, and also that no act of his own in relation to the agreement has in any material degree damnified his opponent He cannot select one part of the agreement for [illegible] He must be

[illegible]

VISHVANATH ATMANARAM *v* BAPU NARAYAN
1 Bom. 262

4 ———— *Absence of delay in coming before the Court* Parties seeking specific performance of a contract should come to the Court for relief within a reasonable time. SAM *v* APPUNDI IBRAHIM SAIB . . . . 6 Mad. 75

[illegible]

claim at all, it would be for damages [illegible] person breaking the contract for loss sustained by the non-fulfilment thereof. PUREEAG SINGH *v.* KHEER SINGH . . . 8 W. R. 280

6. ———— **Right to specific perform-** [illegible]

[illegible]

lands which they had possessed under an [illegible] lakhiraj claim. They subsequently entered into a [illegible]

SPECIFIC PERFORMANCE—*contd.*

I. GENERAL CASES—*contd.*

CHUNDER SINGH v. GOOROO DOSS ROY PROTAP CHUNDER SINGH v. CHUNDER COOMAR ROY
W. R. 1864, 76

7. ——— *Delay in bringing the suit—Specific Relief Act, s 22—Joinder of a person not a party to the contract of which specific performance is sought* A plaintiff sued on the 28th February 1881 for specific performance of a contract entered into on the 1st March 1878 by defendant No 1, and joined in that suit as a defendant

rights for nearly three years. *Held*, that, although the principle of the objection as to the delay of the plaintiff in bringing his suit was an important one, and one which ought to be considered by the Courts in the exercise of their judicial discretion under s. 22 of the Specific Relief Act, yet the point not

I. L. R 10 Calc. 1061

8. ——— *Performance of portion of agreement* Per PONTIFEX, J —It is of the essence of specific performance that part only of an agreement should not be performed CUTTS v. BROWN . . . I. L. R. 6 Calc. 328

s c. in lower Court BROWN v. CUTTS
5 C. L. R 487

and on appeal CUTTS v. BROWN 7 C. L. R. 171

9. ——— *Specific performance of part of contract and damages—Power of High Court* The High Court could, under the Charter

14 W. R. O. C. 15

of non-performance The application of the doctrine of specific performance to partnerships is

where the parties have agreed to execute some

11. ——— *Joint contractees—Right of one contractee to specific performance against the wish of the others—Specific Relief Act (I of 1877), s 16* Under a single contract to convey land to several persons, it is not open to some of the joint contractees to enforce specific performance of the contract if the other contractees refuse to have specific performances SAFIUR RAHMAN v MAHARAMUNNESSA BIBI
I. L R. 24 Calc. 832

12. ——— *Discretion of Court to give relief—Vendor selling land to third parties in breach of his contract* The fact that, subsequently to, and in breach of, his contract to sell, the vendor has sold the same land to third parties having notice of the contract, and that, if relief is refused to the plaintiff, the land may remain in possession of such third parties, does not affect the question as to the propriety of the exercise by the Court of its discretionary power to enforce the contract GURUSAMI v. GANAPATHIA
I. L. R. 5 Mad. 337

13. ——— *Practice—Liberty*

a decree for damages, when assessed, might be entered up *Held*, that he was entitled to ask for such relief PEARISUNDARI DASSEE v HARI CHARAN MOZUMDAR CHOWDHRY
I. L. R. 15 Calc. 211

14. ——— Right to specific performance—*Specific Relief Act (I of 1877), s. 23, cl. (b)—Specific performance of contract.* Where the

SPECIFIC PERFORMANCE—*contd.*

1. GENERAL CASES—*contd.*

personal quality of the party with whom a contract

made, and cannot be claimed by his legal representative If, from the nature of the contract, it is not intended that *A*, the contracting party, should further call upon *B*, with whom the contract is made, to perform his part of the contract, the right to enforce the specific performance of the contract is lost by *B*

forming his

not mention

essence of

KALI PROSAD JOHURI (1902)

I. L. R. 30 Calc. 265
s. c. 7 C. W. N. 229

15. ———— *Issues—Discretion of Court—Delay—Laches—Specific Relief Act (I of 1877), s. 22—Purchase at Court-sale—Purchase subject to subsisting equities—Right, title and interest of judgment-debtor* The plaintiff sued for specific performance of an agreement whereby the father of the first defendant and the husband of the second defendant agreed to sell to the plaintiff 500 square yards of land forming part of a property consisting of a chawal and vacant land The agreement was dated the 29th of June 1901, and the suit was filed on the 30th November 1903 The third defendant purchased the entire property at a Court-sale in execution of a money-decree obtained by the creditors of the original vendor against his estate. He had notice of the plaintiff's claim *Held*, that even if a purchaser at a Court-sale purchases without notice, he can only buy what the

followed *Held*, further, that the purchase by the third defendant was subject to the equity in favour of the plaintiff to compel specific performance, unless that equity had been lost by the plaintiff.

included in the other issues, but only to determine the kind of relief to which a plaintiff is entitled as the result of the findings on the issues preceding it. When, however, a decree for specific performance is

Laches to bar the plaintiff's right must amount to waiver abandonment, or acquiescence and to raise the presumption of any of these, the evidence of conduct must be plain and unambiguous. PEER MAHOMED *v.* MAHOMED EBRAHIM (1905)

I. L. R. 29 Bom. 234

16. ———— *Delay in bringing suit—Laches—Limitation.* Delay, which is short of the period prescribed by the Limitation Act and which is not of such a character as to give rise to an inference of abandonment of right is no bar to a suit for specific performance, unless it is shown to have prejudiced the defendant *Lindsay Petroleum Company* v. *Hurd, L R. 5 P. C. 221*, and *Jamnadas Shankarlal* v. *Atmaram Harjivan, I. L. R 2 Bom. 133*, referred to KISSEN GOPAL SADANEY *v.* KALLY PROSONNO SETT (1905)

I. L. R. 33 Calc. 633

17. ———— *Specific performance, suit for—Pleadings—Practice—Plea in defence—Omission of material term in written contract—Onus— Duty to examine himself—Agreement to take lease on lessor erecting suitable buildings—Time, if essence of contract* In a suit for specific performance it is important to distinguish between negotiation and contract and to ascertain what the con-

party not being concerned with his undisclosed intentions If the plaintiffs' case is clear and the written statement of the defendant raises no defence, the practice in English Courts allows the plaintiff in a suit for specific performance to move for a decree on the written statement being put in, and to get such a decree at once and as a matter of course It is incumbent on a party who seeks to make out that by inadvertence or mistake an

completed without unreasonable delay. In case of undue delay on the part of *H. G. & Co.* might have made time the essence of the contract by

upon a party to give corroborative evidence of

SPECIFIC PERFORMANCE—*contd*

1. GENERAL CASES—*concld*

statements which are not challenged by the other party. MOULVIE MAHOMED IKRAMULL HUQ *v* WILKIE (1907) . . . 11 C. W. N. 946

18. —————— *Agreement to lease—Specific performance—Concluded agreement—No time fixed for commencement of lease—Terms reduced into writing—Oral evidence—Indian Evidence Act (I of 1872), s 92* Oral evidence is admissible to prove some items of an agreement entered into between the parties when some others have been reduced into writing in letters exchanged between the parties There is no Statute of Frauds in India and there is nothing in s 92 of the Evidence Act to exclude such evidence *Semble* Where there is no agreement as to the date of the commencement of the lease, there is no concluded agreement. *Marshall* v *Berridge, L R 19 Ch D 233,* followed In the circumstances of this case, there was a concluded agreement between the parties which could be enforced, and as the plaintiff had not appealed against the decree of the Court below refusing specific performance, he was certainly entitled to damages AMBICA PROSAD DASS *v* J C GALSTAUN (1909)
13 C. W. N. 326

2 SPECIAL CASES

1. ———— **Agreement to purchase and payment of part of purchase-money**—*Right of purchaser* When there is an agreement to sell and a part of the consideration-money has been received, the stipulating purchaser is entitled to specific performance on paying down the rest of the said money SHIB KISHEN DOSS *v* ABDOOL SOBHAN CHOWDHRY . . 3 W. R. 103

But *see* RAMTONOO SURMAH SIRCAR *v* GOUR CHUNDER SURMAH SIRCAR . . 3 W. R. 64

2. ———— **Contract in respect of adjustment subsequent to decree**—*Act XXIII of 1861, s 11* A suit lay for specific performance of a contract in respect of an adjustment subse-

BURRA . . . . . . 3 W. R. 118

3. ———— **Re-sale on purchase-money being unpaid**—*Delay in payment where no time is fixed* When the purchaser of an estate paid earn-

4 ———— **Agreement to exchange land**—*Remedy of seller on refusal to give land.* Where a piece of land was sold in consideration of receiving

SPECIFIC PERFORMANCE—*contd.*

2. SPECIAL CASES—*contd.*

in exchange another piece of land which was not given —*Held,* that the seller's remedy, having regard to the terms of the contract made, was not by a suit to get back the land sold, but by a suit for damages for breach of contract, or by a suit for the specific performance of the contract or so much of it as was left unperformed NASIR ALI *v* GOVERNMENT . . . . . 3 Agra, 394

5. ———— **Contract for lands for which others were to be exchanged**—*Suit for damages* Where plaintiff had contracted with defendant to purchase from him a share of certain

ACHARJEE . . . . . 9 W. R. 269

6. ———— **Refusal to act wholly on deed of partition**—*Suit for rights as they existed before deed* Where a partition deed has been made and partly acted upon, and nothing is asserted against it in the way of undue influence —*Held,* that the proper course for the plaintiff was to sue to enforce performance, and not for her rights as they may have existed previously BHOWANEE KOONWAR *v* THAKOOR DASS 2 Agra 277

7 ———— **Agreement to re-unite after partition**—*Absence of money-consideration* Certain pattidars applied for a butwara under the provisions of Regulation XIX of 1814 At the time of the butwara, it was stipulated between the patti-

Held, that the absence of mention of any money-consideration in the agreement was no bar to its being enforced, as the parties thereto had waived all objection on the score of the particular village named, or any other, falling wholly or in part to their respective shares NUKCHAD SINGH *v.* HUNOOMAN DUTT SINGH . 10 W. R. 69

ing it) required by the Bombay, Baroda and Central India Railway Company. The defendants' secretary wrote in reply that the defendants had appointed an arbitrator on their behalf to determine

SPECIFIC PERFORMANCE—*contd.*

2. SPECIAL CASES—*contd*

the amount of compensation for their land required for the Bombay, Baroda and Central India Railway Company. *Semble* That a contract was entered into by the last-mentioned notice and letter of reply to it, of which specific performance could be enforced. KHARSHEDJI NASARVANJI CAMA *v* SECRETARY OF STATE FOR INDIA **5 Bom O. C. 97**

9. ———— Agreement for renewal of lease—*Agreement by husband alone—Non-concurrence of mortgagee* Immoveable property situate in the Island of Bombay was conveyed in 1859 to *N* and his wife (Parsis), their heirs, executors, administrators, and assignees, and was subsequently mortgaged by *N* and his wife, but the mortgagee did not enter into possession In 1861 *N* alone entered into an agreement with the plaintiff to give them a lease of that property for five years, the plaintiffs being willing to accept that lease with such title as *N* could confer *Held*, that, notwithstanding the non-concurrence of the mortgagee and of *N's* wife, *N* must specifically perform his contract. ...

plaintiff to do so. NAOROJI BERAMJI *v* ROGERS **4 Bom. O C. 1**

10. ———— Contract requiring registration—*Failure to register—Unregistered document.* The plaintiff contracted with the defendant for the purchase of a piece of land, and paid him part of the purchase-money, it being agreed that the balance should be paid after registration of the bill of sale The defendant kept the document with him, but failed to get it registered. In a suit by the plaintiff to enforce specific performance.—*Held*, that the suit would lie TRIPURA SUNDARI *v* RASIK CHANDRA KANUNGUI

6 B. L. R. Ap. 134 : 15 W. R. 189

See RAHMATULLA *v* SARIUTULLA KAGCHI.

1 B. L. R. F. B. 58 : 10 W. R. F. B. 51

TULSI SAHU *v* MAHADEO DAS.

2 B. L R A C 105 : 10 W. R. 483

FATI CHAND SAHU *v* LILAMBER SINGH DAS.

9 B. L. R. 433 : 14 Moo. I A 129
16 W. R. P. C. 26

PRABHURAM HAZRAH *v.* ROBINSON

3 B. L. R. Ap. 49 : 11 W. R. 398

11. ———— Unregistered contract—*Agreement* The plaintiff lent defendant R20,000, and received a document in the following terms "On demand we promise to pay *S V M R C* and *C T A CC* the sum of rupees twenty thousand value received Memo —For the above promissory note, the grant of the dockyard and offices to be deposited in three days, and a proper agreement drawn out. The time of credit to be one year or eighteen months the interest at R1-10 per cent. per mensem." In a suit to compel specific performance and for damages for breach of the agreement contained in the above memo —*Held*, that the memo contained an agreement of which a Court of equity would grant specific performance, had not defendant rendered specific performance impossible. CURRIE *v.* MUTU RAMEN CHETTY

3 B. L. R. A. C. 126 . 11 W. R. 520

12. ———— *Registration Act (III of 1877), ss 48, 49, and 50—Oral agreement, evidence of—Effect of oral agreement as against subsequent registered conveyance A*, by an oral agreement, agreed to grant two mokurari leases of certain properties upon certain terms to *B*, and thereupon executed two mokurari leases in favour of *B* which were not, however, registered Afterwards *A* granted two mokurari leases of the same mouzahs, upon terms more favourable to himself, to *C* and *D*, who, at the time of such grant, had notice of *A's* previous agreement with *B*. *Held*, in a suit for specific performance brought by *B* against *A* and to which *C* and *D* were added as defendants, that, notwithstanding the provisions of ss 49 and 50 of Act III of 1877, *B* could obtain a decree for specific relief, and a declaration that the leases to *C* and *D* were void as against him. NEMAI CHARAN DHABAL *v.* KOKIL BAG

I. L. R. 6 Calc. 534 . 7 C. L. R. 487

13. ———— Bill of sale—*Agreement to transfer share of property in consideration of advances for suit for its recovery—Damages for breach of contract* Where it was agreed between *A* and *B* that, in consideration of certain proceedings to be instituted jointly by *A* and *B* and payments to be made by *B*, for the recovery of certain property claimed by *A* against *C*, *A* would make over the half of the property recovered to *B*, but *A*, contrary to the terms of the agreement, without the consent of *B*, compromised his claim with *C*, and obtained possession —*Held*, that the agreement did not operate as a transfer of the property to *B*; *he* could not sue to eject *A*. *Semble* *B's* proper remedy was a suit for specific performance or for damages for breach of the contract, to support which it would have been necessary to allege performance of her ... and will- ... BHOBO- ... DUTT ... R. 140

14. ———— Agreement for mutual refusals before giving up dwelling house—*Condition precedent—Limitation Act, 1877, Art. 113,* Two brothers, *V* and *R*, in 1861, agreed together ... and part ... than the tw... buy ... 418 ...

SPECIFIC PERFORMANCE—*contd.*

2. SPECIAL CASES—*contd.*

agreement enforceable by law; that until demand no cause of action arose, and limitation only began to run from the demand; that specific performance should be granted in the alternative *Venkappa Chetti v. Akku, 7 Mad 219*, distinguished VIRASAMI MUDALI v RAMASAMI MUDALI

I. L. R. 3 Mad. 87

15 ——— **Contract for sale of land by Receiver**—*Misdescription—Purchaser having personal knowledge—Title to land between high and low water-mark* The defendant, who for twelve years had occupied land as tenant, purchased the land at a sale by the Receiver, but refused to complete the purchase on the ground of material misdescription in the advertisement of sale, in that a road and ghât, comprised within the boundaries mentioned in the advertisement, were not the property of the parties whose land the Receiver purported to sell; and also that, to make up the quantity of land as stated in the advertisement, *viz*, 20 bighas by estimation, land lying between high and low water mark had been taken into calculation The owners of the property sold having brought a suit against the defendant for specific performance, the defendant contended that the Receiver was a necessary party to the suit, and that the sale had been rescinded by a statement of the Receiver that he would forfeit the deposit in the event of the defendant not carrying out his contract In support of his objection to quantity, the defendant relied on a Collectorate chitta as showing that the area of the land sold was only 9 bighas 8 cottahs 10¾ chittaks, the same chitta, however, in giving

sequent accretions, and were therefore entitled to include in their measurement all land down to low-water mark, and having regard to the fact that the defendant was personally acquainted with the property sold, it was not open to him to repudiate the contract on the ground of misdescription The plaintiffs were entitled therefore to a decree for specific performance GANGADHAR SIRKAR v KASINATH BISWAS . . . **9 B. L. R. 128**

16. ——— **Agreement to sell land at a valuation**—*Land of peculiar character—Construction of agreement in a pottah—Assignment of*

building stores, for garden, for orchard, for road-making, and for other uses." The pottah, besides the above, contained the following, as translated; "You will build a factory according to any plan you choose, and possess the same. Within that aforesaid mouzah we will not give settlement to anybody If you take possession, according to your requirements, of extra land over and above this pottah, we shall settle such land with you at a proper rate Thereat we shall make no objection" The lessee, after being in possession for some years under the pottah, assigned it to the plaintiffs, who afterwards took possession of the whole of the extra land, and demanded a pottah therefor from the defendants, and made a contract advantageous to themselves to sell it to third persons The defendants refused to grant them a pottah In a suit for specific performance —*Held*, in the High Court, that where a contract is made to sell land at a fair valuation, and there is no difficulty in ascertaining what a fair valuation would be, the Court will take the usual means of ascertaining it, and decree performance of the contract accordingly But when, having regard to the peculiar character of the property, as in the case of land supposed to contain coal, or valuable minerals, the value of the land must be to a great extent a matter of guess and speculation, the Court will not decree specific performnace, as it has no means of ascertaining by the ordinary methods what price the plaintiff should pay *Held*, by the Privy Council, on the construction of the pottah, that if the lessee, or his assigns, had required additional land for the purpose of carrying out the objects for which the pottah was granted, then the lessors would have been bound to settle so much of the adjoining land with them as might have been necessary for such requirements

character of the property, as its containing coal or other valuable minerals, there is considerable diffi-

L. R. 7 I. A. 107

17. ——— **Lease savouring of champerty**—*Loan of money to carry on litigation.* Specific performance decreed of a lease, though the lease formed part of an arrangement whereby, as a consideration for the lease, the plaintiff was to lend the defendant money to enable him (*inter alia*) to commence legal proceedings against the then tenant of the subject-matter of the intended lease. PITCHAKUTTI CHETTI v KAMALLA NAYAKKAN

1 Mad. 153

18. ——— **Compromise made under alleged concealment of fact**—*Husband and wife—Armenian Christians* Specific performance

it was] alleged that property purchased by the husband had been concealed by him from her when she executed the agreement. *Held*, under the

SPECIFIC PERFORMANCE—*contd.*

2. SPECIAL CASES—*contd.*

circumstances, that that fact, even if proved, was not sufficient to entitle the wife to treat the agree-

trust for the children of the marriage, the wife's remedy was to enforce her own and children's rights by bill to compel a settlement of any property improperly withheld by the husband at the date of the execution of the agreement. GREGORY *v.* COCHRANE . . . **8 Moo. I. A. 275**

ABRATHOON *v.* COCHRANE . **4 W R. P. C 66**

19. ——— **Contract**—*Disability to con-* ... *contract,* ... *VI of* ... *Act),* ... *ance of transactions after the release of his estate from management under that Act.* It is competent to a person,

bound by a contract, of which the terms are to be ascertained by what passed whilst he was disabled from contracting The defendant's ancestral zamindari was placed under management by an order made under s. 2 of Act VI of 1876, and he became incapable of contracting in reference to it. He, however, agreed with the plaintiff that the latter should advance money on mortgage, and take a lease of part of the estate Afterwards by an order, whether well founded or not, at all events effectively made, under s 12 as amended by Act V of 1884, he was restored to the possession of his estate, again acquiring the right to contract about it. He carried on the transaction with the plaintiff, retaining the benefit of money paid by him, but in the end not completing *Held*, that he was bound by the contract, though its terms were to be ascertained by what had passed while he was disabled from contracting, and that specific performance could be decreed against him Whether his entering into the contract was against the policy of the Act, and whether the order under s 12 had, or had not, been made on good grounds, did not affect the question GREGSON *v.* UDOY ADITYA DEB

I. L. R. 17 Calc. 223
L. R. 16 I. A. 221

20 ——— **Transfer of Property Act, 1882, s 83**—*Civil Procedure Code, s. 375.* A sum of money having been deposited in Court under the Transfer of Property Act, s 83, by a vendee of the mortgagor, the mortgagee refused to accept it in discharge of his mortgage except on the terms that the depositor should convey to him part of the mortgaged premises, which he consented to do This agreement was not communicated to the Court, and the depositor refused to carry it out when the mortgagee had withdrawn the money as above.

SPECIFIC PERFORMANCE—*contd.*

2. SPECIAL CASES—*contd.*

Held, that the mortgagee was entitled to a decree for specific performance of the agreement to convey, TATAYYA *v.* PICHAYYA . **I. L. R. 13 Mad. 316**

21. ——— **Reversionary interest, sale of**—*Purchase-money less than market value of reversion—Stat. 31 Vict, c. 4—Inadequate consideration* The rule observed in England until the passing of Stat 31 Vict, c. 4, that specific performance of an agreement to sell a reversionary interest should not be decreed where the purchase-money was less than the market value of the reversion, *held* not to be the rule in India. GITABAI *v.* BALAJI KESHAV SHASTRI NAGARKAR

I. L. R. 17 Bom. 232

the estates down to her death in 1878 After some disputes as to the succession, one *N K*, claiming as widow of an alleged adopted son of *N*, was put into possession by the Revenue authorities. Against *N K* two suits were brought for the property left by *N*. The first suit was brought in April 1879 by one *C*, claiming as sister's son of *N* *C*, being a pauper, sold a portion of the property in suit to one *M* for R20,000 and made *M* a co-plaintiff in the suit. The second suit against *N K* was instituted in May 1879 by *S* and others, the defendants, appellants in this present suit, who claimed title as the nearest sapindas of the deceased *N*. In each of these two suits the plaintiff or plaintiffs were

and *M* asking for a declaration that they were entitled to succeed to the property of the deceased *N*. In January 1884 the female defendant having died, the Collector of Bareilly was brought on to the record of this suit as guardian of her minor children, and on the 19th of January 1885 a compromise was entered into between the Collector, on behalf of the minor children of *M* and one adult daughter of *M* on the one hand and the plaintiffs on the other, whereby the representatives of *M* relinquished the suit and consented to a decree being

instituted a suit for specific performance of the compromise of the 19th January 1885 The Court

SPECIFIC PERFORMANCE—*contd.*

2. SPECIAL CASES—*contd.*

of first instance decreed the plaintiffs' claim On appeal by the defendants to the High Court, it was *held* that there was nothing in s 22 of the Specific Relief Act which would stand in the way of a decree for specific performance of the compromise The compromise, when entered into in 1883, was not

I. L. R. 16 All. 423

23. ——— — Sale-deed fraudulently suppressed by defendant before registration—*Cause of action* Where the defendant agreed to sell certain land to the plaintiff and executed as sale-deed in favour of the plaintiff to that effect, but subsequently obtained possession of it before registration and fraudulently suppressed it :—*Held*, that the plaintiff was entitled to enforce specific performance of the contract by the execution and registration of a fresh document CHINNA KRISHNA REDDI *v* DORASAMI REDDI **I. L. R. 20 Mad. 19**

24. ——— Party entitled to damages for breach of contract—*Right to specific performance—Injunction* A plaintiff who sues for damages, and is entitled to them, cannot likewise be entitled to specific performance, or to an injunction against the further breach of the agreement ASHRUFOONISSA BEGUM *v.* STEWART **7 W. R 303**

25. — – Contract to give in marriage—*Hindu marriage and betrothal—Damages*

26. ——— — – *Hindu law—*

S C GUNPUT NARAIN SINGH *v.* RAJUN KOER **24 W. R. 207**

27. ——————— *Suit to enforce*

SPECIFIC PERFORMANCE—*contd.*

2 SPECIAL CASES—*contd.*

female infanticide, and that it would be illegal, according to Hindu law, to enter into relationship with it The ceremonies necessary to effect a betrothal had not been performed, though some ceremonies had been gone through *Held*, that, assuming the ceremonies, which are said to have taken

damages, and not by the specific performance of the alleged contract NOWBUT SINGH *v* LAD KOOER . . **5 N. W. 102**

28. ——— Agreement by partners in absence of representative of a deceased partner—*Person in position of trustee.* Surviving partners are treated as trustees of the partnership property for the benefit of the representative of a deceased partner, and an agreement entered into by such surviving partners, in the absence of the representative of a deceased partner, which agreement is inconsistent with the nature of such trust — to deal with the partnership assets only by way of sale—will not be specifically enforced. RAMLAL THAKURSIDAS *v* LAKMICHAND MUNIRAM **1 Bom Ap. 51**

29. ——— Stipulation in kabuliat—*Zamindar—Government, liability of* One of the terms of a kabuliat, equally binding on the Govern-

of the said pergunnah, shall be made by the Government of the Honourable Company." In a suit brought by the zamindar to obtain an order upon

specific performance CHUNDER SEKHUR MOOKERJEE *v.* COLLECTOR OF MIDNAPORE **I. L. R 3 Calc. 464 1 C. L. R. 384**

30. —— *Agreement to advance* **money on mortgage** In a suit to compel the defendant to advance R1,800 or thereabouts to the plaintiffs, the unpaid balance of a sum of R3,000 which defendant agreed to advance on mortgage, and for which a mortgage was executed and delivered to the defendant :—*Held*, that the Court ought not to make a decree for specific performance of such agreement. ANAKARAN KASMI *v* SAIDAMADATH AYULLA . . **I. L. R. 2 Mad. 79**

31. ——— Suit for execution of fresh instrument on retention of first one by defendant—*Specific Relief Act (I of 1877), ss 12, 21, 22—Suit to restore terms of lost instrument.* The plaintiffs, alleging that the defendants, having executed in their favour and delivered to them a bond the consideration for which was money due to them

SPECIFIC PERFORMANCE—*contd.*

2. SPECIAL CASES—*contd.*

under the old lease. FONDCLAIR *v.* VINAITHEETHAN CHETTY . . . . . 5 Mad. 251

42. ———— **Vendor and purchaser**—*Suit by purchaser against vendor for specific performance of contract of sale—Covenant by purchaser to build a temple—Specific Relief Act (I of 1877), s 21.* On the 16th November 1893 the first defendant agreed to sell a house to the plaintiff The contract contained a covenant on the part of the plaintiff to build a temple and to secure an annuity to the vendor and his wife. On the 21st of the same month the first defendant sold and conveyed the same house to the second defendant and put him in possession In a suit brought by plaintiff against defendants Nos 1 and 2 for specific performance of the contract of the 16th November —*Held*, that specific performance could not be granted, the covenants contained in the agreement being such as the Court could not enforce RAMCHANDRA GANESH PURANDHAREE *v* RAMCHANDRA KONDAJI I. L. R. 22 Bom. 46

43. ———————— *Specific Relief Act (Act I of 1877)* Upon a contract for the sale of the proprietary right in lands the intending purchaser, insisting on a right to compel the vendor to give an absolute warranty of the title, withheld payment of the purchase-money beyond the time fixed He also sued for specific perform-

had no right to have had delayed performing his

44. ———————— *Suit by vendee against vendor—Delay of vendee in completing—Rescission of contract by vendee—Time of the essence of the contract—Extension of the time stipulated for—Effect of such extension—Conditional waiver of per-*

money Before the transaction was completed, and the conveyance executed, the defendant, on the 23rd June 1886, by an agreement in writing, of that date, agreed to sell the house to the plaintiff at an advanced price of R4,800. The defendant was anxious that the sale should be completed in a short time, as the draft of the conveyance by *C* to himself had been prepared, though not finally approved, and the house was in bad repair and in a somewhat dangerous condition He had applied to the Municipality for leave to repair the house, and the monsoon season had begun. Ultimately it was agreed between him and the plaintiff that the plaintiff should complete the purchase within

asked the defendant for a month's time to complete, saying that he had not the money with him. After some hesitation the defendant extended the time to the 10th August On the 21st July at latest the drafts of the conveyance from *C* to the defendant were formally and finally approved, and the defendant was anxious to complete the sale to the plaintiff On the 23rd July he wrote to the plaintiff reminding him that the time to complete would expire on the 9th or 10th of August, and requesting him to be prepared then to complete the purchase; otherwise he would consider the

void, The an in- was no steps in the matter beyond getting a draft conveyance prepared The deed of conveyance by *C* to

days having a reply or fendant con- to be at an end, and on the 13th September he completed his purchase from *C* without reference to the plaintiff If the plaintiff had been ready to complete the purchase, the conveyance to him by the defendant and the conveyance by *C* to the defendant would have

sent a notice to the defendant requiring him to specifically perform the agreement of the 23rd June 1886 The defendant refused, and the plaintiff *Held*, on

perty, the time stipulated for the completion of the purchase was of the essence of the contract, and

SPECIFIC PERFORMANCE—*contd.*

2 SPECIAL CASES—*contd.*

July was but a timely warning to the plaintiff that the contract would not be kept in suspense after the extended time had expired The plaintiff, though thus warned, took no steps to complete, and was not therefore in a position to enforce performance from the defendant after the 10th August had gone by It was contended for the plaintiff that the letter of the 7th September, written by the defendant's solicitors, treated the contract as

condition being that the plaintiff should complete within four days That condition not having been complied with, the waiver could not be relied on *Barclay* v *Messenger, 43 L J Ch 449*, and *Steuart* v. *Smith, 6 Hare 222* *Quære* Whether under all the circumstances of the case, and assuming time not to have been originally of the essence of the contract, the four days' time limited by that letter was unreasonable TAKIR MAHOMED *v* ABDULLA I. L. R. 12 Bom. 658

45 ———— **Failure to give possession under agreement**—*Suit for specific possession* A purchaser of property of which possession was contracted to be given, but which contract the vendor is unable to fulfil, is at liberty to rescind the contract and sue for repayment of the purchase-money, and is not obliged to sue for specific performance MOHUN LAL *v* BEHAREE LAL . 3 N. W. 336

46 ———— **Agreement to pay money or in default to execute bond**—*Suit to recover money* By an agreement it was contracted that the defendant should pay to the plaintiff R4,000

assigned was now worthless *Held*, also, that, as in a former suit brought by the present defendant for specific performance of the same contract the present plaintiff (as then defendant) had resisted successfully and without qualification, he could not now treat the contract as subsisting SHEO PERGAH ROY *v* INJORE TEWAREE . 21 W. R. 433

48. ———— **Agreement by Government to pay moneys in lieu of tora garas hak**—*Jurisdiction of Civil Courts—Pensions Act (XXIII*

to Civil Courts to entertain any suit relating to any grant of money made by the British Government, whatever may have been the consideration for such grant, and whatever may have been the nature of *the payment, claim, or right for which such grant* may have been substituted Observations on the

of such an agreement MAHARVAL MOHANSANGJI *v* GOVERNMENT OF BOMBAY I. L. R. 4 Bom. 437

49. ———— **Agreement to lease**—*Subsequent lease to third party taking in good faith without notice of agreement—Specific Relief Act (I of 1877), s 18* *S* agreed to lease certain immoveable property to *W* for a term of fifteen years, and to

no knowledge of the agreement to lease to *W*. *W* thereupon sued *S* and his lessees, claiming cancellation of the two years' lease to *N* and his co-lessees

N and others. SARJU PRASAD SINGH *v.* WAZIR ALI (1900) . . . I. L. R. 23 All. 118

50. ———— **Agreement to sell**—*Contract Act (IX of 1872), s. 65—Limitation Act (XV of 1877), Sch. II, Art. 97—Suit for specific performance—Agreement declared unenforceable—Alternative claim for refund of consideration paid thereunder—Limitation.* The defendants, against whom a decree for foreclosure was outstanding, agreed to sell certain immoveable property

SPECIFIC PERFORMANCE—*contd*

2. SPECIAL CASES—*contd.*

to the plaintiff, and the plaintiff paid into Court, as part of the consideration, the amount due by the defendants under the foreclosure decree

for specific performance On appeal by the defendants, it was *held* by the High Court (i) that, the

under the agreement, and (iii) that the plaintiff's

I. L. R. 25 All. 618

51. ——— **Attempt by party to rescind agreement of which his heirs afterwards seek specific performance**—*Suit—Ekrar—Consideration, failure of.* Where parties had made a compromise comprising an agreement, the chief consideration for which was the execution of an ekrar by one party acknowledging the title (as adopted son) of the other party to the agreement, and the former had subsequently by his conduct (in bringing a suit to set aside the adoption and alleging that the ekrar had been obtained from him by fraud) attempted and in a great measure succeeded in depriving the latter of the benefit of the agreement —*Held*, in a suit by the heirs of the party, who had so tried to rescind the agreement, that there had been a failure of consideration and the conduct referred to was at

s.c. L. R. 31 I. A. 107

52. ——— **Construction of lease**—*Covenant for renewal—Time whether or not of the essence of the contract* The plaintiff sued for specific performance of a covenant for renewal contained in a lease, the material clause of which was as follows —"After the expiration of the said term, if the lessee shall so desire, the executant shall have no objection whatever to renew the lease for a further term of twenty years on the terms and in consideration of payment

SPECIFIC PERFORMANCE—*concld.*

2. SPECIAL CASES—*concld*

of the rent mentioned in the lease" There was nothing in the lease to indicate that notice of intention to renew was to be given before its expiration. *Held*, on a construction of the lease, that time was not of the essence of the contract, and that the plaintiff had not forfeited his right to have the lease renewed by reason of having allowed some months to elapse after the expiration of the original term before he gave notice to the defendants of his intention to take advantage of the covenant for renewal JAGGI LAL *v* SIR W. E. COOPER (1905) . . I. L. R. 27 All. 696

53. ——— **Contract to re-convey land**—*Civil Procedure Code (Act XIV of 1882), s 43—Cause of action—Whether same for a suit for specific performance of a contract to reconvey land and for the mesne profits of the property—Specific Relief Act (I of 1877), s 19.* A suit for specific performance of a contract to reconvey a certain plot of land after its breach and the claim for mesne profits of the property to which the plaintiff is entitled in consequence of the delay on the defendant's part to execute the reconveyance, are based on the same cause of action A plaintiff instituted a suit for the specific performance of a contract to reconvey a plot of land, in which he did not claim mesne profits to which he was entitled in consequence of the defendant's delay in performing the contract; subsequently to the decree for specific performance he brought another suit for the mesne profits: *Held*, that the plaintiff's suit for mesne profits that accrued due before the institution of the suit for specific performance was barred under s 43, Civil Procedure Code GANESH RAM PAL *v.* MOHESH RAM PAL (1909) . . . . 13 C. W. N. 669

SPECIFIC RELIEF ACT (I OF 1877).

See INJUNCTION—SPECIAL CASES—EXECUTION OF DECREE
I. L. R. 4 Calc. 380

See INJUNCTION—SPECIAL CASES—PUBLIC OFFICERS WITH STATUTORY POWERS.
I. L. R. 21 All. 348

See LEASE . I. L. R. 33 Calc. 203

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR . I. L. R. 18 Bom. 474

See VENDOR AND PURCHASER—INVALID SALES . I. L. R. 26 Bom. 159

——— **Mandamus**—*Bank of Bombay—Right of a shareholder to inspect the register of shareholders of the Bank —Object of such inspection—Common law right of a member of a corporation to inspect books of the corporation—Presidency Banks Act (XI of 1876), s 50. Held*, that the plaintiff's proper remedy was by way of suit and not *mandamus* under the Specific Relief Act SOLLEMAN SOMJI *v* THE BANK OF BOMBAY (1907)
I. L. R. 31 Bom. 319

SPECIFIC RELIEF ACT (I OF 1877)
—*contd.*

——— s. 9.

See APPEAL—EXECUTION OF DECREES—QUESTIONS IN EXECUTION
I. L. R. 26 Mad. 428

See APPEAL—ORDERS.
I. L. R. 22 Calc. 830

See COSTS—SPECIAL CASES—SUMMARY SUIT FOR POSSESSION 15 W. R. 268

See LIMITATION ACT, 1877, SCH II, ART 3
7 C. W. N. 218

See LIMITATION ACT, SCH II, 1877, ART 142 . . . 9 C. W. N. 1061
10 C. W. N. 1081

See PARTIES—PARTIES TO SUITS—PRINCIPAL AND AGENT
I. L. R. 5 Bom. 208

See POSSESSION—NATURE OF POSSESSION.
I. L. R. 15 Bom 238

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—NATURE AND EFFECT OF DECISION . . 20 W. R. 12

See POSSESSION—SUITS FOR POSSESSION
I. L. R. 26 Mad. 514

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS
I. L. R. 6 Bom. 477

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.
I. L R. 27 Bom. 302

See SPECIFIC PERFORMANCE.

See STATUTES, CONSTRUCTION OF
I. L. R. 19 Calc. 544

See SUIT . I L. R. 31 Calc. 647

See TITLE—EVIDENCE AND PROOF OF TITLE . . . 5 C. L. R. 278

See TITLE—MISCELLANEOUS CASES.
I. L. R 25 Mad. 448

This section corresponds with s. 15 of the Limitation Act of 1859. The following are cases decided on that section :—

1. ——— *Criminal Procedure Code, 1861, ss 318, 319—Dispossession.* The

2. ——— *Object of section —Wrongful dispossession—Onus of proof.* S. 15 did not affect the general law on the matters to which

turbed possession, and to prevent a powerful person

from thus shifting the evidence of proof from himself to another less able to support it. KALEE CHUNDER SEIN *v* ADOO SHAIKH . 9 W. R. 602

3. ——— *Possessory actions*

decrees, did not apply to a case determined under s 15 of Act XIV of 1859 GOBIND CHUNDER BAGDEE *v* GOBIND GHOSE MUNDUL 7 W. R. 171

4. ——— *Previous possession—Dispossession* Mere previous possession will not entitle a plaintiff to a decree for the recovery of

W R. 389 , Ertaza Hossein v *Bany Mistry I L. R 9 Calc. 130 , Debi Churn Boido* v *Issur Chunder Manjee, I. L. R. 9 Calc. 39 , Kaua Manjee* v. *Khowaz Nussio, 5 C. L R 278 , Wise* v. *Ameerunnissa Khatoon, L. R. 7 I. A 73 ; Krishnarav Yashvant* v *Vasudev Apaji Ghotikar, I. L R 8 Bom 371 , Pemraj Bhavaniram* v. *Narayan Shivaram Khisti, I L. R 6 Bom 215 ; Mohabeer Pershad* v. *Mohabeer Singh, I L R 7 Calc 591 : 9 C. L. R. 164,* referred to and explained. PURMESHUR CHOWDHRY *v* BRIJOLALL CHOWDHRY
I. L. R. 17 Calc. 256

SHAMA CHURN ROY *v* ABDUL KABEER
3 C. W. N. 158

NISA CHAND GAILA *v* KANCHARAM BAGANI
I L. R. 26 Calc. 579
3 C. W. N. 568

5 ——— *Suit to enforce right of way* S 15 of Act XIV of 1859 was not applicable to a suit to enforce a mere right of way. HARO DYAL BOSE *v* KRISTO GOBIND SEIN
17 W. N. 70

6. ——— *Nature of possession necessary for suit—Possession as trespasser. Semble* Mere possession as a trespasser was not

COLLECTOR OF BROACH . . 7 Bom. A. C. 82

7. ——— *Warrant of execution—Seizure of immoveable property not described in decree—Illegal possession.* Where a warrant was issued to the Sheriff to seize certain specific immove-

HEERALOLL SAHA
1 Ind. Jur. N. S. 21 ; Bourke O. C. 384

SPECIFIC RELIEF ACT I (OF 1877)—*contd.*

———— s. 9—*contd.*

8. ———— *Right of way—Immoveable property* A right of way is not "immoveable property" within the meaning of s. 9 of the Specific Relief Act. MANGALDAS *v.* JEWANRAM . . . **I. L. R. 23 Bom. 673**

9. ———— *Tenants illegally ejected* A tenant in possession after expiry of his

10. ———— *Time within which suit must be brought.* The suit must be brought within six months of the alleged ouster, otherwise anterior possession would be of not avail to the plaintiff. AMEER BIBEE *v* TUKROONISSA BEGUM **7 W. R. 332**

Upheld on review in TUKROONISSA BEGUM *v.* MOGUL JAN BIBEE . . . . **8 W. R. 370**

AMEEROONISSA KHATOON *v* WISE. **24 W. R. 435**

The plaintiff is entitled to recover notwithstanding any other title DOE D KULLAMMAL *v* KUPPU PILLAI . . . . . . **1 Mad. 85**

11. ———— *Trial of question*

11 W. R. 229

12. ———— *Right under decree for possession.* A party recovering possession of land in virtue of a decree under s 15, Act XIV of 1859, recovered the land with the crop growing upon it, and was fully entitled to cut the same. SHIRAJDEE PRAMANICK *v.* EMAM BUKSH BISWAS **13 W. R. 104**

13. ——
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14. ———— *Suit to set aside award under section.* Although in a suit to set aside an award made under s. 15, Act XIV of 1859, plaintiff had to establish his own title before the party in

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

———— s. 9—*contd.*

possession could be required to make good his case, a Judge should look into the summary case itself, and ascertain if there had been a proper inquiry and trial in that case. SURBO MOHUN ROY *v.* SURUT CHUNDER ROY . . **16 W. R. 34**

15. ———— *Decree for possession—Evidence.* A decree for possession in a suit under s 15 of Act XIV of 1859 was *primâ facie* evidence that the plaintiff in that suit was entitled to recover, from the defendant therein, mesne profits for the period of dispossession. RADHA CHARAN GHATAK *v.* ZAMIRUNISSA KHANUM **2 B. L. R. A. C. 67 11 W. R. 83**

Reversing S.C. ZUMURUDOONISSA *v.* RADHA CHURN GHUTTUCK . . **9 W. R. 590**

See JIAULLAH SHEIKH *v.* INU KHAN **I. L. R. 23 Calc. 693**

and cases there cited.

16. ———— *Mortgagee in possession—Dispossession by mortgagor—Suit for possession—Fraud* It is no answer to a suit for possession under s. 9 of the Specific Relief Act, brought against a mortgagor by a mortgagee who has been forcibly dispossessed by the mortgagor, to allege that the mortgage and possession under it were obtained by the fraud of the mortgagee. The mortgagor's proper remedy is by way of a suit to set aside the mortgage and recover possession. SAYAJI BIN NIMBAJI *v.* RAMJI BIN LANGAPA **I. L. R. 5 Bom. 446**

17. ———— *Partial dispossession—Suit for possession.* A possessory suit lies

18. ———— *Possessory suit—Constructive possession by receipt of rents.* The mere

of cases where a person in physical possession of property is forcibly dispossessed from it against his will and consent. *In the matter of the petition of* TARINI MOHUN MOZUMDAR. TARINI MOHUN MOZUMDAR *v.* GUNGA PROSAD CHUCKERBUTTY **I. L. R. 14 Calc. 649**

19. ———— *Immoveable property—Right of fishery—Possession—Dispossession.* The plaintiffs were fishermen belonging to the village of N. They claimed in this suit for themselves and the other fishermen of their village the exclusive right of fishing in the Nagothna Creek between high and low-water marks, within certain limits set forth in the plaint, and under s. 9 of the Specific Relief Act (I of 1877) they sought to recover possession of that right from the defendants, who, they alleged, had dispossessed them within six months

SPECIFIC RELIEF ACT (I OF 1877)
—contd.

——— s. 9—*contd.*

section held, that the first Court did not act without jurisdiction, the right claimed coming within the denomination of immoveable property. BHUNDAL PANDA *v.* PANDOL POS PATIL

I. L. R. 12 Bom. 221.

20. ——— *Right of fishery —Suit for possession of right to fish in a khal.* A

I. L. R. 18 Calc. 80

21. ——— *Immoveable property—Right of fishery.*

plaintiff, does not come within the provisions of s. 9 of the Specific Relief Act. FADU JHALA *v.* GOUR MOHUN JHALA . I. L. R. 19 Calc. 544

22. ——— *Immoveable property—Right of ferry.* A right of ferry is immoveable property or an interest therein within the meaning of the Specific Relief Acts, s. 9 KRISHNA *v.* AKILANDA . . I. L. R. 13 Mad. 54

23. ——— *Mamlatdars' Courts Act (Bom Act III of 1876)—Suit by a tres-*

Broach, 7 Bom H C Refi A. C. J. 82 ; Krishnarav Yashvant v *Vasudev Apaji Ghotikar, I. L. R 8 Bom. 371 ;* and *Virjiandas Madhavdas* v. *Mahomed Alikhan Ibrahimkhan I. L. R. 5 Bom. 208,* referred to. AMIRUDIN *v.* MAHAMAD JAMAL

I. L. R. 15 Bom. 685

24. ——— *Possession, suit or—Suit in ejectment on a possessory title* Per EDGE, *C.J.*, STRAIGHT and TYRRELL, *JJ.* (MAHMOOD

SPECIFIC RELIEF ACT (I OF 1877)
—contd.

——— s. 9—*contd.*

Wise v. *Ameer-un-nissa Khatoon, L. R. 7 I. A. 73 ; Pemraj Bhabaniram* v. *Narayan Shivaram Khisti, I. L. R. 6 Bom 215 , Krishnarav Yashvant* v. *Vasudev Apaji Ghotikar, I. L. R. 8 Bom. 371 ;* and *Muhammad Yusuf* v. *Sukh Nath, All. Weekly*

possession. WALI AHMAD KHAN *v* AJUDHIA KANDU . . . I. L. R. 13 All. 537

session on his own account was not allowed, such allegation being inconsistent with the case on which he came into Court NRITTO LALL MITTER *v.* RAJENDRO NARAIN DEB I. L. R. 22 Calc. 562.

26. ——— *Suit for posses-*

that possession in law is a substantive right or interest which exists and has legal incidents and advantages apart from the true owner's title.

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

——— s. 9—*contd.*

But that the above propositions were inapplicable to the facts of the present case where the defendants were found to have good title. *Per* O'FARRELL, *J.*—The rule is that where plaintiff in possession without any title seeks to recover possession of which he has been forcibly deprived by a defendant having a good title he can only do so under the provisions of s 9 of the Specific Relief Act, and not otherwise. Here the defendants held under a lease granted by a person who was found to have title, and a suit to recover possession would only lie under the provisions of s 9 of the Specific Relief Act, and this was clearly not such a suit MUSTAPHA SAHEB *v.* SANTHA PILLAI . . . **I. L. R. 27 Calc. 179**

27. ——— *Civil Procedure Code, 1877, s 103—Re-hearing—Review.* S. 9 of the Specific Relief Act does not prohibit a re-hearing under s 103 of the Code of Civil Procedure. A re-hearing differs widely from a review ANTHONY *v.* DUPONT . . . **I. L. R. 4 Mad. 217**

28 ——— *Suit for possession of land by person wrongfully ejected—Joinder of other claims.* A Court should in all cases in which it applied give effect to the provisions of the first paragraph of s 9 of the Specific Relief Act, 1877, whether that section is expressly pleaded or not There is nothing to prevent a claim for damages and a claim for establishment of title being joined with a claim for the relief provided for by the abovementioned section. RAM HARAKH RAI *v.* SHEODIHAL JOTI . . . **I. L. R. 15 All. 384**

29. ——— *Decree for posses-*

this decree —*Held*, that the latter portion of the decree was beyond the scope of a possessory decree under s. 9 of the Specific Relief Act, and must be set aside TILAK CHANDRA DASS *v* FATIK CHANDRA DASS . . . **I. L. R. 25 Calc 803**

30. ——— *Hât—Suit to recover possession of a hât—Delivery of possession—Incorporeal right—Illegal dispossession.* A *hât*, the possession of which is held by collecting tolls or rents, is not "immoveable property," within the meaning of s. 9 of the Specific Relief Act ; and a suit to recover its possession is therefore not maintainable under that section. *Fadu Jhala* v *Gour Mohun Jhala, I. L. R 19 Calc 544*, relied upon. FUZLUR RAHMAN *v* KRISHNA PRASAD (1902)
I. L. R. 29 Calc. 614

31. ——— *Constructive possession—Collusion by tenant with the trespasser—Refusal by the tenant to bring a suit—Right of suit* S 9 of the Specific Relief Act contemplates the case of a person who, being in physical possession of property, is dispossessed. So, where plaintiff was

in collusion with the person who dispossessed, refused to bring a suit. SONATON SHOME *v.* HELIM (1902) . . **6 C. W. N. 616**

32. ——— *Civil Procedure Code, s. 43—Summary suit for possession—Plaintiff restored to possession—Subsequent suit by plaintiff for mesne profits—Burden of proof.* One Lachmi Narain died possessed of certain immoveable property He left him surviving a widow, Mukhta Kunwar Narain Das obtained possession of some portion of the said immoveable property, as he alleged, under a lease from Mukhta Kunwar, and held possession, at any rate, for some months, down to the 27th of November 1897. After the death of Mukhta Kunwar, one Sheo Kumar, who claimed to be the adopted son of Mukhta Kunwar, by some means other than legal process, dispossessed Narain Das Narain Das thereupon instituted a suit under s 9 of the Specific Relief Act, and, having obtained a decree in the suit, was restored to possession. He then instituted a suit against Sheo Kumar to recover mesne profits for the time during which he was out of possession. As to this suit, it was *held* (i) that the suit was not liable to be defeated by reason of s. 43 of the Code *of Civil Procedure ; and (ii)* that, as to the other

entitle him to remain in possession as against the defendant SHEO KUMAR *v.* NARAIN DAS, (1902)
I. L. R 24 All. 501

33. ——— *Civil Procedure Code (Act XIV of 1882), s. 622—Tenant holding over—Dispossession by landlord—Suit by tenant to re-*

Relief Act as merely equivalent to the word legally is, we think, to deprive them of a force and a significance, which they carry on their very face.

SPECIFIC RELIEF ACT (I OF 1877) —*contd.*

———— s 9—*contd*

For a thing, which is perfectly legal, may still be by no means a thing done ' in due course of law ,' to enable this phrase to be predicated of it, it is essential, speaking generally, that the thing should have been submitted to the consideration and pronouncement of the law and the ' due course of law ' means, we take it, the regular normal process and effect of the law operating on a matter which has been laid before it for adjudication That, in our opinion, is the primary and natural meaning of the phrase, though it may be applied in a derived or secondary sense to other proceedings held under the direct authority of the law , in this sense it may be said, for instance, that revenue or taxes are collected in due course of law " The only issue tried by the Subordinate Judge was—" Whether the plaintiff was wrongly dispossessed within six months before the suit " *Held*, that the plaintiff's remedy lay in an application under the extraordinary jurisdiction (s 622 of the Civil Procedure Code, Act XIV of 1882), inasmuch as that issue was not one upon which the dispute between the parties could be properly adjudicated upon RUDRAPPA *v* NARSINGRAO (1905)

I. L. R 29 Bom. 213

34. ———————— *Immoveable property—Actual and constructive possession—Landlord and tenant—Dispossession by third party—Suit by Landlord—Maintainability* A landlord holding

[illegible]

I. L. R. [illegible] Mad. [illegible]

35. ———————— *Criminal Procedure Code (Act V of 1898), s 145—Possessory suit —Effect of order of a Criminal Court—Revision.*

[illegible]

I. L. R 30 All. 331

36. ———————— *Dispossession in due course of law—Suit by tenant of judgment-debtor against auction-purchaser—Delivery of possession—Civil Procedure Code (Act XIV of 1882), ss 318, 319* When on obtaining delivery of possession of immoveable property under s. 318 of the Code of Civil Procedure the auction-purchaser dispossessed a tenant of the judgment-debtor :—*Held*, that the auction-purchaser not having proceeded under s. 319 of the Code, the dispossession was not in due course of law and a suit under s 9 of the Specific Relief Act was maintainable MULUK PATOONI *v* BHARAT CHANDRA DAS (1908)

12 C. W. N. 694

37. ———————— *Criminal Procedure Code (Act V of 1898), s. 145—Dispossession due to order of Criminal Court—Possessory suit—Maintainability* [illegible]

[illegible]

the allegation that he has been dispossessed as a result of the order of the Criminal Court *Nagappa v Sayad Badrudin, I L. R 26 Bom 353,* and *In the matter of Chytun Chunder Roy, 20 W. R. 12,* distinguished MOORE *v* MONORANJAN GUHA, (1908)

12 C. W. N. 696

38. ———————— *Possessory suit—Possession of plaintiff if must have been physical possession—Possession through tenants—Ouster of tenants—Tenants not made parties—Jurisdiction.* [illegible]

[illegible]

actual occupation of the land amounted to the ouster of his immediate landlord to whom rent used to be paid In a suit under the section instituted by the immediate landlord of the dispossessed tenants, who were not made parties to the suit, the Court made a decree in the plaintiff's favour :—*Held*, that the non-joinder of the tenants did not affect the jurisdiction of the Court and the High Court would not interfere. BINDUBASHINI CHOUDHURANI *v* JAHNAVI CHAUDHURANI (1897)

13 C. W. N. 303

39. ———————— *Specific Relief Act (I of 1877), s 9—Possession through tenant—Dispossession—Possessory suit if lies at the landlord's instance—Total diluviation of land during suit if* [illegible]

[illegible]

Bindubashini Chaudhurani, v. *Srimati Jahnavi Chaudhurani, 13 C. W. N. 303,* referred to. *Quære*. Whether the total diluviation of the land in the course of a suit under s. 9, Specific Relief Act, oust the jurisdiction of the Court. JANAKI NATH ROY CHOUDHURY *v.* DINA MANI CHAUDHURANI (1909) . . . 13 C. W. N. 305

40. ———————— *Specific Relief Act (I of 1877), s. 9—Dispossession of tenant—Landlord if may sue—Adhiars of Bhutan Duars, if tenants—High Court's power to revise—Civil Procedure Code (Act V of 1908), s. 115.* The decision in *Bindubashini* v. *Jahnavi, 13 C. W. N. 303,* is in direct conflict with that in *Sonaton Shome* v. *Sheikh Helim, 6 C. W. N. 616.* *Semble* (approving of the former decision):

SPECIFIC RELIEF ACT (I OF 1877)
—*contd.*

——— s. 9—*concld.*

When a landlord is deprived of the possession of the benefits arising out of the land demised by reason of the dispossession of the tenant, he should be entitled to obtain recovery under s. 9 of the Specific Relief Act. *Adhiars* of Bhutan Duars are tenants When a Munsif

within the meaning of s. 9, Specific Relief Act *Held*, that he merely committed an error of law, and the High Court in revision could not interfere with his decision *Amir Hassan* v *Sheo Baksh, I. L. R 11 Calc 6, Raghu Nath* v. *Rai Chatrapat, 1 C. W N. 633, Fadu Jhala* v *Gour Mohan Jhala, I L R. 19 Calc. 544*, and *Bindubashini* v *Jahnavi, 13 C W N. 303*, referred to. SHYAMA CHURN GHOSH *v.* MAHOMED ALI (1909) . . . 13 C. W N. 835

——— ss. 9 and 39—*Suit on basis of former possession apart from title—Concurrent suit for cancellation of deed of gift under which defendant claimed—Cause of action* Where a plaintiff filed a suit for recovery of possession of immoveable property under s 9 of the Specific Relief Act, 1877, and, while such suit was pending, filed a second suit asking for cancellation of a deed of gift under which the defendant claimed title, it was *held* that this was not a splitting up of a cause of action and that the second suit was unobjectionable in point of law. JAI GOPAL MUKERJI *v* LALIT MOHAN (1904)
I. L R. 26 All 236

——— ss. 15, 17—*S 15 does not apply where undivided father, without concurrence of his sons, agrees to sell—Decree in such cases in suit for specific performance against the father and son* An un- ... under certain ... over every ... y S 15 of ... ply where an

defendants, the proper decree to be passed is one directing the sale by the father of the entire property on payment of the whole consideration, without determining whether the sale will be binding on the son and not one directing the father to sell his one half share on payment of one half of the purchase money. *Kosuri Ramaraju* v. *Ivalury Ramalingam, I L. R. 26 Mad 74*, followed. SRINIVASA REDDI *v.* SIVARAMA REDDI (1908)
I. L. R. 32 Mad. 320

——— s. 18.

See SALE . . 9 C. W. N. 1019

See SPECIFIC PERFORMANCE—SPECIAL CASES . . I. L. R. 23 All 119

SPECIFIC RELIEF ACT (I OF 1877)
—*contd*

——— s 18—*concld.*

See VENDOR AND PURCHASER—MISCELLANEOUS CASES . . 2 C. L R. 382
I. L. R. 14 Mad. 459

——— s. 18—*Contract relating to property of minor—Guardian, liability of.* Where a contract to sell immoveable property was entered into, without any legal necessity, by the defendant, not in her personal capacity and not on the representation that the property was her own, but as the next friend of her minor son, and the parties contemplated that, unless the sanction of the District Judge were obtained, the bargain was to come to an end, and before such sanction was obtained the minor ... *Held* that

(1905) . . . I. L. R. 32 Calc. 832

——— s. 19.

See SPECIFIC PERFORMANCE
13 C. W. N. 669

——— *Suit for declaration under a mokurari pottah—Alternative relief—Civil Procedure Code (Act X of 1877), s. 28.* A suit to have a mokurari pottah enforced as against one co-sharer granting it, and other co-sharers who repudiate it, and in the alternative to have the salami paid for the ... substance a suit to

granting the pottah. Under s. 28 of the Civil Procedure Code, such an alternative claim may be allowed against one or more of the defendants. RAJDHUR CHOWDHRY *v.* KALIKRISTNA BHATTACHARJYA I. L. R. 8 Calc. 963: 11 C. L. R. 330

——— ss. 20, 21.

See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT.
I. L. R. 14 Mad. 18

... to othe-

... and that the suit was therefore barred under s 21 of the Specific Relief Act, the latter clause of which ... provided by the Code of ... ay ... il ... has ... ect

SPECIFIC RELIEF ACT (I OF 1877) —*contd.*

——— s 21—*contd.*

which he has contracted to refer, the existence of such contract shall bar the suit." *Held*, that, before that section could be relied upon, it must be shown that the plaintiff had refused to refer to arbitration, and that the filing of the plaint was *not such a refusal.* KOOMUD CHUNDER DASS *v* CHUNDER KANT MOOKERJEE

I. L. R. 5 Calc. 498 5 C. L. R. 264

2. ——— *Agreement to refer*

agreed to refer the matters in difference between them in such suit to arbitration The Court accordingly adjourned the suit, and the matters in difference therein were referred to arbitration by the

I. L. R. 4 All. 546

3. ——— *Agreement to refer to arbitration—Refusal to refer—Suit in respect of matter agreed to be referred—Pleadings.* One of the parties to a contract to refer a controversy to

to perform his contract *Held*, that the mere act of filing the suit on the part of the plaintiff was not tantamount to a refusal to perform his contract in the sense of s. 21 of the Specific Relief Act The contract, the existence of which would bar a suit under the circumstances contemplated by s 21 of the

4. ——— *Contract to refer*

5. ——— *Agreement to refer to arbitration—Refusal to perform agreement.* In a

SPECIFIC RELIEF ACT (I OF 1877) —*contd.*

——— s 21—*contd.*

writing to you as follows · We used to reside and act in the house together in peace and harmony

agreement should take place amongst the women, in

to receive or pay. As to that, we are truly to act on our true religious faith, and we have written and delivered this writing of our free will and pleasure. The same is agreed to and approved of by our heirs and representatives, all; the 11th Jyesth Vadya

show that the plaintiff's claim to maintenance had been laid before the arbitrator or that the plaintiff

time allowed to the arbitrators to make and publish their award, *viz.*, fifteen days If the latter, her withdrawal could not, in any view of the section, be held to be a refusal on her part to perform her agreement to refer. Even if the plaintiff's withdrawal was unjustifiable, it appeared that the defendant had taken no steps, under s 523 of the Civil Procedure Code (Act XIV of 1882), to have the agreement filed in Court, and thus render her withdrawal of no effect There was nothing to show that the defendant did not acquiesce in it. *Quære: Whether the above agreement was not void* by reason of uncertainty. *Quære* Whether the actual submission of a subject in dispute to named arbitrators, followed by the attempt of one of the parties to such submission to withdraw from or to prevent an award being made upon the submission falls within the concluding paragraph of s. 21 of the Specific Relief Act, I of 1877. ADHIBAI *v.* CURSANDAS NATHU . . I. L. R. 11 Bom. 199

6. ——— *Arbitration—*

SPECIFIC RELIEF ACT (I OF 1877) —*contd.*

——— s. 21—*concld.*

in difference between them to arbitration, and for

their award within one week. Before the week had expired, a

one of the p

under s 373

from the suit

in respect of

cation was granted, the suit struck off, and a fresh suit instituted in pursuance of the permission thus given by the Court. In defence to this suit it was pleaded that the suit was barred by s 21 of the

and that it was immaterial that the period within which the award was to be made expired before the bringing of the second action *Per* TYRRELL, *J*, that the suit was barred by the second clause of s 373, the Court having had no jurisdiction to pass the order under that section, or, having referred the suit to arbitration, to restore the suit to its file and treat it as awaiting the Court's decision. SHEOAMBER *v.* DEODAT . . I. L. R. 9 All. 168

7. ——— *Civil Procedure Code, s. 523—Arbitration—Agreement to refer made pending a suit—Such agreement a bar to the continuance of the suit.* Where parties to a suit have agreed to refer the matters in dispute between them in such suit to arbitration, such an agreement ousts the jurisdiction of the Court to proceed with the suit, whether it is filed in Court under the provisions of s 523 of the Code of Civil Procedure or not. *Salig Ram* v. *Jhunna Kuar, I L R 4 All 546; Sheoambar* v *Deodat, I L R 9 All 168,* and *Shib Lal* v *Hira Lal, All Weekly Notes (1888) 133,* followed SHEO DAT *v.* SHEO SHANKAR SINGH, (1905) . . . . I. L. R. 27 All. 534

8. ——— ss. 21 and 30—*Suit to recover money due on an award—Specific performance—Damages.* In a suit for the recovery of a certain sum of money with interest due on an award and on the failure of the defendant to pay for the re-

DUNJI *v.* JAMSETJI EDULJI (1904)
I L R. 28 Bom. 1

SPECIFIC RELIEF ACT (I OF 1877) —*contd.*

——— s. 22.

See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT.
I. L. R. 18 Bom. 702
I. L. R. 19 Bom. 764

See SPECIFIC PERFORMANCE.
I. L. R. 29 Bom. 234

1. ——— *Specific performance of contract—Discretion of Court—Delay in applying to Court for relief.* Great delay on the part of the plaintiff in applying to the Court for specific performance of a contract, of which he claims the benefit, is of itself a sufficient reason for the Court in the exercise of its discretion to refuse relief *Milward* v. *The Earl of Thanet, 5 Ves 720n*, referred to NAWAB BEGAM *v.* CREET (1905)
I L R. 27 All. 678

2. ——— *Specific performance—Issues—Discretion of Court—Delay—Laches—Purchase subject to subsisting equities—Right, title and interest of judgment-debtor* The plaintiff sued

even if a purchaser at Court-sale purchases without notice, he can only buy what the Court could sell, i e., the right, title and interest of the judgment-debtor, as these existed at the date of the sale, and as these could have been honestly disposed of by the judgment-debtor himself *Sobhagchand* v *Bhaichand, I. L. R. 6 Bom 193,* followed. PEER MAHOMED *v* MAHOMED EBRAHIM, (1905)
I. L R 29 Bom. 234

——— s. 23, cl. (*b*)—

See SPECIFIC PERFORMANCE—GENERALLY.
I. L. R. 30 Calc. 265

——— cl. (*c*)—

See COMPROMISE—REMEDY ON NON-PERFORMANCE OF COMPROMISE
5 C. W. N. 386

See HINDU LAW . I. L. R. 29 All. 37

——— s. 23 and s 27, cl. (*e*)—*Contract to take shares* S 23, cl (*h*), and s. 27, cl. (*e*), of the Specific Relief Act (I of 1877) do not apply to

SPECIFIC RELIEF ACT (I OF 1877) —*contd*

——— s. 25.

See VENDOR AND PURCHASER—TITLE
I. L. R. 15 Bom. 657

——— s. 26.

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . I. L. R. 4 Bom. 594

See SPECIFIC PERFORMANCE—SPECIAL CASES . I. L. R. 12 Calc. 152

——— s. 27.

See MORTGAGE—REDEMPTION—RIGHT TO REDEEM . I. L. R. 24 Mad. 449

See RIGHT OF SUIT—POSSESSION, SUITS FOR—CO-DEFENDANTS
6 C. W. N. 314

See VENDOR AND PURCHASER—INVALID SALES . . I. L. R. 18 Mad. 43

See VENDOR AND PURCHASER—NOTICE
I. L. R. 10 Calc. 710
I. L. R. 27 Calc. 358

1. ——— cl. (*b*)—*Misjoinder—Joinder of causes of action—Multifariousness.* The plaint-

a misjoinder of causes of action GUMANI *v* RAM CHARAN . I. L. R. 1 All. 555

2. ——— *Agreement to convey the mortgaged property in case of default—Suit for specific performance of contract—Mortgage—First*

in the nature of a mortgage by conditional sale, and there was no necessity for *P* to take proceedings to

SPECIFIC RELIEF ACT (I OF 1877) —*contd*

——— s. 27—*concld*

foreclose the mortgage, and the suit was maintainable. Also that, assuming that *D* had no notice of the agreement of the 7th August 1877, it was very doubtful whether under s 27 (*b*) of Act I of 1877 *D* could claim that specific performance of that agreement should not be granted, inasmuch as the contest lay between a prior and subsequent lien created upon the same property, which had passed to the transferee under a sale in execution of a decree for the enforcement of the subsequent lien BADRI PRASAD *v* DAULAT RAM . I. L. R. 3 All. 700

——— s. 28

See SPECIFIC PERFORMANCE—SPECIAL CASES . I. L. R. 18 Mad. 415

——— s. 30.

See LIMITATION ACT, 1877, SCH. II ART. 113 . I. L. R. 5 All 263
I. L. R. 16 All. 3
I. L. R. 23 Mad. 593

——— s. 31.

See DEED—RECTIFICATION.
I. L. R. 14 Calc 308
L. R. 14 I. A. 18

1. ——— *Landlord and*

I. L. R. 8 Calc. 118

s.c. KOYLASH CHUNDER BOSE *v.* ANABULLAH SHEIKH . . . . 9 C. L. R. 467

2. ——— *Sale—Suit for specific performance—Rectification—Mutual mistake—Clear proof.* To establish a right to rectification of a document it is necessary to show that there has been either fraud or mutual mistake. Under the terms of s 31 of the Specific Relief Act (I of 1877), it is necessary that the Court should find it clearly

v. *Fowler*, 4 *D. & J.* 250, 264, followed and applied. MADHABJI *v.* RAMNATH (1906)
I. L. R. 30 Bom. 457

——— ss. 31, 34.

See CONTRACT—BOUGHT AND SOLD NOTES.
I. L. R. 20 Calc. 854

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

——— s. 35.

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY.
I. L. R. 3 Mad. 215

——— *Rescission of contract,*

I. L. R. 18 Bom. 342

——— ss. 38, 41.

See ESTOPPEL—ESTOPPEL BY CONDUCT.
I. L. R. 26 Calc. 381

——— s. 39.

See ARBITRATION—AWARDS—VALIDITY OF AWARDS, AND GROUND FOR SETTING THEM ASIDE . I. L. R. 25 Bom. 10

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS
L. R. 29 I. A. 203
I. L. R 27 Bom. 607
I. L. R. 7 Calc. 736
I. L. R. 23 Bom. 375

See LIMITATION ACT, 1877, SCH I, ART. 91.
I. L. R. 27 Bom. 560
I. L. R. 5 All. 322

See ONUS OF PROOF—DECREES AND DEEDS, SUITS TO ENFORCE OR SET ASIDE.
I. L. R. 12 All. 523

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT . I. L. R 9 All. 439
I. L. R 23 Bom. 375

1. ——— *Suit for declaration—Cancellation of document—Consequential relief.* The plaintiff having sued for the cancellation of a sale deed framed the prayer in the plaint so as to seek a declaration that the sale-deed was fraudulent and for an order to have it cancelled and a copy was sent to the Sub-Registrar as provided by s 39 of the Specific Relief Act (I of 1877). *Held*, that the suit was one for a declaration with a distinct prayer for consequential relief. *Karam Khan* v. *Daryai Singh, I L. R. 5 All. 331,* dissented from PARVATIBAI *v.* VISHVANATH (1905)
I. L R. 29 Bom. 207

2. ——— *Limitation Act (XV of 1887), Art. 91—Suit to set aside an instrument—Collusive sale-deed not intended to be acted upon.* A suit to cancel or set aside an instrument must, under Art. 91 of the Limitation Act, be brought within three years from the date when the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him. The plaintiff on 1st June 1895 executed a sham sale-deed in favour of the defendants, neither party intending that it should be acted upon. The defendants in February 1899 began to set up a claim to ownership on the strength of the deed. On

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

——— s. 39—*concld.*

3rd August 1900, plaintiff brought this suit On its being contended that the suit was barred by limitation :—*Held*, that the suit was not barred having been brought within three years from the date when the plaintiff apprehended that the defendants had set up a title under the instrument. The facts which would entitle a person to bring such a suit are stated in s. 39 of the Specific Relief Act (I of 1877). SINGARAPPA *v.* TALARI SANJIVAPPA (1905)
I. L. R. 28 Mad. 349

——— s. 40 and Ch IV, ss. 35-38—*Impossibility arising after execution of contract to*

quence ejected therefrom by the owner. In a suit

... inasmuch as the

501

——— s. 41.—*Refund of money* The decision in *Mohori Bibee* v. *Dharmodas Ghose, I L. R. 30 Calc 539,* is also an authority for the proposition

I. L. R. 28 Bom.

——— s. 42.

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE
I. L R. 9 All. 622

See BOMBAY REVENUE JURISDICTION ACT.
I. L. R. 29 Bom. 19

See CLAIM TO ATTACHED PROPERTY.
I. L. R. 24 Mad. 20

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS;
I. L. 29 I. A. 203

ENDOWMENT I. L. R. 26 Mad. 450

MISCELLANEOUS SUITS.
I. L. R. 24 Mad 275
I. L. R. 24 All. 170
I. L. R. 25 Mad. 504

SPECIFIC RELIEF ACT (I OF 1877)
—contd.

———— s. 42—contd.

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW—SETTING ASIDE ALIENATIONS, AND WASTE
5 C. W. N. 445
I. L. R. 32 Calc. 62
9 C. W. N. 25

See HINDU LAW—REVERSIONERS—ARRANGEMENTS BETWEEN WIDOW AND REVERSIONERS I. L. R. 22 Calc. 354

See HINDU LAW—REVERSIONERS—POWER OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS.
I. L. R. 18 Mad. 53

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.
I. L. R. 11 All. 224

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—PARTITION
11 C. L. R. 533

See
A

See ONUS OF PROOF—PARTITION
I. L. R. 16 Calc. 117

See PARTIES—SUIT BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.
I. L. R. 15 Bom. 309

See PARTITION—MISCELLANEOUS CASES
I. L. R. 16 Calc. 117
I. L. R. 36 Calc. 726

See RIGHT OF SUIT—CHARITIES AND TRUSTS . . I. L. R. 8 All. 31

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE . I. L. R. 7 All. 583

See TIPPERAH RAJ
I. L. R. 35 Calc. 777

1. ———————— *Declaratory decree—Judicial discretion, decree made in the exercise of—Interference on appeal—Hindu widow—Widow's estate—Will executed by widow, if entitles reversioner to*

SPECIFIC RELIEF ACT (I OF 1877)
—contd.

———— s. 42—contd.

to have been executed in her favour by her deceased husband under which she claimed to be absolute owner—a title which was inconsistent with any

2. ———————— *Declaratory suit—Declaration—Further relief—Court—Jurisdiction.* S. 42 of the Specific Relief Act enacts that no Court shall make a declaration in a suit in which the plaintiff being able to seek further relief omits to do so. The section does not empower the Court to [illegible] a "further [illegible] f the Specific [illegible] *Bom. L. R.* [illegible] KESHAVLAL [illegible] HIRALAL (1904) . . I. L. R. 28 Bom. 567

3. ———————— *Failure to claim*

at the time, neither with the defendant nor with the plaintiff, it being in *custodia legis* and in the hands of an officer of the Court and it being a mere accident that that officer was the plaintiff. Inasmuch as the defendant was not in possession, plaintiff could not, as against her, have consequential relief, and nothing more was required

I. L. R. 27 Mad. 591

4. ———————— *Suit for declaration of title—Omission to seek further relief—Revenue Jurisdiction Act (X of 1876), s. 11—Suit against Government on account of any act or omission of any Revenue officer—All such appeals allowed by the law—Appeals in respect of the act or omission.* The effect of the proviso to s. 42 of the Specific Relief Act (I of 1877) is that the Court shall not make a declaration in the events specified in the proviso, not that the Court shall not grant the relief that is prayed. The expression "all such

SPECIFIC RELIEF ACT (I OF 1877) —*contd.*

——— s. 42—*contd.*

appeals " in s. 11 of the Revenue Jurisdiction Act (Bombay Act X of 1876) means appeals in respect of the act or omission. Therefore the bar of s. 11 would not apply to a suit wherein the cause of action is not an order or decision in respect of which there was a right of appeal under the Land Revenue Code (Bombay Act V of 1879) SAKHARAM *v* THE SECRETARY OF SLALE FOR INDIA (1904) . . . . I. L. R. 28 Bom. 332

5. ——— *Suit to set aside an auction sale—Plaint not asking for possession—Defendant subsequently put into possession of property sold.* A plaintiff instituted a suit to set aside an auction sale. The plaintiff, not having at the time of filing the suit been dispossessed of the property sold, claimed only the setting aside of the auction sale and cost and paid a proper Court-fee on the suit so framed. About a month after the institution of the suit the auction-purchaser was put into possession of the property, which he had purchased. Then the suit came on for hearing, the plaintiff was directed to amend his plaint by adding a claim for possession of the property and to pay

the suit could affect or prejudice the right of the plaintiff and the suit was remanded under s 562 of the Code of Civil Procedure to the lower Court for

6. ——— *Suit for declaratory decree—Further relief—Cancellation of document.* The plaintiff came into Court alleging that he was the owner and in possession of a certain house, of which one of the defendants had executed a mortgage in favour of the other defendant; that the defendant mortgagee had filed a suit and having obtained a decree for sale had caused the property to be proclaimed for sale The plaintiff asked for a declaration that the house was not liable to sale in

(1904) . . . . . I. L. R. 26 All. 606

7. ——— *Declaratory decree —Discretion of Court—Joint Hindu family—Nonjoinder of parties* Where some of the descendants of a judgment-debtor under two Rent Court decrees filed a suit in a Civil Court, asking for a declaration that the joint ancestral family property was not liable, after the decease of the judgment-debtor, to be taken in execution of such decrees and did not make parties to the suit the two sons of the judgment debtor, it was *held* that the Court exercised

I. L. R. 27 All. 158

8. ——— *Suit by heir presumptive against life tenant to restrain waste by life tenant—Injunction* There is nothing in law to prevent the heir presumptive, that is, the person who would be entitled to possession, if the life tenant were to die at the moment of suit, from suing for a

L. R 8 I. A 14, followed. *Gangayya* v. *Mahalakshmi, I L. R 10 Mad 90*, referred to. *Greeman Singh* v *Wahari Lall Singh, I. L. R 8 Calc. 12*, dissented from. MANMATHA NATH BISWAS *v.* ROHINI MONI DASI (1905) . I. L. R. 27 All. 406

9. ——— *Discretion of Court to make declaratory decree—Limitation Act*

alienation—Plaintiff not nearest reversioner—Maintainability Plaintiff, a minor, sued for a declaration that an alienation by a Hindu widow was invalid as against him after the death of the widow. Plaintiff was not the nearest reversioner, there being certainly one and apparently two sets of reversioners, who would be entitled to take in succession before him. Plaintiff's father had not brought any suit, though he could have done so, and the father's right to bring such a suit had become barred. The nearest reversioner had concurred in the improper alienation and all the reversioners nearer than plaintiff had omitted to sue and were barred from doing so by limitation. They were all parties to the suit :—*Held*, that the suit was not barred by limitation. Where there are several

Chhaganram Astikram v. *Bai Motigavri, I. L. R. 14 Bom. 512*, discussed. *Held*, also, that plaintiff was entitled to maintain the suit. A more distant reversioner may maintain such a suit, when the reversioners nearer in succession are in collusion with the widow or have precluded themselves from suing The right given by s. 42 of the Specific

SPECIFIC RELIEF ACT (I OF 1877) —*contd*

——— s 42—*contd.*

Relief Act to bring a declaratory suit is not limited by illustration (*E*) of that section or by Art. 125 of the Limitation Act to suits by a person presumptively entitled to possession The general words of a section should not be limited to the illustations given in the Act or by reference to the suits specially enumerated in the Limitation Act Though it was doubtful whether the lower Court should, in the exercise of its discretion, have allowed

save him from having to prove the impropriety of the alienation again *Per* DAVIES, *J* —The declaration made in the present suit would serve the purpose of perpetuating testimony for whomsoever might happen to be the next reversion on the death of the widow GOVINDA PILLAI *v* THAYAMMAL (1905) . . . I. L. R. 28 Mad 57

10. ——— *Discretionary power of Court in granting declaration—Declaration in respect of a void instrument—Courts, inherent powers of, to stay or dismiss vexatious suits—Court Fees Act—Ad valorem stamp not necessary in suits for declaration, where no consequential relief asked* Every Court of competent jurisdiction has inherent power to prevent abuse of its process, by staying or dismissing without proof actions which it holds to be vexatious *Haggard* v *Pelicier Freres*, [1892] *A C 61 67, 68*, referred to Where the facts

power to grant declaratory decrees under the Specific Relief Act ought not to be exercised when the

Indar Bahadur Singh, L R 31 I A 67, 69.

declaratory suit, and not an *ad valorem* fee on the value of such property. VIJIASWAMI TEVAR *v.* SASIVARMA TEVAR (1905) . I. L. R. 28 Mad. 560

11. ——— *Civil Procedure Code (Act XIV of 1882), s 283—Suit brought under*

SPECIFIC RELIEF ACT (I OF 1877) —*contd.*

——— s 42—*concld*

not controlled by the proviso to s 42 of the Specific Relief Act, and the plaintiff in such a suit is not bound to ask for any further relief, to which he may be entitled *Kunhiamma* v. *Kunhunni, I. L. R 16 Mad 140*, overruled *Ambu* v. *Kettilama I L. R 14 Mad. 23*, followed KRISTNAM SOORAYA *v.* PATHMA BEE (1905) . I. L. R. 29 Mad. 151

12. ——— *Declaratory de-*

sue for a declaratory decree under s 42 of the Specific Relief Act declaring that the person alleged to have been adopted is not his adopted son. It is not necessary for the maintainability of such a suit that a claim must be set up by the party alleged to have been adopted CHINNASAMI MUDALIAR *v.* AMBALAVANA MUDALIAR (1905)

I. L R. 29 Mad. 48

13. ——— *Presumptive reversioner, entitled after widow's death may sue to set aside will of last male holder* The right of the pre-

belonging to him are claimed by devisees under a will alleged to have been left by him, the nearest reversioner in existence is entitled to sue for a declaration that the alleged will was invalid and did not bind his reversionary interest PUTTANNA *v* RAMAKRISHNA SASTRI (1906)

I. L. R. 30 Mad. 195

14. ——— *Suit for posses-*

Held also that the plaintiff

——— s. 45.

See CALCUTTA CORPORATION

I. L. R. 36 Calc. 671

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 31 . I. L. R. 22 Calc. 717

See COMPANY—TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES.

I. L. R. 16 Bom. 398

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

——— s. 45—*concld.*

See HACKNEY-CARRIAGE ACT (BOM. ACT VI OF 1863), s. 6.
I. L. R. 27 Bom. 307

See LEASE . I. L. R. 36 Calc. 271

See LICENSE . I. L. R. 28 Bom. 253

See POLICE ACT (XLVIII OF 1860), ss. 11, 12 . . I. L. R. 26 Bom. 396

1. ——— **Chairman of Calcutta Municipality, discretion of, as to list of candidates and votes at elections.** Instances of applications under s. 45 of the Specific Relief Act for rules against the Chairman of the Calcutta Municipality with regard to the list of candidates for and the votes given at municipal elections *In the matter of* MUTTY LALL GHOSE
I. L. R. 19 Calc. 192

In the matter of RAJENDRA LALL MITTRA
I. L. R. 19 Calc. 195 note

In the matter of the ELECTION OF MUNICIPAL COMMISSIONERS FOR WARD NO. 10, CALCUTTA.
I. L. R. 19 Calc. 198

2 ——— **Practice.** *Per* RUSSELL, J.—

I. L. R. 27 Bom. 307

——— s. 52.

See MAINTENANCE . 9 C. W. N. 1073

——— s. 53.

See INJUNCTION—SPECIAL CASES—EXECUTION OF DECREE
I. L. R. 23 Calc. 351

See INJUNCTION—UNDER CIVIL PROCEDURE CODE . I. L. R. 27 Bom. 357

——— ss. 53, 54, 55.

See INJUNCTION . I. L. R. 34 Calc. 97

——— s. 54.

See CO-SHARERS—ENJOYMENT OF JOINT PROPERTY—ERECTION OF BUILDINGS
I. L. R. 12 All. 436

See INJUNCTION—

UNDER CIVIL PROCEDURE CODE:
I. L. R. 27 Bom. 357

SPECIAL CASES—

BREACH OF AGREEMENT;
I. L. R. 26 Mad. 168
I. L. R. 18 Bom. 702
I. L. R. 19 Bom. 764

EXECUTION OF DECREE.
I. L. R. 22 Mad. 189

INTRUSION IN OFFICE.
I. L. R. 21 Bom. 821

SPECIFIC RELIEF ACT (I OF 1877)—*contd.*

——— s. 54—*concld.*

See INJUNCTION—*contd.*

OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY.
I. L. R. 13 Bom. 252; 674
I. L. R. 19 All. 259
I. L. R. 20 Bom. 704
I. L. R. 26 Bom. 735
I. L. R. 24 Calc. 260
I. L. R. 22 Mad. 251

POSSESSION OF JOINT PROPERTY.
I. L. R. 29 Calc. 500

See LANDLORD AND TENANT—ALTERATION OF CONDITIONS OF TENANCY—ERECTION OF BUILDINGS
I. L. R. 16 Mad. 407

See PARTIES—SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.
I. L. R. 15 Bom. 309

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR . I. L. R. 13 Bom. 674
I. L. R. 18 Bom. 474
I. L. R. 20 Bom. 704

See VENDOR AND PURCHASER—INVALID SALES . . I. L. R. 18 Mad. 61

——— factory—*Bengal* ... *Agricultural* ... *s. 54, Ill.* ... *rendering* ... *able.* The ... purpose, ... a out of ... be an agricultural ...

entitled to sue for an injunction restraining the tenant from building such factory on the land. SURENDRA NARAYAN SINGH *v.* HARI MOHAN MISSER (1905) . . . . . 9 C. W. N. 87

——— s. 55.

See INDIGO . I. L. R. 31 Calc. 174

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY . I. L. R. 14 Calc. 236
I. L. R. 31 Calc. 944

——— *Mandatory injunction—Perpetual injunction—Trees overhanging neighbour's land—Continuing nuisance—Threatened damage.* As every owner of land is under an obligation not to ...

SPECIFIC RELIEF ACT (I OF 1877) —*concld.*

——— s. 54—*concld.*

I. L. R. 19 Bom. 420, Norris v. *Baker, 1 Roll 393; Baten's Case, 9 Rep. 53; Shelfer* v. *City of London Electric Lighting Company,* [1895] *1 Ch. 287,* referred to A perpetual injunction restraining the defendant from planting trees the roots

LAKSHMI NARAIN BANERJEE *v.* TARA PRASANNA BANERJEE (1905) . . I. L. R. 31 Calc. 944
s.c. 8 C. W. N. 710

——— s. 56.

See BOMBAY DISTRICT MUNICIPAL ACT (BOM. ACT III OF 1901), ss. 82 (*c*) AND 86 . . I. L. R. 27 Bom. 403

See CIVIL PROCEDURE CODE, 1882, s. 258
I. L. R. 31 Calc. 480
s.c. 8 C. W. N. 395

See INJUNCTION—

UNDER CIVIL PROCEDURE CODE
I. L. R. 27 Bom. 357

SPECIAL CASES—BREACH OF AGREEMENT.
I. L. R. 26 Mad. 168

SPECIAL CASES—EXECUTION OF DECREE . I. L. R. 14 Mad. 425
I. L. R. 18 Mad. 338
I. L. R. 21 Mad. 352
I. L. R. 23 Calc. 351

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.
I. L. R. 5 All. 429

See PARTIES—SUIT BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.
I. L. R. 22 Bom. 646

——— s. 57.

See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT I. L. R. 14 Mad. 18
I. L. R. 18 Bom. 702
I. L. R. 19 Bom. 764
I. L. R. 26 Mad. 168

——— s. 57, Illus. (*d*)—

See CONTRACT . I. L. R. 36 Calc. 354

SPECULATIVE PURCHASE.

See SALE . . 13 C. W. N. 710

SPES SUCCESSIONS.

See HINDU LAW . I. L. R. 36 Calc. 481

See MAHOMEDAN LAW,
I. L. R. 32 Bom. 172

1. ——— *Non-transferable and non-releasable—Mahomedan Law.* The chance of an heir-apparent succeeding to an estate is under Mahomedan Law neither transferable nor releasable. It is only by an application of the principle that

SPES SUCCESSIONS—*concld.*

equity considers that done which ought to be done

which is assignable in equity. In the case of deeds executed by *pardanashin* ladies it is requisite that those who rely on them should satisfy the Court that they had been explained to and understood by those who executed them *Sudisht Lal* v. *Sheobarat Koer, L. R. 8 I. A. 39, 43, Shambati Koeri* v. *Jago Bibi, I. L. R. 29 Calc. 749,* followed. SUMSUDDIN *v.* ABDUL HUSEIN (1906)
I. L. R. 31 Bom. 165

2. ——— *Mahomedan Law.* A mere *spes successionis* is unknown to, and not recognised by, Mahomedan Law. ABDOOL HOOSEIN *v.* GOOLAM HOOSEIN (1905)
I. L. R. 30 Bom. 304

SPLITTING CAUSE OF ACTION.

See CIVIL PROCEDURE CODE, 1882, s. 43
I. L. R. 29 All. 256

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY —POSSESSION . 7 B. L. R. Ap. 42

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—GENERAL CASES . . 6 Bom. O. C. 88
4 Mad. 334
I. L. R. 2 Bom. 570

——— splitting up of decree—

See LIS PENDENS . 13 C. W. N. 226

SPLITTING OFFENCE.

See CRIMINAL PROCEEDINGS.
I. L. R. 4 Calc. 18

See ROBBERY . . 5 C. W. N. 372

SPY.

See ACCOMPLICE . I. L. R. 19 Bom. 363

SRADH CEREMONY.

See HINDU LAW—
LEGAL NECESSITY.
I. L. R. 36 Calc. 753

STAKEHOLDER.

See INTERPLEADER SUIT.
2 Ind. Jur. N. S. 113

See PRINCIPAL AND AGENT—LIABILITY OF AGENTS . . 4 Bom. O. C. 125

STALL-KEEPERS.

See MARKET . . 11 C. W. N. 1128

STAMP.

See Appellate Court—Rejection or Admission of Evidence admitted or rejected by Court below.

See Court Fees Act.

See Court Fees Act (VII of 1870). I. L. R. 35 Calc. 202

See Power-of-Attorney. I. L. R. 23 Calc. 187

See Registration Act (III of 1877), s. 17. 12 C. W. N. 59

See Stamp Acts.

See Act II of 1899, Sch. I, Art 1. I. L. R. 33 Calc. 298; 436

See Stamp-duty.

See Stamp-duty, Refund of.

See Valuation of Suit.

——— cancellation of—

See Plaint—Return of Plaint. I. L. R. 7 Bom. 487

——— deficiency in—

See Limitation Act, 1877, s. 4. I. L. R. 27 Bom. 330

See Plaint—Rejection of Plaint.
1 N. W. 17
11 W R 177
2 Mad. 436
I. L. R. 9 Bom. 355
I. L. R. 13 Bom. 517

See Small Cause Court, Presidency Towns—Practice and Procedure—Re-hearing . I. L. R. 18 Calc. 445

See Special or Second Appeal—Procedure in Special Appeal.
I. L. R. 13 All. 580
I. L. R. 20 Bom. 791

1. BENGAL REGULATIONS.

——— Beng Reg XII of 1826—*Receipt for G*[illegible] Law (Reg[illegible] tered by [illegible] *stamped* [illegible] parties residing or carrying on business therein when there was no intention of pleading such documents in the mofussil Courts, were *held* to be good

STAMP—*contd.*

1. BENGAL REGULATIONS—*concld.*

and binding. Goury Churn Mookerjee *v.* Jogendronath Mookerjee . W. R. 1864, 289

——— **Beng. Reg. X of 1829—**

See Stamp Act, 1879, Sch. I, Art. 49. I. L. R. 7 Calc. 594

——— s. 31—*Stamp Act (X of 1862)—Mirasi pottahs.* Mirasi raiyati pottahs, where not required either by the old (Act X of 1829, s. 31) or new Stamp Law (Act X of 1862), to be written on stamped paper. Moheeooddeen Ahmed *v.* Prannath Roy Chowdhry 3 W. R., Act X, 142

2. BOMBAY REGULATIONS.

——— Bom. Reg XVIII of 1827—*Will.* Regulation XVIII of 1827 did not require a will to be stamped during the testator's lifetime. Webbe *v.* Lester . 2 Bom. 55 : 2nd Ed. 52

1. ——— s 10—*Construction of section.* An objection to the validity of a document under Regulation XVIII of 1827, as distinguished from its inadmissibility in evidence, or from a pro-[illegible]

2. ——— *Signed account—Evidence when unstamped.* A signed account showing a balance up to date, and containing a promise to pay interest upon the consolidated balance, cannot be made use of in evidence to support a claim to interest on that balance, unless it be stamped; but it may be used as a samaduskut or simple admission of a balance due, although not stamped Dhondu Jagannath *v.* Narayan Ramchandra, 1 Bom. 47

3. ——— sub-s. (3)—*Mortgage—Lease—Counterpart.* Where an agreement between a mortgagor and mortgagee contain stipulation that the mortgagor should, at the time [illegible] it had [illegible] se the [illegible] e rent

STAMP—*contd.*

2. BOMBAY REGULATIONS—*contd.*

———— **s. 10**—*concld.*

[illegible]

against losses to be incurred after the determination of the lease, which, not having any operation so long as the lease was in existence, was therefore not exempt from stamp duty under that Regulation. Where an appellant has not tendered the stamp duty and penalty on a document which the Courts below have held to be insufficiently stamped, the High Court will not allow him to do so in special appeal. RAM KRISHNA GOPAL *v.* VITHU SHIVAJI **10 Bom. 441**

———— **s. 12, sub-s. (2)**—*Suit to recover possession of immoveable property—Practice.*

[illegible]

could not obtain on it a judgment for a sum or value [illegible]

1. ———— **s. 13**—*Intention to defraud revenue.* On documents insufficiently stamped under Regulation XVIII of 1827 the question did not properly arise, under s. 13 of that Regulation, whether the intention of the parties in not sufficiently stamping them was to defraud Government of its revenue. That question was rendered important, first, by s. 13 of Act XXXVI of 1860, and subsequently, in a more explicit manner, by s. 15 of Act X of 1862. KASTUR BHAVANI *v.* APPA **I. L. R. 5 Bom. 621**

2. ———— *Right to have document stamped—Intention to evade stamp-duty.*

[illegible]

3. ———— **and s. 14**—*Bond stamped after death of grantor.* A bond or other writing, stamped after the death of the grantor, is valid against his heirs. The personal representatives, or other persons claiming as heirs and kindred of a deceased grantor, stood, with regard to ss. 13 and 14 of Regulation XVIII of 1827, in the same position as the deceased grantor would, and were not third parties within the meaning of s. 14. The

STAMP—*concld.*

2. BOMBAY REGULATIONS—*concld.*

———— **s. 14**—*concld.*

previous decisions of the late Sudder Court to the contrary overruled. RAGHIA *v.* DHARMA JHATU **1 Bom. 52**

1. ———— **s. 14, sub-s. (1)**—*Deed of sale*

[illegible]

ÂPAJI VISHNU . . **5 Bom. A. C. 217**

2. ———— *Purchaser at sale in execution of decree—Validity of mortgage-deed.* The purchaser at a Court-sale of the right, title, [illegible]

that on which it was stamped. *Jagannath Vithal v. Apaji Vishnu, 5 Bom. A. C. 217*, followed. NARAYAN DESHPANDE *v.* RANGUBAI **I. L. R. 5 Bom. 127**

3. MADRAS REGULATIONS.

———— **Mad. Reg. XIII of 1816**—*No provision for payment of penalty—Secondary evidence of unstamped document.* In a suit to redeem a mortgage of 1833, executed upon an unstamped cadjan, liable to stamp duty under Regulation XIII of 1816, secondary evidence of the contents of this document was tendered on payment of a penalty. *Held*, that the evidence could not be admitted. KOPASAN *v.* SHAMU . **I. L. R. 7 Mad. 440**

———— **Mad. Reg. II of 1825, s. 4**—*Deed transferring property conditionally—Ad valorem stamp-duty.* An instrument, dated 1853, which [illegible]

STAMP ACT (XXXVI OF 1860).

See STAMP DUTY.

———— **Security bond given to abkari renter.** A security bond executed by a third party to the abkari renter is not exempt from stamp duty. RAMASVAMI CHETTI *v.* PAPPA REDDI **1 Mad. 190**

———— **s. 14**—*Bond executed on optional stamp.* No larger sum could be recovered under s. 14, Act XXXVI of 1860, upon a bond executed on an optional stamp than that optional stamp covers

STAMP ACT (XXXVI OF 1860)—*concld.*

——— s. 14—*contd.*

and no amount of penalty can make up the deficiency in the stamp. KERAMUT ALI *v.* ABDOOL WAHAB . . . . 17 W. R. 131

1. ——— Sch. A and s. 14—*Promissory note containing agreement to waive jurisdiction* A promissory note containing an agreement by the maker that, in case of any dispute or difference arising concerning the payment of the note or the subject-matter thereof, the same shall and may be sued in the Supreme Court, and "to the jurisdiction of which I hereby waive and agree to waive all pleas," properly stamped as a promissory note, did not require an additional stamp as an agreement under Act XXXVI of 1860, Sch. A, and s. 14. RAKHALDASS SINGHEE *v.* ROY CHUNDER DUTT

1 Ind. Jur. O. S. 124

amount received this day from you in cash on account of stamp."—*Held*, to be neither a bond nor a hundi, but to be in the nature of a promissory note and to come within the description in Art. 4, Sch. A of Act XXXVI of 1860 HUTUMAN SAHIB *v* HUSAIN SAHIB . . . . . 1 Mad. 152

3. ——— Sch. A, art. 20—*Partnership*

and loss in respect of his share; that they should

1 Mad. 226

STAMP ACT (X OF 1862).

——— s. 3.

See GENERAL CLAUSES CONSOLIDATION ACT, 1868, s. 6 . 7 Mad. Ap. 9

1. ——— *Offence under section—Engrossing deed on unstamped paper.* The mere engrossing of a deed on unstamped paper was not an offence under s. 3 of Act X of 1862, nor did the signing such deed as a witness constitute any such offence REG. *v* JETHA MOTI. REG. *v.* VIRJI KUVARJI . . 2 Bom. 135 ; 2nd Ed. 129

REG. *v.* JOTI BIN SATU . . 1 Bom. 37

2. ——— *Penalty—Attesting witnesses and persons drafting documents.* The

STAMP ACT (X OF 1862)—*contd.*

——— s. 3—*contd.*

words in s. 3 of Act X of 1862, "unless in any case in which a higher penalty is imposed" and "not

MOUS . . . . . 3 Mad. Ap. 27

3. ——— and s. 52—*Omission to get sanction of Collector.* A prosecution under s. 3, Act X of 1862, not having been authorized by the Collector of the Stamp Revenue for the district or any other officer specially authorized by the Government in that behalf, was held to be, under s 52 of that Act, irregular. QUEEN *v* ADJOODHYA PERSHAD . . . . . 2 N. W. 188

1. ——— s 14—*Documents improperly stamped—Evidence, admissibility in.* Documents not bearing proper stamps under Act X of 1862 are

3 Agra 103a

2. ——— *Act XXXVI of 1860—Bond stamped after suit.* A bond stamped

AMIRCHAND RUPCHAND . 3 Bom. A. C. 82

3. ——— *Calculation of stamp-duty—Nature of instrument* In determining

given to it by the parties, if the contents of the instrument show that the title is a misnomer. PENDSE *v* MALSE . . 3 Bom. A. C. 94

4. ——— *Single document containing two contracts and bearing one stamp—Allowance of value of stamp.* Where a document contained two distinct contracts requiring separate stamps, but the whole was impressed with one insufficient stamp, it was held that this stamp might be taken into account in making up the aggregate of the stamps required. BALAJI MAHADEV *v.* KRISHNAJI BIN CHIMNAJI . 6 Bom. A. C. 95

5. ——— *Copies of record* with the

when the party who was desirous of appealing was in confinement under the operation of the sentence

STAMP ACT (X OF 1862)—*contd.*

———— s. 14—*contd.*

or order at the time that he applied for a copy of the same, it was *held* that copies of any part of the record of a criminal trial could only be furnished to applicants on stamp paper. ANONYMOUS
4 Mad. Ap. 58

6. ———— *Transfer of tenure—Admissibility in evidence* The transfer of an under-tenure, endorsed upon the back of the tenant's pottah, is not admissible in evidence, unless it be stamped as though it were a separate deed TETAI ABOM *v* GAGAI GURA CHAWA
3 B. L. R. Ap. 30

S C PITAYE AHUNG *v* GIROHEE KOER AJOOAH
11 W. R. 365

7. ———— *Surrender of equity of redemption—Unstamped endorsement* Where the defendant executed in favour of the plaintiff what purported to be a deed of absolute sale, but an ikrar executed contemporaneously reserved the right of redemption to the defendant, and the plaintiff alleged he had surrendered it by returning the ikrar.—*Held,* that, as the original deed was, on the face of it, an absolute sale, and as

———— s. 15.

See STAMP ACT, 1879, s 34.
I. L. R. 14 Mad. 255

———— s. 15, sub-s. (6)—*Application for*

under the stamp law; the pauper should himself make timely application under sub s 6, s 15 Act X of 1862 GOLAM GUFFOOR *v* EKRAM HOSSEIN CHOWDHRY . . . 10 W. R. 358

———— ss. 15 and 17.

See APPELLATE COURT—REJECTION OF ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS . 2 Mad. 321
3 Mad. 71
3 B L. R. A C. 126; 235
5 B. L. R. Ap. 10
7 B. L. R. 653
I. L. R. 6 Bom. 621

———— s. 17.

See APPEAL—ACTS—STAMP ACT, 1862
3 Bom O. C. 153

STAMP ACT (X OF 1862)—*contd.*

———— s. 17—*contd.*

was no stamp Such documents should not be received at all LALJI SINGH *v* AKRAM SER
3 B. L. R. A. C. 235 ; 12 W. R. 47

2. ———— *Intention to evade stamp laws* A bond, executed between a plaintiff who sued upon it and the defendants, contained the following clause: "And inasmuch as we (the

Court Judge, before whom the case was tried, considered the above clause in the bond to be evidence of an intention between the parties to avoid the stamp laws, and refused to receive evidence to the contrary. He also refused to admit the bond in evidence *Held,* on reference to the High Court, that the clause in question did not amount to an agreement to evade the stamp laws The Judge

3 B. L R. A. C 329 : 11 W. R. 553

3 ———— *Intention to evade*

4. ———— *Permission to pay penalty where document is lost* *Quære* Whether permission to pay the stamp duty and penalty can be given in the case of a lost instrument. ARUNACHELLUM CHETTY *v* OLAGAPPAH CHETTY
4 Mad. 312

5. ———— *Hundi—Inadmis-*

the second defendant. The third defendant owed

STAMP ACT (X OF 1862)—*contd.*

——— s. 17—*concld.*

that the first defendant entered upon a binding engagement with him to deliver, or permit the delivery, of grain of the value of R1,000, and that he failed to fulfil his engagement. The Civil Judge decreed for the plaintiff. On appeal.—*Held*, by the High Court, reversing the decision of the Civil Court, that the second hundi was not admissible in evidence, not being stamped, and that there was no evidence of such an agreement as that relied on by the plaintiff. MAHOMED RAHAMATULLA *v.* WARD
5 Mad. 391

6. ——— s. 17 and s. 15—*Intention to evade payment of duty—Jurisdiction.* In a suit

17, Act X of 1862, it was competent to the Judge to find, on the facts before him, whether the absence of the stamp was owing to an intention to evade payment of the stamp duty, and that no question arose for reference to the High Court. RAJ CHUNDER SHAHA *v.* GOBIND CHUNDER KOOLAL
13 W. R. 102

had given him, but the existence of which the plaintiff denied. That document was *not* stamped, though, on the face of it, it stated that it was to be stamped. No objection was taken on that score to the document before the first and lower Appellate Courts, who considered that the document was a

NADGOWDA
15 W. R. P. C. 33 : 14 Moo. I. A. 24

1. ——— s. 22—*Promissory note—Interest.* A promissory note is sufficiently stamped if the

STAMP ACT (X OF 1862)—*contd.*

——— s. 22—*contd.*

stamp covers the principal sum named in the note without reference to the interest. GOMEZ *v.* YOUNG
2 B. L. R. O. C. 165 : 12 W. R. O. C. 1

2. ——— *Promissory note—Admissibility in evidence.* A B, by an instrument

properly stamped as a promissory note payable on demand, and ought to have been admitted in evidence. *Per* PEACOCK, *C.J.*—A promissory note payable on demand ought to be stamped as such, notwithstanding there may be a collateral agreement between the parties that the holder will not present it for a given time, or if paid on demand that the maker shall be entitled to discount. CHANDRAKANT MOOKERJEE *v.* KARTIK CHARAN CHAILE . **5 B. L. R. 103 : 14 W. R. O. C. 38**

3. ——— *Promissory note—Ambiguity.* Where the wording of a promissory note bearing a one-anna stamp appears to be

properly stamped. Under such circumstances, the Court will take evidence of usage. BANK OF HINDUSTAN, CHINA, AND JAPAN *v.* SEDGWICK
1 Ind. Jur. N. S. 107

——— s. 26.

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE
1 Mad. 217
12 W. R. 376

——— *Refund of stamp duty—Commencement of suit.* *Held*, that, for the pur-

summons had been previously taken, it must be considered as taken at the commencement of the proceedings on the day appointed for hearing. AMIRCHAND JAMNADAS *v.* MAGGAN AMTHU
4 Bom. A. C. 176

——— s. 27—*Right to recover on contract*

cannot recover a larger amount under it than (as stated) the optional stamp upon the instrument *would have been sufficient to cover.* In a suit for the recovery of money due under a written contract the defendants admitted that a sum of R6,328-4-0

to set off

ndants pat

amp upon

STAMP ACT (X OF 1862)—*contd.*

——— s. 27—*concld.*

which was only sufficient to cover the sum of R5,000. *Held*, that, notwithstanding the admission of the defendant, the plaintiffs could only recover R5,000 in the suit KISTNASAMY PILLAY v. MUNICIPAL COMMISSIONERS FOR THE TOWN OF MADRAS . . . . 4 Mad. 120

——— s. 32—*Appeal on valuation of claim* Under s. 32, Act X of 1862, an appeal relating to the valuation of a claim can be entertained by the High Court. BASOO MAD FUROSH v HUREE PANDEY . . . . . 11 W. R. 479

——— s. 50, sub-s. (2)—*Jurisdiction of Collector—Offence under Criminal Procedure Code (Act XXV of 1861), ss 169, 171* An application was made to a Collector under s. 50, sub-s. (2), Act X of 1862, to replace a damaged stamp by a new one As it appeared that the stamp had been tampered with for fraudulent purposes, the Collector made over the parties to the Magistrate for trial

——— Sch A, Art 1—*Promissory note for payment of grain* An instrument in the form of a promissory note for grain should be stamped, under Art 1 of Sch A of Act X of 1862, with a stamp of the value of one rupee LACHIRAM JAYASANGJI v RAMJI BIN SHIVAJI . . 6 Bom. A. C. 107

——— Art. 3—*Petition for a lease* In a suit for payment of rent for use and occupation of land, where the basis of plaintiff's claim was for a kabuliat, the agreement produced as evidence of the

Affirming on review s.c . 14 W. R. 178

1 ——— Art. 4—*Agreement—Bond* In a suit for breach of contract to cultivate and deliver indigo, for recovery of the amount specified in the contract —

the amount

DOYLE v.

[illegible]

2. ——— and Art. 15—*Agreement to supply cotton.* An agreement to supply cotton in consideration of a sum of money received should be stamped under Art. 4, and not under Art 15, Sch A, Act X of 1862 SAMSUDDIN SULTAN v RAMJI BHIKA . . . 5 Bom. A. C. 151

1. ——— Art. 10—*Promissory note—Bond* A promissory note, attested by a witness, does not require to be stamped as a bond under Act X of 1862, Sch. A, Art. 10 The words in that clause

STAMP ACT (X OF 1862)—*contd*

——— Art. 10—*concld.*

words "bearing the attestation of one or more witnesses" apply only to the words "instrument or writing," and not to the word "bond" GLADSTONE v SADOO CHURN DUTT

2 Ind. Jur. N. S. 203

2 ——— *Promissory note.* In a suit, brought by a joint-stock company in liquidation against a former director of the company, for R27,30,000 on a promissory note, dated the 1st of March, and purporting to be paid on demand, but with the words in pencil "due 4th June" put on it, the same day it was signed, in accordance with an understanding between the defendant and the other directors that they would not press him for payments before the latter date, and signed by the defendant some days after the day it bore date —*Held*, that a one-anna stamp was not sufficient under Sch A, Art 10, of Act X of 1862 EASTERN FINANCIAL ASSOCIATION v PESTANJI CURSETJI . . 3 Bom. O C. 6

3. ——— *Written direction by master to servant for payment of money* A written direction given by a master to a servant for the payment of money belonging to the former in the hands of the latter was *held* to be not an order for the payment of money within the scope of the terms used in Art 10, Sch A, Act X of 1862, as amended by Act XXVI of 1867 PUTBULWANT RAO v. FUTTEHOODDEEN

1 N. W. Ed. 1873, 143

1. ——— Art. 12—*Security bonds for costs of appeal to Privy Council.* Security bonds for costs of appeal to the Privy Council come within Art 12, Sch A, Act X of 1862, and ought to be executed on a stamp as therein specified SOONJHAREE KOONWUR v. RAMESSUR PANDEY

5 W. R. Mis. 47

2. ——— *Solehnamah admitting satisfaction of decree—Petition—Agreement—Act XXVI of 1867, Art 10.* In a suit upon a bond for R40 with interest, the defendant filed a solehnamah admitting that the amount due from him was R25 and agreeing to pay that sum by instal-

of 2 annas as for an instalment bond. MANICK CHUNDER ROY v LALLMON SHEIKH. PUNCHANUN SIRCAR v GUNESH MUNDUL . 8 W. R. 214

——— Art. 18—*Penalty—Obligation for payment of money* Where the parties to an agreement added to the stipulations which it contained

meaning of Art. 18 of Sch. A of the Stamp Act, X of 1862, and required an optional stamp COLLINS v. DEWAN SINGH . . . . 2 N. W. 465

STAMP ACT (X OF 1862)—*contd.*

——— Art. 42—*Lease—Instrument purporting to create relation of landlord and tenant.* Where a written instrument purported to create the relation of landlord and tenant for five years, the plaintiff's (lessor's) tenure being that of a mirasidar, that is, an hereditary tenancy under Government, determinable on default in payment of the proportion of the Mothee Faisal assessment payable for the land:—*Held,* that the written instrument was a lease, and was not liable to be stamped, by virtue of the exemption of Art 42, Sch. A of Act X of 1862. SAMINATHAIYAN *v.* SAMINATHAIYAN . . . . . . 4 Mad. 153

1. ——— Art. 43—*Sanad to gomashta to collect rents* A sanad, which authorized a gomashta to collect rents, and to sue for them, requires to be stamped. Such a sanad required a four-rupee stamp under Art 43, Sch A of Act X of 1862. RAGHU NANDAN THAKUR *v.* RAMCHARAN KAPALI

1 B. L. R. F. B. 55 : 10 W R. F B. 39

2. ——— *Instrument operating as power-of-attorney* J M executed in favour

over the surplus to me." *Held,* that the above instrument operated as a power-of attorney, and not as an assignment, and was properly stamped under Act X of 1862, Sch. A, Art 43, with a stamp of R4 PESTANJI MANCHARJI WADIA *v* MATCHETT 7 Bom. A. C. 10

——— Art. 54—*Deed of partition—Each sharer's copy of in instrument* Under Act X of 1862, Sch. A, Art. 54, each sharer's copy meant each sharer's part as exemplification of an instrument executed in duplicate, triplicate, etc Where a document, bearing the date June 1863 and purporting to be a deed of partition between two brothers, was unstamped :—*Held,* that it should be stamped as each sharer's copy of an instrument under Act X of 1862, Sch A, Art 54. NARAYAN RAGHUNATH *v.* KASHINATH . I. L. R. 8 Bom. 299

1. ——— Sch. B, Art. 11—*Suit for declaration of title to portion of land paying revenue to Government—Interest in land.* A suit for the declaration of title to a fractional share in a zamin-

according to the provisions of note (*e*), Art. 11 Sch. B, Act X of 1862. RAJ CHUNDER ROY *v* CHUNDEE CHURN NAIK . . . . . 8 W. R. 437

2. ——— *Time for obtaining copy of decree.* The rule of circular No 31, dated 3rd October 1864, that the time allowed for obtaining a copy of judgment or decree shall not begin to count till the whole of the requisite pieces

STAMP ACT (X OF 1862)—*concld.*

——— Sch. B, Art. 11—*concld.*

CHOWDHRY *v* ALI AZIM . . . 9 W. R. 138

3. ——— *Suit for resumption—"Revenue."* A suit to resume lands as

STAMP ACT (XXVI OF 1867).

See COURT FEES ACT, XXVI OF 1867.

STAMP ACT (XVIII OF 1869).

See GENERAL CLAUSES CONSOLIDATION ACT (I OF 1868), s. 3 . 7 Mad. Ap. 9

See STAMP DUTY.

1. ——— *Insufficiency of stamp.* The Civil Court is authorized, under Act XVIII of 1869, to receive the proper amount of stamp which should have been affixed on the plaintiff's pottah under the law in force when it was executed. MAHOMED RIJAH *v.* COLLECTOR OF CHITTAGONG

6 B. L. R. Ap 117 : 15 W. R. 116

2. ——— *Agreement executed both in England and India—Liability to stamp duty—Admissibility in evidence.* An agreement

I. L. R. 1 Mad.

3. ——— *Orders on tenants to pay rent to person to whom landlord has executed release.* Orders upon tenants to hold themselves

THAKOORNATH SAI . . . 25 W. R. 80

1. ——— s. 3, sub-s. (5)—*Bond—Definition* ... "bond" in

SUNKER GHOSE . . I. L. R. 8 Calc.

STAMP ACT (XVIII OF 1869)—*contd.*

——— s. 3—*contd.*

2. ——— *Entry of loan in account books.* Entries of loans in account books cannot be treated as bonds within the meaning of sub-s. (5) of s. 3 of Act XVIII of 1869 QUEEN *v.* BULDEO . . . . . 2 N. W. 453

3. ——— sub-s. (11)—*Conveyance.* An instrument which purports to convey two or more properties for a sum of money, composed of items described in the instrument as the values of those properties is simply a deed of sale coming under the definition of "conveyance" in Act XVIII

4. ——— *Sale-certificates—Conveyance—Mad Act VIII of 1845, ss. 35 and 40.* Certificates of sale issued under ss 35 and 40 of Madras Act VIII of 1865 are not conveyances subject to stamp duty. . ANONYMOUS 8 Mad. 112

5. ——— s. 3, sub-s. (15)—*Lease—Contract to pay sum of money in consideration of a grant* An engagement by a proprietor of land to pay to a superior a sum of money in consideration of a grant of the right to farm dues, in the nature of revenue, is a "lease" within the meaning of the General Stamp Act, 1869. COLLECTOR OF TANJORE *v* RAMASAMIER . . . I. L. R. 3 Mad. 342

6. ——— *Second lease altering first stamped and registered.* After a complete lease has been executed, stamped, and registered, if another document is prepared and executed with a view to alter the first, and substitute new terms so far as the rent is concerned, it requires, under the Stamp Act, to be itself stamped provided for a lease. BYJNATH DUTT JHA *v* PUTSOHEE DOBAIN . . . 20 W. R. 36

7. ——— sub-ss. (18) and (26) and Sch. I, Art 10—*Mortgage—Pledge by letters of*

May. This document bore a 2-rupee stamp. In September and October M obtained further advances from the plaintiffs in respect of other indigo, giving them similar letters of assignment

STAMP ACT (XVIII OF 1869)—*contd.*

——— s. 3—*contd*

was a stamp of 8 annas MORAN *v* MITTU BIBEE I. L. R. 2 Calc. 58

8. ——— sub-s. (25)—*Promissory note insufficiently stamped—Express contract* A suit on a promissory note payable on demand which was not stamped was *held* to have been rightly

ROY CHOWDHRY *v.* MADHUB CHUNDER GHOSE 21 W. R. 1

9. ——— *Promissory note —Bond* The defendant, having borrowed R50

shall pay interest at R1 per diem. *Held* (STUART, C J, dissenting), that such instrument was a "pro-

I. L. R. 3 All. 260

10. ——— and Sch. II, Art. 5—*Note or memorandum acknowledging debt—Promissory note —Insufficiently stamped document, admissibility in evidence of.* The plaintiff sold and delivered certain goods to the defendant. The defendant gave the plaintiff, in respect of the price of such goods, the following instrument: "Agra, 14th

at 12 per cent. per annum from the 14th November ber 1877 to the date of suit. *Held*, by STUART, C J, and PEARSON, OLDFIELD, and STRAIGHT JJ, treating the suit as one for a debt, that although such instrument was not admissible in evidence as a promissory note, as it was insufficiently stamped, it was nevertheless admissible as

STAMP ACT (XVIII OF 1869)—*contd.*

——— s. 3—*concld.*

See BENARSI DAS *v* BHIKARI DASS
I. L. R. 3 All. 717

GOPAL CHAND MARWAREE v MOHOKOOM KOOAREE . . . . . **I. L. R. 3 Calc. 314**

and AKBAR *v.* KHAN . **I. L. R. 7 Calc. 256**

——— s. 4—*Document executed in foreign territory.* An unstamped instrument executed in foreign territory, and valid under the law of the place of execution, is admissible as evidence in Court of British India, provided it does not affect any property situated in British India (Act XVIII of 1869, s. 4). NARAYAN SADASHIV *v* BAPUJI BALAL . . . . . **7 Rom. A. C. 140**

——— s. 9—*Account stated—Interest*—Under Act XVIII of 1869, s 9 a one-anna stamp is the proper stamp for a document containing an account stated, and stipulating for payment of interest. GIRDHAR NARAN *v* UMAR AJU
I. L. R. 4 Bom. 326

1. ——— s. 18—*Admission in written statement and evidence. Quære* Although there have been decisions in the English Courts upon the Stamp Act which support the contention that a defendants' written statement and deposition may contain such an admission as renders it unnecessary for the plaintiff to put the written contract in evidence, yet do not the words of s. 18 of Act XVIII of 1869 prevent such a contention ? ANKUR CHUNDER ROY CHOWDHRY *v* MADHUB CHUNDER GHOSE
21 W. R. 1

2. ——— and Sch. I, Art. 14, and Sch. II, Art. 36—*Admissibility of unstamped document for collateral purpose* The plaintiff, as administrator of *D*, sued to recover from the defendants the sum of R3,000, alleging that, in February 1878, the said sum had been entrusted to defendant Nos 1 and 2 for investment on *D's* account, and had been advanced by them as a loan to defendant No. 3. The defendants alleged that the money was originally the property, not of *D* but of the plaintiff himself ; that he had made it over as a gift to his daughter *P*, by whom it had been lent to defendant No 3 and that defendant No 3 had duly repaid it to *P* In the defendants' written statement it was alleged that the gift to *P* had been made in the month of February 1878, and evidence to this effect was given at the trial At the trial, however, the defendants also alleged that in July 1878 the plaintiff had executed an instrument of gift of R3,000 to *P* and they produced a document, dated 3rd July 1878, purporting to be signed by the plaintiff, whereby he made over R3,000 to *P*, of which R1,000 was to be held by *P*, in trust for *D* during *D's* life, and to be paid back to plaintiff on *D's* death, and the remaining R2,000 were to be the property of *P* absolutely When tendered in evidence, the document was objected to as being [illegible]

STAMP ACT (XVIII OF 1869)—*contd.*

——— s. 18—*concld.*

of the document, and that its admission did not involve giving effect to it as operative between the parties to it. RUSTOMJI EDULJEE CROOS *v.* CURSETJEE SORABJEE CROOS . **I. L. R. 4 Bom. 349**

3. ——— *Document referred to as basis of suit inadmissible as being unstamped —Admissibility of other evidence.* Even if a document is not admissible as being unstamped, the plaintiff might recover on such part of the case as he could make out by other evidence (provided it is recoverable with reference to the law of limitation) notwithstanding that he had in his plaint referred to such document as the basis of his suit NOOR BIBEE *v* RUMZAN . . . **4 W. R. 198**

——— s. 19.

See STAMP ACT, 1879, s 26.
I. L. R. 3 Mad. 342

——— s. 20.

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS
I. L. R. 4 Calc. 213

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—EVIDENCE, MODE OF DEALING WITH
10 Bom. 406

1 ——— *Hundi—Insufficient stamp—Evidence—Penalty.* Insufficiently-stamped hundies cannot be received in evidence even on payment of a penalty under s 20 of Act XVIII of 1869. MOTHOORA MOHUN ROY *v.* PEARY MOHUN SHAW . . **I. L. R. 4 Calc. 259**
2 C. L. R. 409

2. ——— *Bond written partly on one and partly on another paper—Deficiency in stamp* A bond written partly on one and partly on another stamp paper the two aggregating the proper stamp leviable, was tendered in evidence without the certificate required by s. 49 of the Stamp Act. *Held,* that there was a deficiency in the stamp on the bond, and therefore a liability to the penalty under s 20 The deficiency must be calculated to be equivalent to the difference between the value of the stamp on one of the papers, and the whole value chargeable. ANONYMOUS . **7 Mad. Ap. 36**

3. ——— *Lost deed proved* [illegible]

RUSSICK CHUNDER NEOGY . [illegible]

4. ——— and s. 22—*Admission of unstamped document on payment of penalty.* Where a Subordinate Judge admitted an unstamped document after payment of stamp duty and penalty [illegible]

STAMP ACT (XVIII OF 1869)—*contd.*

——— s. 20 and s. 22—*concld*

stamp duty:—*Held*, that the certificate was not such as was contemplated by s 20, and did not make the document admissible; and that the Judge ought, under s. 22, to have impounded the document and sent it to the Collector PROSUNNO NATH LAHIREE *v* TRIPOORA SOONDUREE DABEE

24 W. R. 88

——— s. 24 and ss. 29 and 44—*Evasion of stamp law—Promissory note not duly*

powered, may be convicted by the Magistrate under s. 44. If an instrument called a promissory note or other document of that kind and as such liable to the duty imposed by the Act is not duly stamped the person subject to penalty is the person who makes it and not the person in whose favour it is made The Magistrate of the district should not himself try a case in which he instituted the prosecution as Collector QUEEN *v* NADI CHAND PODDAR . 24 W. R. Cr. 1

1. ——— s 28—*Document requiring anna stamp—Stamp affixed subsequently to execution of document* A document which by law requires a one-anna adhesive stamp to be affixed must be received in evidence, if, at the time of its being tendered, it bears the requisite stamp, even though such stamp has been affixed subsequently to the execution of the document BHAURAM MADAN GOPAL *v* RAMNARAYAN GOPAL . . . . . 12 Bom. 208

NOOR BIBEE *v* RUMZAN . 24 W R. 198

KALI CHURN DAS *v* NOBO KRISTO PAL

9 C. L. R. 272

2 ——— *Power to receive*

3. ——— *Promise to pay money and grain—Promissory note.* A document which contains a promise to pay money and a cer- ... note for ... 69, s. 28.

... Mad. 296

4 ——— *Promissory note*

STAMP ACT (XVIII OF 1869)—*contd.*

——— s. 28—*concld.*

s c NUNDUN MISSER *v* CHITTUR BUTEE

21 W. R. 446

5. ——— *Promissory note—Insufficiency of stamp* The following document bearing a one-anna stamp, was admitted by the Court of first instance and accepted by the lower Appellate Court as bearing a sufficient stamp: "My dear sister *M*—Be it known that R750 on account of the former note of hand and R225 of to-day's date, amounting in all to R975, are due to you by me I promise to pay you this sum in two months, I am already negotiating for a loan from another place. Rest assured no harm will come to your money, and for your satisfaction and security this note of hand is given to you Keep this as a voucher and consider the former note of no use. At the time of payment this note is to be returned to me." *Held*, that the document was a promissory note, and should have borne a stamp of 12 annas. The deficiency in the stamp could not have been supplied when the document was offered in evidence MAKBUL AHMAD *v.* IFTIKHARUNNISSA BEGUM

7 N. W. 124

6. ——— *Document on one-anna stamp—Admissibility in evidence on payment of penalty* A promissory note upon a one-anna stamp dated in August 1870 provided for the repayment of the amount mentioned in it on or before the 12th July 1871 In a suit upon the promissory note:—*Held*, that it was not receivable in evidence upon payment of a penalty. CHINNA PERUMAL NAICKER *v* ANNAMAL . . 7 Mad. 361

1. ——— s. 29—*Prosecution by Collector—Intention to evade payment of stamp-duty.* A

2. ——— *Intention to evade payment of duty—Donor and donee of deed of gift.* Intention to evade payment of stamp duty is not an essential ingredient in the offence described in s 29 of Act XVIII of 1869. *Held*, that the donor

STAMP ACT (XVIII OF 1869)—*contd.*

—— s. 29—*concld.*

under a deed insufficiently stamped was properly convicted, but that the donee had committed no offence under the section. ANONYMOUS
6 Mad. Ap. 5

—— ss. 34 and 41 and Sch. II, Arts. 5 and 20—*Collateral instrument—Policy of Insurance—Assignment and re-transfer by endorsement.* A policy of insurance bore three endorsements: the first, an assignment of all the right, title, and interest of the assured to the P Bank; the second, a retransfer from the P Bank to the assured, all claims having been satisfied; the third, an assignment by the assured similar to the first assignment to Messrs. *B R S & Co* *Held*, by MARKBY and AINSLIE, *JJ.*, that the first and third endorsements were liable, as collateral instruments under Sch. II, Art. 20, of the General Stamp Act, to a stamp of one rupee, and that the second endorsement was not chargeable with stamp duty. *Held*, by GARTH, *C. J.*, that none of the endorsements were chargeable with duty. *In the matter of* THOMPSON'S POLICY . . . . I. L. R. 3 Calc 347

—— ss. 39-40—*Promissory note—Evidence.* A promissory note, not payable on demand, executed on unstamped paper, was brought to a Collector, under s. 39 of Act XVIII of 1869, for adjudication as to the proper stamp, who, upon the payments provided in that section having been made, made the endorsement thereon provided in that section

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GRIDHARI DAS *v* JAGAN NATH
I. L. R. 3 All. 115

—— s. 43.

See COLLECTOR . I. L. R. 2 All. 808

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—STAMP ACT, 1869.
I. L. R. 3 Calc. 622

1. —— Sch. I and Sch. II, Art. 11—

of eight tin of ten seers each, or to bazar maunds nett, as usual, delivery to be given and taken in all twelve months, as it is prepared, by instalments of forty to sixty cases at a time from my manufactory, commencing from this day. Cash on delivery of each lot. I engage not to sell any hogs' lard to any

STAMP ACT (XVIII OF 1869)—*contd.*

—— s. 43—*concld.*

notice in writing, you must render yourselves similarly liable to a penalty of R5,000 as and by way of liquidated damages." This latter was signed by the defendant, and, as the plaintiffs alleged, formed the contract between them. The letter bore a stamp of one anna. In an action for a breach of the contract, it was tendered in evidence by the plaintiffs, and objection was taken to it that it was insufficiently stamped and that it required an *ad valorem* stamp as

2. —— *Letter assigning chose in action out of British India.* A letter by

8 Bom. O. C. 108

1. —— s. 43, Art. 15—*Conveyance—Shares in public company—"Amount."* No *ad valorem* stamp duty is payable under Act XVIII of

that Act, signifies the sum total, or amount of money, forming the consideration, and the words "or secured" apply only to cases of mortgages and the like, not to an out-and-out conveyance. *In the matter of* PORT CANNING LAND COMPANY
16 W. R. 208

2. —— *Conveyance—Indemnity bond.* Where a document, purporting to be a conveyance, and for only one consideration, contains word which merely express, though very informally, the usual covenants for title which every properly-drawn English conveyance contains, those words cannot be considered as constituting an indemnity bond, so as to render the document liable to stamp duty as an indemnity bond in addition to stamp duty to which it is liable as a conveyance. ANONYMOUS . I. L. R. 1 Mad. 133

1. —— Sch. II, Art. 5—*Adjustment of account* An adjustment of account is not admissible in evidence unless stamped with a one-anna stamp. TARINEY CHURN NANDY *v.* ABDUR ROHOMAN
2 C. L. R. 346

2. —— *Balance of running*

24 W. R.

3. —— *Note or memorandum balancing an account.* On the 9th October 1875

STAMP ACT (XVIII OF 1869)—*contd.*

———— Sch. II, Art. 5—*concld.*

the book containing the accounts between the plaintiff and defendant kept by the plaintiff was examined by the parties and a balance was struck in the plaintiff's favour which was orally approved and [illegible]

[illegible]

RAM *v.* RAM PRASAD . I. L. R. 2 All. 641

4. ———— *Hath-chitta—Balance of accounts* A *hath-chitta*, drawn up by only one of two parties to a money transaction, and purporting to represent the balance of accounts between them but not assented to in any way by the other party, is not such a document as is contemplated by Art. 5, Sch. II of the General Stamp Act, and does not require to be stamped KOONJO MOHUN DOSS *v.* KRISHNA CHUNDER SHAHA

25 W. R. 361

5. ———— *Stamp on entry* [illegible] When an account in a *hath-chitta* [illegible]

[illegible]

to each entry showing an advance, such an entry is not a note or memorandum whereby any debt is acknowledged to be due, and does not require a stamp under Art. 5, Sch. II of Act XVIII of 1869. BROJENDER COOMAR *v.* BROMOMOYE CHOWDHRANI I. L. R. 4 Calc. 885 : 3 C. L. R. 520

BROJO GOBIND SHAHA *v.* GOLUCK CHUNDER SHAHA . . . . I. L. R. 9 Calc. 127

———— Art. 5 and Art. 11.

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS . I. L. R. 4 Calc 213

———— Art. 7—*Bank memorandum—Receipt.* A bank memorandum informing one of their customers that money has been paid to his account by a third person, and has been credited to that account, does not require to be stamped under Art 7, Sch. II of Act XVIII of 1869. *In the matter of* ACT XVIII OF 1869, *and of the* UNCOVENANTED SERVICE BANK

I. L. R. 4 Calc. 829 : 3 C. L. R. 597

1. ———— Sch. II, Art. 11—*Agreement to remunerate pleader for his services* Where a pleader is to receive a remuneration under a special agreement contained in his vakalatnama, or in a separate document, the document containing the agreement must bear a stamp of adequate value. NUTHOO LALL *v.* BUDREE PERSHAD 3 Agra 286

STAMP ACT (XVIII OF 1869)—*contd.*

———— Sch. II, Art. 11—*concld*

2. ———— and s. 14—*Agreement—Bond.* When an instrument consisted of two parts the [illegible]

[illegible]

promise abandoned his claim for grain, he could recover upon it the principal sum advanced with interest CHIMNAJI *v.* RANU

I. L. R. 4 Bom. 19

3. ———— *Bond—Agreement with covenant sounding in damages* An instrument containing a covenant to do a particular act, the breach of which is to be compensated in damages, is not a bond, and requires an 8-anna stamp only. Remedies on such an instrument and on a bond discussed. GISBORNE & Co *v* SUBAL BOWRI

I. L. R. 8 Calc. 284 : 10 C. L. R. 219

4. ———— and Sch. I, Art. 5—*Bonds for performance of contracts of public works.* A contract taken by the Department of Public [illegible]

[illegible]

5. ———— *Agreement* A postscript to a document contained a stipulation that the defendant should return two promissory [illegible]

[illegible]

6. ———— *Receipt for money* [illegible]

[illegible]

———— Sch. II, Art. 13—*Power of attorney under Registration Act, 1871, s. 33.* For a power-of-attorney executed under the provisions of s. 33 (a) of the Registration Act of 1871 (Act VIII of 1871), a stamp of 8 annas is sufficient under Art 13, Sch. II of the General Stamp Act (XVIII of 1869). *In re* KESHAV KASHINATH . 9 Bom. 43

———— Art. 15—*Schedule appended to deed of sale—Collateral instrument.* A schedule appended to a deed of sale does not require to be stamped under the provisions of Act XVIII of 1869. ANONYMOUS . . . . . . 6 Mad. Ap 36

1. ———— Art. 32—*Power-of-attorney.* An instrument authorising a person to receive on behalf of another such sums as should become due in the couse of the execution of a certain work is not

STAMP ACT (XVIII OF 1869)—*concld.*

——— Art. 32—*concld.*

an assignment of money, but a power-of-attorney, and is covered by a stamp of R8, whatever may be the amount recoverable under it. BHAGVANDAS KISHORDAS *v.* ABDUL HUSEIN MAHOMED ALI

I. L. R. 3 Bom. 49

2. ——————— *Vakalatnama.* Vakalatnama authorising a pleader to receive, [illegible]

S C. *In the matter of* ACT XXIII OF 1869

3 C. L. R. 13

——— Art 38—*Instrument of transfer.* The accused was prosecuted under Act XVIII of 1869, s. 29, for executing a document on insufficiently stamped paper The document recited that "whereas *A* and *B* have sold to me 2 gundas 3 cowries of land under a kobala, dated the 9th of [illegible]

heirs shall have no objection or contest whatever in regard to the mutual exchange of lands between the vendors and me, the purchaser ; hence I have executed this chitti by way of conveyance or deed of exchange which may be of service when required" This document bore a stamp of 8 annas, and it was executed only by the accused and presented by him for registration. *Held,* that the document was an instrument of transfer within the meaning of Art 83, Sch II, Act XVIII of 1869. EMPRESS *v.* DWARKANATH CHOWDHRY . I. L. R. 2 Calc. 399

STAMP ACT (I OF 1879).

See STAMP DUTY

——— s. 2, cl. 13—*Specified property* An agreement was made between certain persons to transfer the future surplus profits of their respective trades to a trustee, in order that the trustee should hold the fund so to be created on certain trusts declared in the agreement. *Held,* that the fund [illegible]

——— s. 3.

See PROMISSORY NOTES, FORM OF.

I. L. R. 16 Mad. 283

1. ——————— *Hundi stamped with adhesive stamps—Admissibility in evidence—"Duly stamped"* The words "duly stamped" in s. 3 of the Stamp Act signify "stamped or written upon paper bearing an impressed stamp." GISBORNE & Co *v* SUBAL BOWRI

I. L. R. 8 Calc. 284 : 10 C. L. R. 219

STAMP ACT (I OF 1879)—*contd.*

——— s. 3—*contd.*

2. ——— Sub-s. (4)—*Bond—Promissory note.* Where an instrument bearing the date the 24th September 1881, stamped with an adhesive stamp of 1 anna, and attested, recited that an account was made up of the principal and interest due on a former bond executed by the defendant to the plaintiff, and that a certain sum was found due at the [illegible]

given in Act I of 1879, and should be stamped accordingly. BALKRISHNA TRIMBAK *v* GOVIND PAND NAIK . . I. L. R. 8 Bom. 297

3. ——————— *Agreement—Bond* [illegible]

instrument was ascertained to be less than R10, it was *held* to be properly stamped as a bond with a stamp of 2 annas. MAGANDAS KHEMCHAND *v.* RAMCHANDRA HIRAJI . I. L. R. 7 Bom. 137

4. ——————— *Bond.* *A* executed a document, by which he promised to pay on demand R16 to *B.* The writer of the document [illegible]

5. ——————— *Bond—Contract* [illegible] The defendant signed an agree- [illegible]

superintendent *Held*, that the instrument [illegible] by the defendant was an agreement merely and did not require to be stamped as a bond MADRAS RAILWAY CO. *v.* RUST . I. L. R. 14 Mad. 18

6. ——————— *Bond.* *R* executed to pay on [illegible]

[illegible] ENCE UNDER STAMP ACT, s. 49

I. L. R. 13 Mad. 147

7. ——————— *Khata in the name of the debtor, but in the handwriting of another—Bond—Acknowledgment.* A khata in the name of a debtor acknowledging the receipt of the amount advanced and bearing the signature of the writer

STAMP ACT (I OF 1879)—*contd.*

——— s. 3—*contd.*

of the khata as writer of it merely, *held* to be an acknowledgment only, and not a bond within the meaning of s. 3, sub-s. 4 (*b*), of the Stamp Act (I of 1879) DULABH VANMALI *v*. REHMAN JAMAL
I. L. R. 14 Bom. 511

8. ——— **and s. 61**—*Acknowledgment of debt in writing—Attestation by witnesses—Bond*

LAL SIRCAR *v*. QUEEN-EMPRESS
I. L. R. 22 Calc. 757

9. ——— *Bond—Promissory note—Attestation by witness* A document by which the executant promised to pay to the person named therein a certain sum of money on a certain date with interest is not "attested by a witness" *within the meaning of cl (b) of sub-s 4 of s 3 of* Act I of 1879, merely by reason of its bearing on the face of it a statement by the scribe of the document, that the document was correct and was written by his pen. REFERENCE UNDER STAMP ACT, s 49
I. L. R. 17 All. 211

10 ——— **and Sch. I, Art. 5**—*Court Fees Act, Sch II, Art 1 (b)—Petition to withdraw suit—Agreement—Bond* A petition, stamped as an agreement, having been presented to a district Court by the parties to a suit, informing the Court that they have entered into an agreement, whereby, *inter alia*, the defendant was bound to

the instrument was not a bond, but a petition to the Court, requiring a Court-fee stamp REFERENCE UNDER STAMP ACT, 1879 . **I. L. R. 8 Mad. 15**

11. ——— **and Sch. I, Art. 11**—*Promissory note—Bond—Impressed label—Impressed sheet—Rule 9 (a) of the Rules of Government of India of 26th February 1881.* By a document dated 8th March 1882, which purported to be a promissory note attested by three witnesses and written on an impressed lable of 2 annas, *A* promised to pay *B* before a certain date R135 *Held*, that the document was a bond and must be treated as unstamped for the purposes of s 34 of the Stamp Act, 1879 By a document, dated 23rd June 1880, stamped with an adhesive stamp of one anna, purporting to be a promissory note attested by two witnesses, *A* promised to pay R56 to *B* or order on demand. *Held*, that the document was not a

STAMP ACT (I OF 1879)—*contd.*

——— s. 3—*contd.*

bond, but a promissory note REFERENCE UNDER STAMP ACT, 1879 . . **I. L. R. 8 Mad. 87**

12. ——— **and sub-s. (13)**—*Bond—Mortgage—Stamp Act, 1879, ss. 7, 26, and Sch I, Arts. 13, 44* A grower of sugarcane executed a deed whereby he borrowed a sum of R25 as "earnest money" and covenanted to deliver to the lender on certain date 21 maunds of rab (unrefined sugar) upon which he was to receive a profit of 9 annas per maund over and above a price to be thereafter fixed at a meeting of growers He further covenanted as follows "If the supply of the rab be less than the fixed quantity, and the money still remains due, then the said money thus due,

including the said profits" As collateral security, he hypothecated the produce of a field of sugarcane, the value of which was not stated. *Held*, by the Full Bench, that the instrument was a "mortgage-

Bench, that the proper stamp duty payable on the instrument was four annas *Held* by STUART, *C.J*, and STRAIGHT, *J*, that in estimating the stamp duty payable on the instrument, the amount stipulated to be paid by way of penalty in case of breach of the covenant to deliver the rab *must* be taken into account *Reference by Board of Revenue, N.-W. P, I. L R 2 All 654*, doubted, and *Gisborne* v. *Subal Bowri, I. L R 8 Calc. 284*, referred to by STRAIGHT, *J. Per* STUART, *C J.*, that for the purpose of estimating the stamp duty, the amount secured by the instrument was R25, the amount borrowed, *plus* R11-3, the amount to be paid to the borrower on the 21 maunds at 9 annas per maund, and that the additional profit, *i e*, the price fixed at the meeting of

non-delivery of the 21 maunds; and stamp duty was payable on his amount *In the matter of* GAJRAJ SINGH . . **I. L. R. 9 All. 585**

13. ——— **and s. 23**—*Bond—Interest.* A

STAMP ACT (I OF 1879)—*contd.*

——— s. 3—*contd.*

Held, that the amount secured by the bond was R200 and the bond must be stamped accordingly. S 23 of the Stamp Act (I of 1879) did not apply to the instrument SAMBHU CHANDRA BEPARI *v* KRISHNA CHARAN BEPARI . I. L. R. 26 Calc. 179

14. ——— and Sch. I, Art. 13—*Bond—At-*

should be entitled to sell the debentures, and also to recover damages, and also to discontinue payments of the above instalments. It was also provided that the company should be at liberty to retain £40,000 as compensation for risk, expenses, etc.

1879. REFERENCE UNDER STAMP ACT, S. 46

I. L. R. 15 Mad. 193

——— s. 3, sub-s. (6)—*Order for payment of money of a person not a banker* The plaintiff agreed to lend money to the defendant for payment of his trade debts, etc.

defendant that the "chits," being cheques or bills

v. VELJBHUKHAN PARABHURAM

I. L R. 17 Bom. 684

1. ——— s. 3, sub-s. (9)—*Conveyance —Transfer by trustee to cestui que trust—Release.* Where three executors of a will purported to convey

2. ——— and sub-ss (11) and (19)—*Deed of family arrangement* By a deed of family

... of a settlement, nor an instrument of partition within the meaning of Act I of 1879 *In the matter of* THE MAHARAJAH OF DURBHANGAH

I. L. R. 7 Calc. 21

STAMP ACT (I OF 1879)—*contd.*

——— s. 3—*contd.*

3. ——— *Conveyance—Transfer of land in pursuance of compromise.* A

1. ——— s. 3, sub-s. (10)—*Unduly stamped —Rule 5 (e) of the Government of India, 3rd March 1882 (attestations of plain sheets subjoined to stamped documents), ultra vires* Of the rules, dated 3rd March 1882, issued by the Governor-General in

dissenting), that the rule is *ultra vires* and inoperative for the purpose of declaring an instrument,

I. L. R. 6 Mad.

2. ——— *Duly stamped—Document issued without endorsement required by rules passed and published under ss. 55 and 57.* The omission of a stamp vendor to endorse on a stamped paper the particulars required by rule (9) of the revised rules published under ss. 55 and 57 of the Indian Stamp Act, 1879, by the Government of Madras

3. ——— *Instrument professing to effect a partition ultra vires of the executants —Instrument of partition.* Persons incorrectly purporting to be co-owners of certain property agreed to divide it in severalty by written documents *Held*, that the arrangement fell within the definition of "instrument of partition" in the Stamp Act, 1879. REFERENCE UNDER STAMP ACT, 1879

I L. R. 12 Mad. 198

4. ——— *Instrument "duly stamped"—Rule 5 (b) of the rules made by the Governor-General in Council under Notification No 1288 of 3rd March 1882.* The absence of the certificate required by rule 5 (b) of the rules, dated 3rd March 1882, issued by the Governor-General in Council, under ss. 9, 15, 17, 32, 51, and 56 of the Stamp Act (I of 1879), does not make the document in question not "duly stamped" within the intention of the Stamp Act. QUEEN-EMPRESS *v.* TRAILAKYA NATH BARAL

I. L. R. 18 Calc. 39

5. ——— *Promissory note not chargeable with duty of 6, 10, or 12 annas—Such promissory note written on impressed sheet of proper*

STAMP ACT (I OF 1879)—*contd.*

—— s. 3—*contd.*

value bearing the word "hundi"—Note duly stamped—Rules by Governor-General in Council under s. 9 of Stamp Act—Notification No. 1288 of 3rd March 1882, rules 3, 4, 6—Notification No 2955 of 1st December 1882, rule 6 A. The effect of Notification No. 2955 of the 1st December 1882, amending the rules made by the Governor-General in Council under s. 9 of the Stamp Act (I of 1879) and published in Notification No 1288 of the 3rd March 1882, is not to prohibit all promissory notes except those chargeable with a duty of 6, 10, or 12 annas being written on impressed sheets bearing the word "hundi." A rule which says that certain promissory notes shall be written on impressed sheets bearing the word "hundi" cannot be interpreted as enacting that other promissory notes shall not be written on impressed paper of the proper value if it happens to bear the word "hundi." A promissory note for an amount not exceeding R200, payable otherwise than on demand, but not

6. —— and s. 34—*Rules 4 and 6 of rules made under s 9 of the Stamp Act—Promissory note—*

BARAYALU . . . I. L. R. 14 Mad. 32

1. —— s. 3, sub-s. (11)—*Partition deed*

2. —— *Award of arbitrators for division of family property—Written agreement to effect division according to the terms of the award, effect of—Division of the property in severalty—Partition deed.* The co-sharers in an undivided Hindu family having under a written instrument agreed to divide the family property according to the terms of the award passed by the arbitrator :—*Held,* that the instrument was an agreement to divide the property in severalty, and was therefore a partition deed within the definition

STAMP ACT (I OF 1879)—*contd.*

—— s. 3—*contd.*

in sub-s. (*11*) of s. 3 of the General Stamp Act (I of 1879) *In re* VASANJI HARIBHAI

I. L. R. 15 Bom. 677

3. —— and s. 29, and Sch. I, Art. 37—*Instrument of Partition—Computation of value of property Held,* that the words "the final order" used in the definition of an "instrument of partition" in Act I of 1879 mean not the order authorizing a partition to proceed, but the order passed after the partition has been made declaring the various allotments of land Also, that the stamp

spect of that portion of it allotted to the applicant for partition Also that, for the purposes of that Act, the value of the property is to be computed with reference to its market value and not with reference to the Court Fees Act, 1870 REFERENCE BY BOARD OF REVENUE

I. L. R. 2 All. 664

4. —— and s. 29(e)—*Instrument of*

family One of the documents contained a clause to the effect that the executant had no further claim on property of the family :—*Held,* that the document should be stamped as instruments of partition, each member paying according to the share taken by him under the partition. REFERENCE UNDER STAMP ACT, s 46

I. L. R. 15 Mad 184

1. —— s. 3, sub-s. (13)—*Definition of "mortgage"—Transfer of Property Act (IV of*

4 C. W. N. 524

2. —— *Mortgage—In-*

Held, that the agreement was a mortgage as defined by the Stamp Act. REFERENCE UNDER STAMP ACT, s 46 . . . I. L. R. 11 Mad. 39

3. —— *Lease—Mortgage* An instrument, therein described as a lease, was executed in consideration of one hunderd and twenty rupees, and it provided that the party paying that sum should remain in possession of certain

STAMP ACT (I OF 1879)—*contd.*

———— s. 3—*contd.*

land for twelve years, but contained no provision for repayment of that sum or for the payment of rent. *Held*, that the instrument was a usufructuary mortgage, and not a lease. REFERENCE UNDER STAMP ACT, s. 46 . I. L. R. 21 Mad. 358

1. ———— s. 3, sub-s. (15)—*Policy of insurance or memorandum of proposed insurance—Document on the face of it not contemplating necessity of any other formal document.* A document not being a mere "slip" or memorandum of a proposed insurance, and mentioning the sum for

assurers, and lastly, expressly guaranteeing payment of losses and claims settled under it, and which, on the face of it, does not contemplate the necessity of any other document of a more formal character being passed to the assured, requires to be stamped as a policy under sub-s (*15*), s. 3 of the Stamp Act (I of 1879). *In re* MARINE INSURANCE CERTIFICATE . . . I. L. R. 19 Bom. 130

2. ———— and s. 25—*Policy of insurance—Uncovenanted Service family Pension Fund, stamp on entrance certificate of.* An entrance certificate granted under the rules of the Uncovenanted Service Family Pension Fund is a life-policy within s. 3(5) of the Stamp Act for an amount not exceeding R1,000, and is therefore chargeable with a duty of 6 annas. Such an instrument is not within the scope of s 25 (*c*) of the Stamp Act REFERENCE UNDER STAMP ACT, 1879, s. 46

I. L. R. 19 Calc. 499

———— s. 3, sub-s. (17)—*Receipt—Memorandum of payment—Document containing no acknowledgment of payment.* *A* made a payment of R22 to *B* At *A's* request, *C* made a memorandum in writing to the following effect: "*B* has received R22," but affixed no stamp to it. He was charged and convicted, under s 61 of the Indian Stamp Act (I of 1879) for not affixing a receipt stamp to the memorandum *Held*, reversing the

and not a mere statement that money was received. *In re* JAMNADAS HARINARAN

I. L. R. 23 Bom. 54

1. ———— s. 3, sub-s. 19 (b)—*Settlement—Gift* The word "settlement," as defined in s. 3 of the Stamp Act, suggests the creation of a separate interest in favour of several persons who may have a legal or moral claim on the settlor or for whom he may desire to make a provision. *Held*, therefore, that where, because of natural affection, a person bestowed upon his sister and her son certain land, the document was liable to stamp duty as a gift and not as a settlement. REFERENCE UNDER STAMP ACT, 1879 . . . I. L. R. 7 Mad. 349

STAMP ACT (I OF 1879)—*contd.*

———— s. 3—*concld.*

2. ———— *Settlement—Gift.* An instrument whereby a life-interest in land is created with remainder to the settlor and his heirs is a settlement within the meaning of the Stamp Act. REFERENCE UNDER STAMP ACT, s. 46

I. L. R. 21 Mad. 422.

———— s. 5.

See POWER-OF-ATTORNEY.

I. L. R. 23 Calc. 187

———— s. 6—*Endorsement of consent of relative and co-sharer on deed of conveyance—Document completing transaction.* The document

endorsement of consent and the conveyance were several instruments employed to complete a transaction within the contemplation of s. 6 of the Stamp Act (I of 1879), and the consent ought to have been written on a separate stamp paper of the value of one rupee *In the matter of* HANMAPA

I. L. R. 13 Bom. 281

1. ———— s. 7, and s. 3, sub-s. (4), Sch. I, Art. 5—*Bond—Agreement with penalty in case of breach.* One of the clauses of an instrument by

being an agreement chargeable under that Act with a stamp duty of 8 annas:—*Held* (STUART, *C J.*, dissenting), that the instrument was chargeable, under s. 7 of that Act, with the stamp duty leviable on a bond for R5,000 *Per* STUART, *C.J.*—That

I. L. R. 2 All. [illegible]

2. ———— *Contracts or several loans of rice on a single bond—Construction.* Sixteen persons borrowed a quantity of rice from the plaintiff, and executed to him a bond for the debt, showing how much rice had been borrowed by each of them. They did not bind themselves to repay the entire debt jointly and severally. *Held*, that the instrument should be regarded as comprising sixteen distinct contracts, so as to fall within the purview of s. 7 of the Stamp Act (I of 1879), and should be stamped accordingly. SHABUDIN MAHOMED *v.* HIRNAK RAJNAK

I. L. R. 10 Bom. 47

3. ———— para. 2—*Stamp duty—Lease—Pottah—Mortgage.* By an instrument which recited

STAMP ACT (I OF 1879)—*contd*

——— s. 7—*contd.*

that *A* was indebted to *B* in the sum of two lakhs of rupees, and that *A* had taken a fresh loan of R2,59,000 from *B*, the former leased certain mouzahs to the latter for a term of twenty years, at a yearly rental R1,40,000 It was provided that,

found in pottahs On the question what was the proper amount of stamp duty leviable on the document :—*Held*, that, though the arrangement intended to be effected was partly a lease and partly an usufructuary mortgage, yet the instrument came within the provisions of s 7, para. 2, of the Stamp Act, and should be stamped as a mortgage only *In the matter of a reference from the* BOARD OF REVENUE UNDER S 46 OF THE GENERAL STAMP ACT. *Ex parte* HILL

I. L. R. 8 Calc. 254 ; 10 C. L. R. 33

4. ——— *Lease and mortgage combined in one document—Stamp Act (I of 1879), s. 3, sub-s. (13).* A zamindar leased certain land in his village to some cultivators at a rent of

294, referred to REFERENCE UNDER STAMP ACT, s. 49 . . . **I. L. R. 17 All. 55**

5. ——— and Art. 54—*Release—Debts—Annuity* *J* and *S* passed to their brother *E* an ... *J* and *S* relin... rty in favour

6 ——— *Instrument relating to "several distinct matters"—Consideration for lease being rent payable each month and one month's rent payable in advance to be repaid at*

instrument relates to only one matter, namely, the lease, and is not chargeable with duty as an instrument 'dealing with two distinct matters." REFERENCE UNDER STAMP ACT, s 61 (1) (1902)

I. L. R. 26 Mad. 473

——— s. 10—*Hundi* A hundi for a sum of R380, payable otherwise than on demand, cannot be stamped with an adhesive stamp The words "drawn or made out of British India" in cl. (*b*) of s. 10 of the Stamp Act of 1879 apply to the entire clause DEVAJI *v* RAMAKRISTNIAH

I. L. R. 2 Mad. 173

——— s 11—*Act II of 1899, s 12 (3)—Adhesive stamp—Cancellation* The mere drawing of two parallel lines without moreover a receipt stamp affixed to an instrument does not have the effect of cancelling it "so that it cannot be used again" within the meaning of the Stamp Act. VIRBHADRAPA *v* BHIMJI (1904)

I. L. R. 28 Bom. 432

——— s 11 and ss. 61, 62—*Instrument requiring to be stamped before or at time of execution—Non-cancellation of adhesive stamp—Sanction to prosecution* The first paragraph of s. 11 of

of the General Stamp Act. The accused was convicted under that section by the Deputy Magistrate, and the District Magistrate on appeal, holding that, upon the evidence, the conviction should have been for abetment and not for the principal offence, altered the finding accordingly to a conviction under s 109 of the Penal Code, read with ss 11 and 62 of the General Stamp Act *Held*, that the receipt to the salary bill in question was an instrument which

the offence which appeared to have been committed was one under the second paragraph of s. 61 ; but that, no sanction having been given by the Collector under s 69 for a prosecution under s. 61, it was not advisable to interfere further than by setting aside the conviction and sentence. QUEEN EMPRESS *v* RAHAT ALI KHAN

I. L. R. 9 All. 210

——— s 12 and s. 7—*Contract by principal and surety on same stamp paper, but separately written—Writing on the reverse of a stamp paper—Government notification under the Stamp Act, force of.* In a bond engrossed on a stamp paper of sufficient value, and dated the 19th April 1879, the contract of the principal was written first, and after his signature followed the contract of the surety, signed by the latter. The document commenced on

STAMP ACT (I OF 1879)—*contd.*

——— s. 12—*contd.*

the side other than that on which the stamp was impressed, and terminated on the side impressed with the stamp The stamp was not in any way defaced, nor was the paper so written as to admit of the stamp being used again. *Held*, that the bond constituted only one instrument, and was properly stamped, not being open to objection under ss. 7, 12, 13, and 14 of the Stamp Act, 1879 The construction of the words "on the face of the instrument," used in s 12 of Act I of 1879, considered. *Quære:* Whether certain Government notifications —to the effect that an instrument, commenced on the side of the paper other than that on which the stamp is impressed and completed on the side on which the stamp is impressed, is, under s 12 of Act I of 1879, to be treated as unstamped, and prohibiting writing on the reverse of an impressed stamped paper—are *ultra vires* as being more stringent than, and therefore inconsistent with, that Act ? DOWLATRAM HARJI *v* VITHO RADHOJI I. L R. 5 Bom. 188

1. ——— s. 13—*Suit on bond—Stamp, sufficiency of.* A bond stipulated that for the consideration of a loan of R80 the debtor should deliver to the creditor on a future day "800 arris of

adequately stamped. BHAIRAB CHUNDRA CHOWDHRI *v.* ALEK JAN . I. L. R. 13 Calc. 268

2. ——— and s. 34—*Money-bond—Endorsement of transfer.* The endorsement of transfer written on a simple money-bond duly stamped requires a stamp, and can be stamped under s 34 of the Stamp Act PRALHAD LAKSHMANRAV *v* VITHU . . . I. L. R. 17 Bom. 687

1. ——— s. 16 and ss. 11 and 34—*Hundi —Execution—Stamp affixed at time of execution and subsequently cancelled on delivery of hundi—Evidence, admissibility of* Where a hundi was

took place at that time as part of the same trans.

When applied to a document, the term "execution" means the last act or series of acts which completes it. It might be defined as formal completion. The contract on a negotiable instrument until delivery is incomplete and revocable. Until delivery, a hundi is not clothed with the essential

STAMP ACT (I OF 1879)—*contd.*

——— s. 16—*concld.*

characteristics of a negotiable instrument. BHAWANJI HARBHUM *v.* DEBJI PUNJA I. L. R. 19 Bom. 635

2. ——— "*Stamped at the time of execution*"—*Stamp Act (II of 1899)—Affixing and cancelling stamp immediately after signature—Letters Patent, cl. 12—Part of the cause of action—Promissory note payable in Madras or Secunderabad—Payments of interest in Madras—Jurisdiction.* A promissory note was executed in plaintiff's favour at Vizianagram, payable in Secunderabad or Madras. Payments of interest due on the note were made in Madras.

note was stamped at the time of execution, within the meaning of s. 16 of the Stamp Act (I of 1879). SURIJ MULL *v.* HUDSON (1900) I. L. R. 24 Mad. 259

1. ——— s. 24—*Conveyance—Consideration —Agreement to pay assessment until transfer is made in Collector's books—Relinquishment of title by mortgagor in favour of mortgagee.* Where under

the mortgagee purchaser in the Collector's books.— *Held*, that such an instrument was a conveyance of which the amount of the consideration calculated according to s. 24 of the General Stamp Act (I of 1879) was the original mortgage amount, *plus* the amount mentioned in the instrument. *Held*, also, that the instrument was an agreement to pay assessment until the land conveyed was transferred in the Collector's books, and as such should bear the additional stamp for an agreement, namely, eight annas. SINAPAYA *v* SHIVAPA I. L. R. 15 Bom. 675

2. ——— and Sch. I, Art. 16—*Certificate* ... on a certificate ... rt. 16, ... when ... e, it is ... tgage- ... Act.

debt within the meaning of ... REFERENCE UNDER STAMP ACT, 1879 I. L. R. 5 Mad. 18

3 ——— *Stamp on sale certificate—Property sold subject to a mortgage—Interest —Transfer of Property Act (IV of 1882), sub-s 5 (d), s 55.* Where property is sold subject to a mortgage or other charge, the payment of such mortgage or charge forms, under ordinary circumstances, part of the consideration-money for the

STAMP ACT (I OF 1879)—*contd.*

——— s. 24—*contd.*

the sale. *In the matter of* Act I of 1879. *In the matter of a reference to the* Board of Revenue I. L. R. 10 Calc. 92 13 C L. R. 164

4. — — *Certificate of sale —Purchase-money* Claims on property admitted by the parties or established by a decree of a Court should be entered in the certificate of sale and be computed as part of the purchase-money in ascertaining the amount of the stamp duty leviable on the certificate of sale Other claims should neither be entered in the certificate of sale nor computed as part of the purchase-money It is the duty of the purchaser to provide the stamp. *In re* Ramkrishna . . . I. L. R. 9 Bom. 47

5. ——— and Sch. I, Arts. 16 and 21 —*Certificate of sale of property sold by public auction under order of Court—Sale subject to mortgage or lien—Mortgage debt—Interest—Consideration* Where a certificate of sale, granted to the purchaser of property sold by public auction under an order of Court has expressly set out that such sale is made subject to the mortgage right of a third party, the principal sum (but not the interest) due at the

duty is the sum of the purchase-money and the principal money so due on the mortgage The certificate of sale therefore, whenever it is possible, should set out the exact amount that is due, at the time of the sale, in respect of the principal sum secured by the mortgage *Semble* It is otherwise if the mortgage be only recited in the proclamation of sale, and not expressly set out, as an existing incumbrance on the property sold, in the certificate of sale. Arrears of interest due on the mortgage are to be excluded from such calculation, since s. 23 of the Stamp Act—which enacts that " where interest is expressly made payable by the terms of

interest been made therein —applies as much in this case as if the document of transfer, on which the stamp duty was to be calculated, had been the document itself which stipulated for the payment of interest Nagindas Jeychand *v* Halalkhore Nathwa Gheesla . I. L. R. 5 Bom. 470

6. ——— *Mortgage lien—Certificate of sale—Sale in execution of decree* Where property is sold at a Court-sale subject

him Khan Musa Khan . I. L. R. 15 Bom. 532

STAMP ACT (I OF 1879)—*contd.*

——— s. 24—*concld.*

7. ——— and Sch. I, Art. 63—*Sale of leasehold property—Rent reserved not liable to ad valorem duty—Stamp-duty leviable only on the actual consideration-money—Stamp Act (II of 1899), ss 24, 25, Sch. I, Art. 63* Certain leasehold

Collector of Bombay referred to the High Court the question whether, under s 24 of the Stamp Act (II of 1899), the payment of the rent reserved by the deed should not be taken as part of the " consideration " in respect whereof the transfer was chargeable with *ad valorem* duty *Held*, that the *ad valorem* duty was only payable on the consideration actually mentioned in the conveyance (*viz*, the amount of the purchase-money Reference under Stamp Act, 1899 . I. L. R. 24 Bom. 257

——— s. 26.

See Mortgage Bond . 8 C W. N. 667

1. ——— *Lease—Amount of rent for first year unascertainable—Stamp Act, 1869, s. 19.* When the amount of rent payable for the first year cannot be ascertained in order to determine the proper stamp under Sch I, s 19 (b) of the General Stamp Act, 1869, for a lease, and more rent is recovered than the stamp affixed warrants, the right to recover the rent due for the subsequent years is not affected. In such a case sufficient effect is given to s 26 of the Stamp Act, 1879, by limiting the amount recoverable for the first year to the amount which the stamp will cover Collector of Tanjore *v* Ramasamier I. L. R. 3 Mad. 342

2. ——— *Act XXXVI of 1860, s. 14—Meaning of word " claimable "—Mortgage to secure future advances* The word "claimable " in s 26 of Act I of 1879 means " claimable

I. L. R. 31 Calc. 807

——— s. 31.

See Debtor and Creditor. I. L. R. 16 Mad. 85

——— s. 34

See Promissory Notes, Form of I. L. R. 8 Calc. 645

STAMP ACT (I OF 1879)—*contd*

——— s. 34—*contd.*

1. ——— *Unstamped "promissory note" executed when Stamp Act, 1869, was in force—Admissibility of, as a "bond" on payment of penalty.* An instrument which comes within the

authorised under proviso (*1*) of s. 34 of the Stamp Act, 1879, implies a punishment for neglect in failing to affix the proper stamp at the time of execution The word "chargeable" in the above proviso means chargeable under the Act in force at the date of the execution of the instrument NARAYANAN CHETTI *v.* KARUPPATHAN

I. L. R. 3 Mad 251

2. ——— *Unstamped transfer of mortgagee's interest, effect of—Re-transfer of interest—Award, effect of, on transfer—Unstamped instrument, admissibility of, in evidence—Finding of fact based on conjecture—Fraud* On the 17th September 1866 *G* gave *Z* an usufructuary mortgage of certain immoveable property to secure the repayment of R7,101, purporting to be advanced by *Z* As a fact, only R2,301 of that amount were actually advanced by *Z*, the balance R4,800, being advanced by *R*. In 1868 *Z* sold the mortgagee's interest in the deed of mortgage to *R* for R2,301, the transfer being by endorsement and not being stamped In April 1869 *G* transferred a portion of the mortgaged property to *A*. In September 1869 *R* sued to have such transfer set aside, claiming in virtue of the deed of mortgage and the transfer endorsed thereon On the 23rd September 1871 the Court of first instance refused to receive the transfer by endorsement in evidence and to proceed with the suit, because such transfer was not stamped On the 20th April 1872 *Z* executed a stamped transfer of the mortgagee's interest in the deed of mortgage in favour of *R* *R*, treating the

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STAMP ACT (I OF 1879)—*contd.*

——— s. 34—*contd.*

sued for proprietory possession ...

actually interested in the deed of mortgage ... and not *S*, and on this ground, as well as on other grounds, dismissed *S*'s suit. *Per* STRAIGHT, *J.*—That the transfer by endorsement of the deed of mortgage, notwithstanding such transfer was not stamped, transferred to *R* the mortgagee's interest in the deed; that such interest could not be re-transferred to *Z* except by a formal instrument ... as any other

suit instituted by *Z* would, strictly ... based, not on the deed of mortgage, but on the re-transfer; and that therefore, under these circumstances, and having regard to the fact that *Z* had not returned the R2,301 to *R*, *S* actually, though not ostensibly, based his suit upon a re-transfer of the mortgagee's interest in the deed of mortgage, ... was not stamped and for which he had not ... tly his suit ... award could

be still regarded as the person interested ... and *S* was therefore entitled to maintain the suit. SHANKAR LAL *v.* SUKHRAN . I. L. R. 4 All. 462

3. ——— *Promissory note—Acknowledgment* The plaintiff sued on two documents, signed by the defendant, each bearing ... of R203 ... de on the ... 1515 was ... iting, the ... n fall on whole amount of which ... the 3rd August." *Held*, that the documents were not acknowledgments, but promissory notes, ... were ... not ... 1879

I. L. R. ... 645

STAMP ACT (I OF 1879)—*contd.*

——— s. 34—*contd.*

s.c. MANICK CHUND *v.* JOMONA DASS
7 C. L. R. 88

4. ——— *Admissibility in evidence—Evidence as to time when stamped* When a document, which under the stamp laws requires to be stamped, is tendered in evidence, the only question for the Court is whether it bears a proper stamp at the time when it is tendered The Court is not bound, nor is it at liberty, to allow the parties to go into evidence to show at what time the document was stamped KALI CHURN DAS *v.* NOBO KRISTO PAL . . . . 9 C. L. R. 272

NOOR BIBEE *v.* RUMZAN 24 W. R. 198

BHAURAM MADAN GOPAL *v.* RAMNARAYAN GOPAL
12 Bom. 208

5 ——— *Suit on an unstamped promissory note—Evidence Act (I of 1872), ss. 65, cl. (b), and 91* The plaintiff sued to recover from the defendant the balance of a debt due on an unstamped note passed to him by the defendant for the consideration of R38. The note recited that the defendant had received the amount, and would repay it after three months from the date of its execution. The defendant admitted, by his written statement, execution of the note, and the receipt of R37 in the shape of paddy, but alleged that he had paid off the debt He also contended that the note, being unstamped, could not be admitted in evidence The plaintiff contended that the note was a bond and could be admitted on payment of the stamp duty and the penalty, under s 34 of the Stamp Act (I of 1879), which he offered to pay The Subordinate Judge was of opinion that the note in question was a promissory note, but the defendant's admission of the consideration enabled the plaintiff to sue, although the note itself was inadmissible On re-

evidence The admission contained in the defendant's written statement did not amount to an admission of the claim as for money lent The

ATMARAM BABAJI . I. L. R. 12 Bom. 443

STAMP ACT (I OF 1879)—*contd.*

——— s. 34—*contd.*

6. ——— *Suit on unstamped hundi—Admission of liability by defendant* In a suit brought upon two hundis, which were inadmissible in evidence for want of impressed stamps, the Judge allowed the claim, holding that the defendants' admission in their written statement rendered it unnecessary to put the hundis in evidence. *Held*, reversing the decree, that a hundi is "acted upon" within the meaning of s 34 of the Stamp Act where a decree is passed on it, whether proved or admitted, and that the Court cannot give effect to it in either case. CHENBASAPA *v.* LAKSHMAN RAMCHANDRA . . I. L. R. 18 Bom. 369

7 ——— *Unstamped balance of account—Evidence—Acknowledgment of liability—Limitation Act, 1877, s 19* Though an unstamped acknowledgment cannot be, within the meaning of s 34 of the Stamp Act, "acted upon" as an acknowledgment of a particular sum being due, still it may be used for the collateral purpose of showing an acknowledgment of an existing liability in respect of goods sold FATECHAND HARCHAND *v.* KISAN . . I. L. R. 18 Bom. 614

(*Contra*) MULJI LALA *v.* LINGU MAKAJI
I. L. R. 21 Bom. 201

8. ——— and ss. 17 and 33—*Act XXXVI of 1860, s 13—Act X of 1862, s 15—Unstamped document executed in 1852 out of British India—Penalty* A document comprising an assign-

stamping such a document executed out of British India It was sought in 1890 to use the document in Madras, but it was not stamped. *Held*, that no penalty could be levied upon it under the Stamp Act of 1879 REFERENCE UNDER STAMP ACT, s. 46
I. L. R. 14 Mad. 255

9. ——— and ss. 35 and 39—*Admission of unstamped document in evidence on payment of penalty—Necessity for production of original document* Where a Court has occasion to admit a previously unstamped document in

I. L. R. 18 All. 295

10. ——— *Penalty chargeable only on the original, unstamped, or insufficiently stamped instrument—Document tendered as secondary evidence not within the section and not admis-*

not, has not been produced. The clauses of that section deal with, and exclusively refer to the

STAMP ACT (I OF 1879)—*contd.*

s. 34—*contd.*

admission in evidence of original documents which have been either not stamped at all or have been insufficiently stamped. RAJA OF BOBBILI VENKATA SVETA CHALAPATI *v.* INUGANTI CHINA
I. L. R. 23 Mad. 49
L. R. 26 I. A. 262

VENKATA SVETA CHALAPATI *v.* INUGANTI BHAVAYYAMANI GARU . . 4 C. W. N. 117

11. ——— *Notice of allotment of shares not stamped—Evidence of notice of allotment.* A notice of allotment of shares in a Company, though not stamped, is admissible in evidence to establish the fact that notice of allotment had been given *In re Whitly Stule's Case,* [illegible]

12. ——— *Admission of document in evidence—Unstamped promissory note* [illegible]

and remanded the case for trial on the merits. [illegible]

being duly stamped. DEVACHAND *v.* HIRACHAND KAMARAJI . . . I. L. R. 13 Bom. 449

13 ——— *Inadmissibility of stamped document stamped after execution—Document not duly stamped.* A receipt (dated 1887) stamped subsequently to execution, but before production, in Court, was tendered in evidence. *Held,* that the document was inadmissible. S. 34 of Act I of 1879 requires instruments chargeable with duty to be "duly stamped," which in this case meant "*stamped before or at the time of execution,*" as laid down by s. 16 of the Act. JETHIBAI *v.* RAMCHANDRA NAROTTAM
I. L. R. 13 Bom. 484.

14. ——— *Instrument admitted as duly stamped—Appellate Court's power to question the admission—Bom Reg. XVIII of 1827, s. 10.* Where a Court of first instance has admitted [illegible]

document to be insufficiently stamped, it can only proceed under s. 50 of the Act. S. 34 of Act I of 1879 applies to instruments whenever executed, and must therefore be held to override the special provision of s 10 of Bombay Regulation XVIII [illegible]

I. L. R. [illegible] Bom.

15. ——— *Document proposing to borrow on certain conditions—Promissory note—Proposal—Contract Act (IX of 1872), s 4.* A letter containing a request to borrow a certain sum of money promising that the same should be repaid with interest on a certain day is not liable to stamp duty. It is not a promissory note, but a mere proposal under s. 4 of the Contract Act (IX of 1872) DHONDBAT NARHARBHAT *v.* ATMARAM MORESHVAR . . I. L. R. 13 Bom. 669

16. ——— *"Chargeable with duty"—Promissory note executed out of British India—Insufficient stamp—Stamp Act, ss. 5 and 18.* A suit upon a promissory note which had been [illegible] was dismissed on the [illegible] tamped, [illegible] nce, on [illegible] 4 of the [illegible] referred [illegible] —*Held,* [illegible] Act did not render the [illegible] it section [illegible] which is [illegible] provision of [illegible] executed out of British India to be stamped before it is sued on or used in Court, where the holder of the note has not done any of the acts referred to in ss. 5 and 18 of the Act, and, in consequence, the obligation to stamp has not arisen. MAHOMED ROWTHAN *v.* MAHOMED HUSIN ROWTHAN
I. L. R. 22 Mad. 337

17. ——— *Instrument admissible in evidence on payment of duty and penalty—Promissory note—Unconditional undertaking to pay money.* A letter was written in the following terms:—"In addition to R115 already received, R385 is also required. Please send it by the bearer Streenevasan. The amount will be returned with interest at 12 per cent. without delay." *Held,* that there was no unconditional undertaking on the

STAMP ACT (I OF 1879)—*contd.*

——— s. 34—*concld.*

face of the document to pay the money; that the undertaking was conditional on the amount being

I. L. R. 27 Mad. 1

——— s. 35

See Parol Evidence.
I. L. R. 30 Mad. 386

1. ——— ss. 37, 40—*Arbitration—award—Evading payment of stamp duty.* Six persons acted as arbitrators in a dispute between two of their fellow villagers, and delivered their award in writing. Subsequently the award was filed in evidence by one of the disputants in the civil suit in the Court of the Munsif of Cuttack, who, on the ground that the document bore no

Mahanty
I. L. R. 8 Calc. 859 : 10 C. L. R. 365

2. ——— *Duty and penalty*

ference under Stamp Act, 1879
I. L. R. 5 Mad. 394

3. ——— and ss. 33, 34, 35, 45, and 50—*Collector's decision that an instrument is*

is not duly stamped is not final and conclusive

STAMP ACT (I OF 1879)—*contd.*

——— s. 35—*concld.*

revision under s. 50. Haribai *v.* Krishnarva Gopal . . . I. L. R. 22 Bom. 632

1. ——— s. 39—*Deed of release—Endorsement on conveyance—Payment of deficient duty.* A deed of release was endorsed on a deed of conveyance for R100. The conveyance bore an impressed stamp for one rupee, but the endorsement was unstamped. *Held,* that the conveyance was valid, and that the release could be validated on payment of the deficient stamp duty and the penalty under s. 39 of the Stamp Act. Reference under Stamp Act, s. 46 . I. L. R. 11 Mad. 40

2. ——— *Lost document which is unstamped—Payment of penalty—Secondary evidence of lost document.* In the case of a lost document no penalty can be levied and secondary

Bhavayammi . . I. L. R. 17 Mad. 473

——— s. 41—*Fresh suit—Costs—Civil Procedure Code, 1882, ss. 13, 43.* The plaintiff in a suit upon a certain instrument not duly stamped was compelled to pay the amount of duty and penalty. The defendant was the person bound to bear the expense of providing the proper stamp for such instrument. The plaintiff, with reference to s. 41 of the Stamp Act, 1879, sued the defendant to recover such amount. *Held,* that such amount

——— s. 49—*Power of reference to High Court.* A bail-bond was executed to a District Munsif, who expressed no doubt as to the amount of duty to be paid and made no application to have the case referred. The District Judge referred the case to the High Court. *Held,* that the District Judge was not authorized to make the reference. Reference under Stamp Act, s. 49
I. L. R. 11 Mad. 38

1. ——— s. 50—*Power of Appellate Court as to insufficiently-stamped documents admitted in lower Court.* Where a document has been admitted

2. ——— and s. 3, cl. (1)—*Unstamped document admitted by original Court on payment of duty and penalty—Power of Appellate Court to review such admission.* Where the Court of first instance has, on payment of the prescribed duty and penalty, admitted an unstamped document as evidence, under s. 3, proviso 1, of Act I of 1879, a superior Court sitting in appeal has no jurisdiction to review the lower Court's proceedings in so far as they concern such admission, except in the case

STAMP ACT (I OF 1879)—*contd.*

——— s. 50—*concld.*

provided for by s. 50 of that Act. PUNCHANUND DASS CHOWDHRY *v.* TARAMONI CHOWDHRAIN
I. L. R. 12 Calc. 64

3. ——— *Collector, power of—Reference to High Court—Decision of Provincial Small Cause Court admitting insufficiently stamped document in evidence. Semble* A Collector is entitled under s 50 of the Stamp Act to refer to the High Court the decision of a Provincial Small Cause Court admitting in evidence an insufficiently stamped instrument on payment of duty and a penalty. REFERENCE UNDER STAMP ACT, s. 50
I. L. R. 15 Mad. 259

1. ——— s. 51—*Application for allowance for spoiled stamps—Power of Collector as to inquiry—Transfer of duty to Deputy Collector—Charge of false evidence—Penal Code, ss 181, 193.* S. 51, Ch. VI of Act I of 1879, enacts that, "subject to such rules as may be made by the Governor General in Council as to the evidence which the Collector may require, allowance shall be made by the Collector for impressed stamps spoiled in the cases hereinafter mentioned, etc" According to a rule made with reference to that section, "the Collector may require every person claiming a refund under Ch. VI of the said Act, or his duly authorized agent, to make an oral deposition on oath, etc." *Held*, therefore, that the Collector himself is [illegible]

applications and he cannot delegate [illegible]

[illegible] produced by the applicant on their oaths, and consequently, in reference to the statements of such witnesses, no charge under s 181 or s 193 of the Penal Code was sustainable EMPRESS *v.* NIAZ ALI . . . . . I. L. R. 5 All. 17

2. ——— *Mortgage-deed stamped, but not sued* A mortgage-deed, which [illegible]

[illegible] instrument was stamped, but not registered; and on its appearing that the amount of the debts in question exceeded the sum named the intended mortgagee refused to carry out the transaction, and the executants executed a deed of conditional sale of the same premises in favour of another. *Held*, that the stamp duty paid on the mortgage could be refunded under Stamp Act (I of 1879), s 5 (*d*) (6). REFERENCE UNDER STAMP ACT s. 46
I. L. R. 16 Mad. 459

3. ——— *Allowance for spoiled stamps—Mistake made when using stamped*

STAMP ACT (I OF 1879)—*contd.*

——— s 51—*concld.*

paper. S. 51 (*a*) of the Stamp Act, which permits an allowance being made for spoiled stamps, applies only to cases of accidental spoiling of the paper of which the stamp is made, and does not cover cases of the use of the paper in an ordinary way, in which a mistake has been made. NARASIMHA CHARYULU *v.* APPA RAU
I. L. R. 18 Mad. 122

4. ——— *Spoiled stamp—Accidental injury to stamp.* The purchaser at a Court-sale presented a stamped paper for the engrossment of the sale-certificate. The stamp was inadvertently punched by some officer of the Court, but the paper was used as intended and delivered to the purchaser. Subsequently a Deputy Collector, treating the certificate as unstamped, levied the stamp duty together with a penalty. *Held*, that the document was duly stamped, and that the amount levied should be refunded. REFERENCE UNDER STAMP ACT, s. 46
I. L. R. 18 Mad. 235

5. ——— and ss. 3, 31—*Allowance for spoiled stamps* Allowance for spoiled stamps may be made under s 51 of the Stamp Act when a stamped instrument has been endorsed by the Collector under s 31. REFERENCE UNDER STAMP ACT, s. 46 . . . I. L. R. 11 Mad. 37

——— s. 61.

See ABATEMENT . I. L. R. 8 All. 18

1. ——— s. 61 and ss 3 (*10*) and 57—*Rules of Governor-General, 3rd March 1882, 5 (e)* [illegible] ...*ng on re-* [illegible] the power [illegible] the Stamp [illegible] uncil made [illegible] 3rd March [illegible] 5 (*e*) which [illegible]

complete writing of such *instrument*, provided that in every such case the side of the sheet which bears the stamp must be covered by a substantial part of the instrument before any part of the latter can be written on the plain paper joined to such sheet Provided, further, that the part of the instrument written on the plain paper must be [illegible] marks of all the per- [illegible]

paper, so as to make it an offence under s [illegible] if they did so write REFERENCE UNDER STAMP ACT, 1879 . . . I. L. R. 7 Mad. 176

2 ——— *Promissory note—Insufficient stamp—"Accepting."* The term "accepting" used in s 61 of the Stamp Act, 1879,

STAMP ACT (I OF 1879)—*contd*

——— s. 61—*contd.*

does not mean "receiving," but "executing as acceptor." To receive a promissory note not duly stamped and put it in suit does not constitute an offence under s. 61 of the Stamp Act, 1879 QUEEN *v.* GULAM HUSSAIN . I. L. R. 7 Mad. 71

3. ——— and s. 64—*Receipt—Acknowledgment by letter* Where the receipt of money exceeding R20, in satisfaction of a debt, is acknowledged by letter without a receipt stamp being affixed, the writer is liable to punishment under s 61 of the Stamp Act, 1879 REFERENCE UNDER STAMP ACT, 1879 I. L. R. 8 Mad. 11

4. ——— *Person receiving an under-stamped promissory note—Person executing note* Under s 61 of Act I of 1879, the "person accepting" a promissory note not duly stamped is the person who executes such note as acceptor, not a person who merely receives the note The mere receiver of an unstamped or insufficiently-stamped promissory note is not as such liable to any penalty

abettor

71, Queen

1, Empress

Empress v

115, referr.

5. ——— *Memorandum of payment—Document containing no acknowledgment of payment not a receipt—Stamp Act (I of 1879), s 3 (17).* A made a payment of R22 to B At A's

for not affixing a receipt stamp to the memorandum *Held* (reversing the conviction), that the memorandum was not a receipt To constitute a receipt within the meaning of s 3 (*17*) of the Stamp Act, there must be an acknowledgment, either express or implied, of the receipt, and not a mere statement that money was received *In re* JAMNADAS HARINARAN . . . I. L. R. 23 Bom. 54

6. ——— and ss. 37 and 40—*Offence*

PALANI . . . . I. L. R. 7 Mad. 501

7. ——— and ss. 37, 40 and 69—*Offence under Stamp Act—Execution of unstamped document—Sanction by Collector to prosecute—Procedure—Abetment.* A executed to B on plain

STAMP ACT (I OF 1879)—*contd.*

——— s. 61—*contd*

upon B to pay the duty and penalty, and on B's refusal to pay, impounded the instrument and sent it to the Collector The Collector, concurring with the opinion of the Civil Court, sanctioned the prosecution in the Criminal Court of both A and B, but without requiring the payment of the duty and penalty The prosecution resulted in the conviction of A under s 61 of the Stamp Act (I of 1879) and of B of abetment of A's offence *Held*, that the

offence of abetment of the execution of such an instrument. EMPRESS *v.* JANKI I. L. R. 7 Bom. 82

8. ——— *Offence under Stamp Act—Omission of Treasury Officer to give certificate required by rule 5 (b) of the rules made by the Governor-General in Council under Notification No 1288 of 3rd March 1882.* The non-compliance by the Treasury Officer or the stamp vendor with the direction to give the certificate required by rule 5 (*b*) *of the rules dated 3rd March 1882 issued* by the Governor-General in Council under ss 9, 15, 17, 32, 51, and 56 of the Stamp Act is not an act for which the person purchasing the stamp from him can be punished, by the invalidation of the stamp innocently bought by him or under s 61 *of the Stamp Act.* QUEEN-EMPRESS *v* TRAILAKYA NATH BARAL . . I. L. R. 16 Calc. 39

9. ——— and Sch. II, Arts. 52 and 58

MUTHIRULANDI . . I. L. R. 11 Mad. 526

10. ——— and ss 64 and 58—"*Signing otherwise than as a witness, etc*," *meaning of—Liability of agent authorized to sign on behalf of principal—Granting of unstamped receipt—Refusal to grant stamped receipt by firm—Liability of members of such firm—"Person," meaning of—*

consequently within the purview of the section. Where, therefore, a person signed a firm's name to certain letters under the authority of the firm, the circumstance that the body of the letters were

cludes the members of a trading partnership. So

STAMP ACT (I OF 1879)—*contd.*

——— s. 61—*concld*

the Stamp Act with having granted an unstamped receipt, and under s. 64 of that Act with having refused to grant a duly stamped receipt, it was *held* that their liability depended on whether they were in contemplation of law the persons who signed the letters of acknowledgment or refusal

made under s 58 of that Act. QUEEN-EMPRESS v KHETTER MOHUN CHOWDHRY

I. L. R. 27 Calc. 324
4 C. W. N. 440

——— s. 63 and ss. 37 (b), 40, 61—*Prosecution for attempt to defraud Government by understating the value of property in a partition-deed.* A District Judge impounded a partition-deed produced before him and forwarded it to the Collector under s. 35 of the Stamp Act, 1879, being of opinion that the executant of the deed had committed an offence under s. 63. The Collector under s. 69 sanctioned the prosecution of the executant, who was convicted by the Magistrate of an offence under s 63 of the Act. On appeal the Sessions Court acquitted him on the ground that the Collector had not complied with s. 37 (*b*) or s. 40 of the Act. *Held*, that the acquittal was wrong. *Empress* v. *Dwarkanath Chowdhry, I. L. R. 2 Calc. 399*, *Empress* v. *Soddanund Mahanty, I. L R 8 Calc. 259*; *Empress* v. *Janki, I. L. R. 7 Bom 82*, considered. QUEEN-EMPRESS v. VENKATRAYADU . . I. L. R. 12 Mad. 231

——— s. 64 and s. 69—*Refusal to give receipt—Sanction of Collector necessary before prosecution—Jurisdiction, want of* Prosecution

1. ——— s. 67—*Document executed with intent to defraud revenue* The second clause of s. 67 of the Stamp Act, 1879, is not controlled by the first clause of the section, which refers only to bills of exchange and promissory notes, but applies to all cases in which a document is executed with intent to defraud the Government of stamp duty REFERENCE UNDER STAMP ACT, 1879

I. L R. 9 Mad. 138

2. ——— and s. 61—*Defrauding Government of stamp revenue by a contrivance or device not otherwise specially provided for—Receipt of unstamped document—Abetment of an offence under s. 61 of Stamp Act, 1879—Penal Code (Act XLV of 1860), s. 40* Two letters were

STAMP ACT (I OF 1879)—*contd*

——— s. 67—*concld.*

written to petitioner in which the writer recommended him to advance sums of money to the bearers of the letters and bound himself to repay those sums, if lent, in case of default on the part of *the borrowers. The loans were made by* petitioner, who kept the letters. A prosecution having been subsequently commenced against petitioner under s. 67 of the Stamp Act, 1879, for defrauding Gov-

which on its face required to be, and was not, stamped, could not be said to be "an act, contrivance, or device not specially provided for by this Act or any other law for the time being in force;" and that punishment for the act of the executant of such a document if it were punishable at all, was provided for under s 61 of the Stamp Act, *1879*, and it could not therefore be dealt with under s. 67. Also that the act of a person receiving an unstamped document might amount to abetment of an offence, having regard to s 61 of the Stamp Act, 1879, and to the definition of an "offence" is s. 40 of the Penal Code, and, if so, would be an act provided for by "*any other law* for the time being in force," and so not within the terms of s. 67 of the Stamp Act, 1879. QUEEN-EMPRESS v. SOMASUNDARAM CHETTI

I. L. R. 23 Mad. 155

——— s. 68—*Court-fee stamps—Sale by unlicensed person—Stamp Act (XVIII of 1869), s 43—Court Fees Act (VII of 1870), s 34.* The sale of Court-fee stamps without a license was not an offence under the Stamp Act (XVIII of 1869), but is now specially made so by s. 68 of Act I of 1879. EMPRESS OF INDIA v. JALLU

I. L. R. 4 All. 216

——— s. 69.

See COLLECTOR . I. L. R. 2 All. 806

See COURT FEES ACT, 1870, SCH. I, ART 8.
I. L. R. 11 Bom. 526

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED OR UNREGISTERED DOCUMENTS
I L R. 18 Bom. 614
I. L. R. 21 *Bom.* 201

See LIMITATION ACT, 1877, s. 19—ACKNOWLEDGMENT OF DEBTS
I. L. R. 18 Bom. 614
I. L. R. 21 *Bom.* 201

——— Sch. I, Art. 1.

See STAMP ACT, *1869*, SCH. II, ART 5.

1. ——— *Acknowledgment—Hath-chitta.* Whether an account signed by a debtor in the books of his creditor amounts to an acknowledgment within the meaning of the Stamp Act (I of 1879), Sch. I, Art. I, is a question depending

STAMP ACT (I OF 1879)—*contd*

———— Sch. I, Art. 1—*contd*.

in each case upon the form and intention of the entry BINJA RAM *v* RAJMOHUN ROY
I L. R. 8 Calc. 282

2. ———— *Stamp duty—Hath-chitta—Evidence—Acknowledgment.* An account in a hath-chitta, showing advances of money made to, and part-payment made by, the defendant the whole amount being in the handwriting and signed by the defendant, is admissible in evidence without being stamped. *Brojender Coomar* v. *Bromomoye Chowdhrani, I L R 4 Calc. 885*, followed. BROJO GOBIND SHAHA *v* GOLUCK CHUNDER SHAHA . . I L. R. 9 Calc. 127

3. ———— *Acknowledgment—Promise in writing—Contract—Contract Act (IX of 1872), s 25, cl 3, and s 62, ill. (a)* A *khata*, or account stated bearing a stamp of one anna, but containing no promise in writing, *held* to be a mere acknowledgment sufficiently stamped, and not a contract within the meaning of s. 25, cl. 3, of Act IX of 1872. CHOWKSI HIMUTLAL *v* CHOWKSI ACHPUTLAL . . I. L. R. 8 Bom. 194

4. ———— *Acknowledgment—Balance-sheet—Nikash* A nikash or balance-sheet made out and signed by a gomashta of a business showing a balance due by him to the owner of the business is not an acknowledgment of a debt within the meaning of Art. 1, Sch I of the Stamp Act, and is admissible in evidence without being stamped. *Brojo Gobind Shaha* v. *Goluck Chunder Shaha, I. L. R. 9 Calc. 127*, followed. NUND KUMAR SHAHA *v* SHURNOMOYE DASI
I. L. R. 15 Calc. 162

5. ———— *Acknowledgment of debt—Limitation Act (XV of 1877), s. 19—Inten-* [illegible]

NAND KISHORE . . I. L. R 15 All. 56

6. ———— and Art. 5—*Acknowledgment—Admissibility in evidence* The defendant, in two letters to the plaintiff in respect of certain contracts to sell Government securities, [illegible]

STAMP ACT (I OF 1879)—*contd*.

———— Sch. 1, Art. 1—*concld*.

whole amount of which will be paid up in full on the 3rd and 4th August." Both letters were stamped with a one anna stamp *Held*, that they were insufficiently stamped and inadmissible in evidence. MANICK CHUND *v* JOMOONA DOSS
7 C L. R. 88

S. C MANICK CHUND *v* JOMOONA DOSS
I. L. R. 8 Calc. 645

7. ———— *Limitation Act (XV of 1877), s. 19, Exp. 1, Sch. II, Art. 56—Acknowledgment of debt, unstamped—Tankha—Stamp duty—Evidence of debt* The mere fact of a document being an acknowledgment of a debt, within the meaning of s. 19 of the Limitation Act, would [illegible]

[illegible] *Bishambar Nath* v. *Nand Kishore, I. L R. 15 All. 56*; and *Mulji Lala* v. *Lingu Makaji, I. L. R 21 Bom. 201*, referred to. AMBICA DAT VYAS *v*. NITYANUND SINGH (1903)
I. L. R. 30 Calc. 687

1. ———— Sch. I, Art. 4—*Agreement to lease—Correspondence containing agreement to lease—Complete agreement* Certain correspondence passed between the plaintiff and defendant relating to the lease of a flat in premises in occupation of the plaintiff, which admittedly contained an agreement for a lease for one year, with an option of [illegible]

[illegible] pleaded that under the lease, he was entitled to hold for a year. The year expired [illegible]

[illegible] was unstamped.

STAMP ACT (I OF 1879)—*contd.*

———— Sch. I, Art. 4—*concld.*

and on behalf of the defendant it was argued that the stamped unexecuted lease must be treated as part of the correspondence, and as it was properly stamped, no further stamp was necessary. *Held*, that, as the correspondence contained a complete agreement independently of the draft and engrossed lease, the latter could not be treated as part of the correspondence, and that consequently the correspondence must be stamped and the penalty paid before it could be admitted in evidence BOYD *v* KREIG . I. L. R. 17 Calc. 548

2. ———————— "*Agreement to lease.*" An agreement by a zamindar to execute a formal deed of lease of his zamindari which is under attachment after obtaining a certificate from the Court under s 305 of the Civil Procedure Code is an "agreement to lease" under Art. 4, Sch I of the Stamp Act REFERENCE UNDER STAMP ACT, s 46 . I. L. R. 17 Mad. 280

1. ———— Sch. I, Art. 5—*Agreement or memorandum of agreement relating to the sale of shares—Agreement by correspondence* Correspondence having passed between the plaintiff and defendant relating to the sale of shares in a certain company by the plaintiff to the defendant, and the sale not having been carried out, the plaintiff in a suit for damages against the defendant sought to prove an agreement for sale from the letters, none of which were stamped *Held*, that the letters, though unstamped, were admissible as evidence of an agreement, since they did not constitute an agreement or a memorandum of agreement RAINIER *v* GOULD . I. L. R. 13 Mad. 255

2. ———————— *Agreement—Document acknowledging receipt of money for future sale of shares of a company and promising to execute a pukka document of sale* A document whereby the party executing it purported to sell his right title, and interest in certain receipts for shares, and to execute in future a pukka document of sale thereof, and acknowledged the receipt of R10,000, *held* to be an agreement, and, as such liable to stamp duty of eight annas under Sch. I, Art 5, of the Stamp Act (I of 1879), the property in the receipt not being intended to pass forthwith HEPTULA SHEIKH ADAM & CO *v.* ESAFALI ABDULALI . . . I. L. R. 14 Bom. 316

3. ———————— *Letters submitting to arbitration* Letters written by parties authorizing arbitrators to arbitrate between them do not

4. ———— and Art. 28—*Indemnity note given to railway company by consignee—Agreement.* An indemnity note, passed to a railway company by a consignee and his surety in respect of goods delivered to the consignee, and for which he is unable to produce the railway receipt—by which note they undertake to hold the railway

STAMP ACT (I OF 1879)—*contd.*

———— Sch. I, Art. 5—*contd.*

company, its agents, and servants, harmless and indemnified in respect of all claims to the said goods is not an "indemnity bond" falling under Art 28, Sch. I of the Stamp Act (I of 1879), but is an agreement falling under cl (c), Art. 5, Sch I of that Act, and consequently chargeable only with a stamp duty of 8 annas. ANONYMOUS I. L. R. 5 Bom. 478

5. ———————— *Document—Agreement to pay.* A document was executed in these terms · "This document, a hand-note, is executed

that the document was not a promissory note, nor a

NATH MULLICK . . I. L. R. 10 Calc.

6. —— and Art. 44 (a)—*Agreement—Mortgage* In a contract for work to be performed entered into by a contractor with the Executive Engineer of a district, it was stipulated that payments should be made from time to time to the contractor as the work progressed, and that the Engineer might retain 10 per cent on the value of the work done to cover compensation for default on the part of the contractor and as security for the proper performance of the contract *Held*, that this contract was chargeable with stamp duty as an agreement under Art. 5 (*c*) and not as a mortgage under Art 44 (*a*) of Sch. I of the Stamp Act, 1879. REFERENCE UNDER STAMP ACT, 1879. I. L. R. 7 Mad. 209

7. ———— and Art. 44—*Mortgage—"Agreement not otherwise provided for."* A license issued to an arrack renter expressly required as one of its conditions that the licensee should deposit a sum equal to three months' rental as a

stamped with an eight-anna stamp REFERENCE UNDER STAMP ACT s 46 . I. L. R. 15 Mad. 134

8. ———— and Sch. II, Art. 2 (a)—

—Immo-
the 28th
take for
a pasture
ment at
to graze

thirteen she-buffaloes, at R1-10 per head, on the pasture ground, for a consideration of R21-2-0 to be paid to *B* by two instalmen; in default of

STAMP ACT (I OF 1879)—*contd.*

——— Sch. I, Art. 5—*concld.*

period *E* was to pay on the amount interest at the rate of 2 per cent per month. The Collector of

BIRDWOOD and PARSONS JJ (NANABHAI HARIDAS, J., dissenting) that the rent-note in question was an agreement, and as such chargeable with a stamp duty of eight annas under cl (c) of Art 5, Sch I of the Stamp Act (I of 1879) *Held, per* NANABHAI HARIDAS, J that the instrument was a lease and sufficiently stamped with four annas, growing grass being immoveable property within the definition of s 2 of the General Clauses Act (I of 1868). Should, however, growing grass be not regarded as immoveable property, the instrument was an

the Stamp Act. *In re* HORMASJI IRANI

I. L. R. 13 Bom. 87

9 ——— and Sch. II, Art. 2—*Interest in land—Agreement to sell standing trees.* A document bearing a stamp of one rupee stated, *inter alia,* "I have sold to you the standing trees of the two villages for R1,601 on condition that those young trees whose trunks do not exceed 2 feet in circumference should not be cut by you, and that I will give you written information to cut the trees of the said villages when you shall have to cut the trees and remove them within two years, etc." *Held,* that the document was sufficiently stamped VOHRA MAHAMADALI *v.* RAMCHANDRA

I. L. R. 22 Bom. 785

——— Sch. I, Art. 8—*Articles of Association—Special resolution—Resolution superseding Articles of Association—Companies Act (VI of 1882), ss. 76, 79* A company limited by shares and already possessing Articles of Association, proceeded to pass a special resolution in virtue of

STAMP ACT (I OF 1879)—*contd.*

——— Sch I, Art. 8—*concld.*

than the record of a special resolution, and as such did not require to be stamped *In the matter of the* NEW EGERTON WOOLLEN MILLS

I. L. R. 22 All. 121

1. ——— Sch. I, Art 11—*Bill of exchange otherwise than on demand —Impressed stamp.* A bill of exchange for R500 payable otherwise than on demand must, under Art. 11 of Sch I of the Act, be stamped with an impressed stamp of the value of six annas RADHAKANT SHAHA *v.* ABHOYCHURN MITTER . I. L R. 8 Calc. 721

s.c. RADHAKANT SHUBA *v* ABHOY CHURN MITTER . . . . . 11 C. L R. 310

2. ——— and Art. 19—*Cheque—Bill of exchange—Admissibility in evidence—Post-dated cheque—Stamp Act, 1879, s 67—Penalty* In determining whether a document is sufficiently stamped for the purpose of deciding upon its admissibility in evidence, the document itself as it stands, and not any collateral circumstances which may be shown in evidence, must be looked at. *Bull* v. *O'Sullivan, L. R. 6 Q. B 209; Gatty* v. *Fry, L R 2 Ex D. 265;* and *Chundra Kant Mookerjee* v. *Kartik Charan Chaile, 5 B L. R 103,*

——— Sch. I, Art. 13—*Security-bond for costs of appeal—Court Fees Act (VII of 1870), Sch II, Art 6. Held,* by the Full Bench, that where a bond is given under the orders of a Court as security by one party for the costs of another, it is subject to two duties—(*a*) an *ad valorem* stamp under the Stamp Act, Art 13, Sch I; (*b*) a Court-fee of eight annas under the Court Fees Act, Art 6, Sch. II KULWANTA *v.* MAHABIR PRASAD

I. L R. 10 All. 16

1. ——— Sch. I, Art. 16—*Certificate of sale.* The stamp duty payable on a certificate of sale is governed not by s. 24, but by Sch. I, Art 16, of the Stamp Act, 1879 REFERENCE FROM DISTRICT JUDGE UNDER s. 49 OF STAMP ACT

I. L. R 5 Mad. 18

2. ——— *Certificate of sale*

3. ——— *Certificate of sale—Practice—Ad valorem stamp duty—Sale, subject*

STAMP ACT (I OF 1879)—*contd.*

——— Sch. I, Art. 16—*concld.*

to mortgage lien, of property in several lots—Stamp

merely a proportionate amount of it, was to be added to the price, and the total amount to form the consideration upon which an *ad valorem* stamp duty was to be calculated, each purchaser obtaining a separate sale-certificate. *In re the application of* VISHNU KESHAV SATHE

I. L. R. 10 Bom. 68

4. ——————— *Sale-certificate—Sale subject to incumbrance.* Where property sub-

money together with the incumbrance ... PRASAD *v.* RAM NARAIN . I. L. R. 15 All. 107

5. ——————— *Sale of property subject to mortgage—Valuation of property sold—Computation of purchase-money—Certificate of sale—Proclamation of sale—Mortgages noted in proclamation of sale—Civil Procedure Code, 1882, ss. 282 and 287.* Mortgages noted in the pro-

should be entered in the certificate and computed as part of the purchase-money if they have been thus admitted or established, or if they have been

dure Code. SHANTAPPA CHEDAMBARAYA *v* SUBRAO RAMCHANDRA YELLAPUR

I. L. R. 18 Bom. 175

1. ——— Sch. I, Art. 21—*Conveyance by vendors under one denomination to the same person's purchasers under another denomination.* Eight persons, the owners of a tea estate, purported to convey their rights in the estate to a company; the consideration expressed in the deed of conveyance

STAMP ACT (I OF 1879)—*contd.*

——— Sch. I, Art. 21—*concld.*

being £43,320, payable in shares and debentures of the company taken at par. The only shareholders or debenture-holders of the company were the eight persons, who purported to sell the estate to the company. *Held*, that, although the conveying parties were the shareholders of the company, there was just as much a sale and transfer of the property and a change of ownership as there would have been

2. ——— and Art. 60, cl. (b)—*Transfer of lease—Transfer of a share of a partnership.* Where a transaction is in substance a sale of a share in a partnership, and the transfer of a share

I. L. R. 12 Calc. 386

3. ——— *Company—Winding up—Transfer of property by old to new company—Conveyance.* An instrument, which is in terms a conveyance of property at an agreed value, is a sale of such property at that price, and is gov-

s 46 . . . . I. L. R. 20 Bom.

4. ——————— *Conveyance—Transfer of lease.* When by one and the same ... of freehold lands and

fer of each of the interests secured by the ... REFERENCE UNDER STAMP ACT, 1879, s 46

I. L. R. 23 Calc. 283

5. ——————— *Conveyance.* The amount payable on a conveyance under the Stamp Act, Sch. I, Art. 21, is properly calculated on the consideration set forth therein, and not on the intrinsic value of the property conveyed REFERENCE UNDER STAMP ACT, s. 45

I. L. R. 20 Mad. 27

1. ——— Sch. I, Art. 22—*Civil Procedure Code (Act XIV of 1882), s. 62—Copy of a document filed with the plaint—Attestation by the Court or its officer.* Art. 22 of Sch. I of the General Stamp Act (I of 1879) does not apply to a copy contemplated by s. 62 of the Civil Procedure Code

STAMP ACT (I OF 1879)—*concld.*

———— Sch. I, Art. 22—*contd.*

ing the book entry when produced at the hearing KRISHNAJI SADASHIV RANADE *v.* DULABA I. L. R. 15 Bom. 687

2. ———— Copy of order of *Municipal Board certified by the Secretary—Public officer—Evidence Act (I of 1872), ss. 74, 76, and 78.* *Held*, that a copy of an order passed by a Municipal Board on a petition presented to it, and certified as a true copy by the Secretary to the Board, came within Art. 22 of the first Schedule to the

———— Sch. I, Art. 25, and Art 5—*Declaration of trust—Agreement.* An agreement was made between certain persons to transfer the future

Indian Stamp Act, 1879, Sch. I Art. 25, and as an agreement under art. 5 (c) REFERENCE UNDER STAMP ACT, s. 46 . I. L. R. 11 Mad. 216

———— Sch. I, Art. 29—*Instrument evidencing an agreement to secure repayment of loan executed at time of loan—Assignment by way of mortgage of valuable security to secure pre-existing debt.* Art. 29 of Sch. I of the Stamp Act (I of 1879) applies to an instrument evidencing an agreement to secure the repayment of a loan, executed at the time the loan is made, and not to the case of an assignment by way of mortgage of a valuable security to secure a pre-existing debt. It contemplates an instrument contemporaneous with the advance and with the loan QUEEN-EMPRESS *v.* DEBENDRA KRISHNA MITTER . I. L. R. 27 Calc. 587
4 C. W. N. 524

1. ———— Sch. I, Art. 36—*Instrument of*

stamped with a single stamp as an instrument of gift, under Art. 36, Sch. I of Act I of 1879. *In re* BHAVANIBAI . I. L. R. 7 Bom. 194

STAMP ACT (I OF 1879)—*concld.*

———— Sch. I, Art. 36—*contd.*

2. ———— and Art. 25—*Declaration of trust—Gift.* Where a donee was directed in an instrument of gift of certain land to maintain the donor out of the profits of the land:—*Held*, that the instrument was liable to stamp duty as a gift, and not as a declaration of trust. REFERENCE UNDER STAMP ACT, s. 46 . I. L. R. 12 Mad. 89

———— Sch. I, Art. 37—*Partition, instrument of—Arbitration—Award.* An award directing partition of property, if signed by the parties interested by way of assent to the award, becomes thereby an instrument of partition, and should be stamped accordingly. AMARSI *v.* DAYAL I. L. R. 9 Bom. 50

1. ———— Sch. I, Art. 38—*Deed acknowledging former adoption and investing the person*

I. L. R. 13 Bom. 280

2. ———— Deed confirming

adopted son. On the same document *C*, the mother of *D*, and his father *P* endorsed separately their consent to the adoption. *Held*, that the document

1. ———— Sch I, Art. 39 (b)—*Lease—Rent.* A mittadar executed a perpetual lease of certain

STAMP ACT (I OF 1879)—*contd.*

2. ———— Sch. I, Art. 39 (c), (d)—*Rent—Premium—Mortgage—Lease.* By a document purporting to be a lease, certain land was leased for four years at a rent of R15 per annum. Out of the total rent it was stipulated that R50 should be paid in advance and the balance R10 at the end of the term. *Held*, that the payment of R50 in advance was not payment of a premium or fine within the meaning of Art. 39 (*c*) of the Stamp Act, 1879 By a document

last year of the term. *Held*, that the deposit of one year's rent with the lessor was not a fine or premium within the meaning of art 39 (*c*) of the Stamp Act, 1879 By a document purporting to be an instrument of mortgage, the owner of certain land, being indebted in a certain sum, conveyed the land to his creditor for nine years in liquidation of the principal and interest of the debt. The creditor was to take the produce of the land, enjoy the profits or suffer the loss, and pay R35 per annum as rent *Held*, further, that the document was a lease with a premium liable to duty under Art. 39 (*d*) of Sch I of the Stamp Act, 1879. REFERENCE UNDER STAMP ACT, 1879
I. L. R. 7 Mad. 203

3. ———— and Sch. II, Art. 13, cl. (b)—*Kabuliat or lease of immoveable property for any purpose other than that of cultivation—Stamp duty, exemption from, of such lease.* A kabuliat or lease relating to immoveable property let to a tenant for any purpose other than that of cultivation is not such a lease as is contemplated by art 13, cl. (*b*) of the Stamp Act I of 1879 so as to be exempt from stamp duty, but is chargeable with such duty under Sch. I, Art 39 of that Act. NARAYAN RAMCHANDRA *v.* DHONDU RAGHU
I. L. R. 10 Bom. 173

1. ———— Sch. I, Art. 44, cls. (a) and (b)—*Mortgage-deeds—Covenants for quiet enjoyment—Per Curiam.* Cl (*a*) of Art 44 of Sch. I of the Stamp Act, 1879, applies only to those deeds in which possession of the mortgaged property is given, or agreed to be given at the time of the execution of the deed, or, in other words, where immediate possession of the property is given, or agreed to be given, by the terms of the deed to the mortgagees. *Per* GARTH, *C.J.* The principle of the distinction between the two classes of mortgages named in Art. 44 is that, where the title to the land and the possession or immediate right to possession both pass to the mortgagee, the same

actions are intended to be covered where the transfer of possession takes place in consequence of the agreement on the part of the mortgagor to deliver over possession as part of the security for the

STAMP ACT (I OF 1879)—*contd.*

———— Sch. I, Art. 44, cls. (a) and (b) —*contd.*

mortgage-money ; but where the mortgagee becomes entitled to enter upon possession irrespective of the consent of the mortgagor to make over possession, cl (*a*) will not apply. *Per* FIELD, *J.* The Stamp Act is a Revenue Act, and the rule of construction of

agreement to give possession ; they will not apply where there is no such agreement, express or implied, but the effect of the document is such that a mortgagee has merely a right which he can enforce in a Court of law to obtain possession ANONYMOUS
I L. R. 10 Calc. 274

2. ———— *Construction.* A mortgage-deed, dated the 4th August 1883, sti-

The intention of cl (*a*) is to cover cases of mortgage with possession, and the words "agreed to be given" are to be read as if the words "at the time of execution" immediately followed and qualified the word "given" Cl. (*a*) should be read as if it were worded "when possession of the property . . . is given by the mortgagor at the time of execution, or is agreed to be then given, and not . . . . . is then agreed to be given" HINGANGHAT MILL COMPANY *v.* REECHAND
I. L. R. 8 Bom. 310

3. ———— *Stipulations not creating fresh obligations* Under the ordinary law of mortgage, the mortgagor is bound, so long

mortgagor engages to repay to the mortgagee any costs h
by the
charged

4. ———— *Bond—Mortgage—Stamp Act, 1879, s 3, cl. 4 (c) and 13, ss 7, 26, Sch I, Art. 13* A grower of sugarcane executed a deed whereby he borrowed a sum of R25 as "earnest-money" and covenanted to deliver to the lender on a certain date 21 maunds of rab (unrefined sugar), upon which he was to receive a profit of 9 annas per maund over and above a price to be thereafter fixed at a meeting of growers. He further covenanted as follows: "If the supply of the rab be less than the fixed quantity, and the money still remains due, then the said money thus due,

STAMP ACT (I OF 1879)—*contd.*

——— Sch. I, Art. 44, cls. (a) and (b)—*contd.*

including the profits, shall be paid at the rate of R1 per maund, that in case of my not supplying the rab at all, or selling it at some other place, I will pay the whole amount at once including the said profits." As collateral security, he hypothecated the produce of a field of sugarcane, the value of which was not stated. *Held*, by the Full Bench, that the instrument was a "mortgage-deed" within the meaning of s. 3 (13) and Art. 44 (*b*) of Sch. I of the Stamp Act (I of 1879). *Held*, by STUART, C.J., STRAIGHT, J and BRODHURST, J, that it was also a "bond" within the meaning of s. 3 (4) (*c*) and Art. 13 of Sch. I and with reference to the provisions of s 7 was, chargeable with stamp duty solely as a bond under Art. 13, the contract being a single one. *Held*, by the Full Bench, that the proper stamp duty payable on the instrument was four annas. *Held* by STUART, C J., and STRAIGHT, J, that in estimating the stamp duty payable on the instrument the amount stipulated to be paid by way of penalty in case of breach of the covenant to deliver the rab must not be taken into account. *Reference by Board of Revenue N.-W. P. I L R. 2 All. 654*, doubted; and *Gisborne Subal Bowri, I. L. R. 8 Calc. 284*, referred to by STRAIGHT, J. *Per* STUART, C.J., that, for the purpose of estimating the stamp duty, the amount secured by the instrument was R25, the amount borrowed, plus R11-3, the amount to be paid to the borrower on the 21 maunds at 9 annas per maund, and that the additional profit,

instrument was R25, the amount borrowed, plus R21 the sum recoverable at R1 per maund in the event of the borrower's non-delivery of the 21 maunds, and stamp duty was payable on this amount. *In the matter of* GAJRAJ SINGH

I. L. R. 9 All. 585

See SAMBHU CHANDRA BEPARI *v.* KRISHNA CHARAN BEPARI . . . I. L. R. 26 Calc 179

5 ——— *Assignment by way of mortgage of valuable security to secure pre-existing debt—Stamp Act (I of 1879), s 3, sub-s (13)*

a pre-existing debt it contemplates an instrument contemporaneous with the advance and with

of ascertaining what stamp duty is payable on an instrument alleged to be a mortgage, it is necessary to see if the instrument is a mortgage as defined

STAMP ACT (I OF 1879)—*contd.*

——— Sch. 1, Art. 44, cls. (a) and (b)—*concld*

in the Stamp Act. QUEEN-EMPRESS *v.* DEBENDRA KRISHNA MITTER . I L R 27 Calc. 587
4 C W. N. 524

6 ——— and s. 3 (13), sch. I, Art. 29, and Art 5 (c)—*Mortgage—Assignment of growing coffee* By an agreement made the

ment of the sum advanced It was stipulated that *A* should cultivate the crop till maturity and deliver it to *B. Held*, that this document was a mortgage liable to duty under *Art 44 (b) of Sch. I* of the Stamp Act, 1879. REFERENCE UNDER STAMP ACT, 1879 . . I. L. R 8 Mad. 104

7. ——— and Art. 29—*Mortgage advance payable on demand—Power of sale in default of repayment of advance—Pledge* In consideration of an advance of R1,450, on interest, repayable on demand, certain boat-owners assigned to *S & Co* their paddy boats, the boat-owners retaining working and being responsible for the

repayment on demand, *S & Co* were empowered to take possession and to sell the boats *Held*, that

8. ——— *Mortgage—Consi-*

I L R. 22 Mad 164

9. ——— *"Mortgage-deed."* By a clause in a document referred to the High Court for an opinion as to the stamp duty payable thereon, the A company agreed that, on execution of the document, they would issue and hand to the B com-

STAMP ACT (I OF 1879)—*cont'd.*

——— Sch. I, Art. 44, cls. (a) and (b)—*concld.*

by the said document, secured not only upon the old security of £20,000 first debentures, but also upon the £8,000 second debentures, and the remaining £5,000 of the first debenture, stamp duty was payable on the new security though a portion of the debt secured was included in the previous document on which duty had been paid; that the document was not a mere agreement to make a transfer, but an agreement to hand over the debentures on the execution of the document, and was therefore in effect an actual transfer; that the "mortgage-deed" was one with possession within Art 44 (*a*) of Sch. I of the Stamp Act, 1879, by which this document

wise provided for REFERENCE UNDER STAMP ACT, s 46 . . I. L R 23 Mad 207

——— Sch I, Art 46, and s 34, and Sch. II, cl. 2—*Agreements for sale of goods—Broker's bought and sold notes—Note or memorandum of sale.* The plaintiffs sued to recover damages for the non-acceptance of wheat which the defendant on the 16th May 1889 by two contracts agreed to purchase. At the hearing, in order to prove the terms of the contracts, the plaintiffs tendered two notes, or memoranda of the contracts, which purported to be signed by the broker and also by the defendant These notes were, in fact, the sold notes which the broker had given to the plaintiffs Each of these notes had been stamped with an anna stamp, but the stamp on one of them had not been cancelled at all, and the stamp on the other was without any mark of cancellation except a small part of the first letter of the defendant's

notes. The plaintiffs then contended that the *documents were only memoranda of parol contracts* and might be regarded as agreements for the sale of goods, and exempt from stamp duty, under cl. 2, Sch. II, or at all events admissible on payment of a penalty—ss. 7 and 34. *Held*, that

I. L. R. 14 Bom. 102

——— Sch. I, Art. 49—*Policy of insurance—Life policy—Beng. Reg. X of 1829. Per* BROUGHTON, J. *Held*, that, inasmuch as Regulation X of 1829 was not recognized by the Supreme Court, life policies of insurance issued before 1860 did not require a stamp. RAJNARAIN BOSE *v.* UNIVERSAL LIFE ASSURANCE COMPANY

I. L. R. 7 Calc. 594 : 10 C. L. R. 561

STAMP ACT (I OF 1879)—*contd.*

1. ——— Sch I, Art. 50—*Court Fees Act, Sch. II, Art. 10 (a)—Power to vakil to obtain copies from Collector's office—Stamp* A document authorizing a vakil to apply for copies of records from the Collector's office is properly stamped with a Court-fee stamp under Art. 10 (*a*) of Sch II of the Court Fees Act, 1870, and does not require to be stamped as a power-of-attorney under Art 50 (*b*) of Sch I of the Stamp Act, 1879. REFERENCE UNDER STAMP ACT, 1879 . I. L. R 9 Mad. 146

2. ——— cl. (b)—*Court Fees Act, Sch. II, Art 10 (a)—Vakalatnama—Power-of-attorney* A document was given to *P* by thirty-six persons jointly interested in a certain sum of money authorizing him to appear before a certain officer and receive payment thereof. *Held*, that the document was a power-of-attorney, and that consequently the proper stamp duty was one rupee, leviable under the Stamp Act, 1879, Sch. I, Art. 50 (*b*) REFERENCE UNDER STAMP ACT, 1879 . I. L R 9 Mad. 358

3 ——— and s. 3, cl 16, and s 7—*Power-of-attorney—Instrument of trust.* Ten mirasidars of a village executed an instrument authorizing the person therein mentioned to recover for them from their former agent the perquisites and ... their mirasi ... te to ... ts of ... stru-

ment was a power-of-attorney and should bear a stamp of R5 REFERENCE UNDER STAMP ACT, s 46

I. L. R. 15 Mad. 386

1. ——— Sch I, Art. 52—*Tax—Receipt for money paid as taxes—Municipality, receipt for house-tax exceeding twenty rupees.* A receipt by a Municipality acknowledging payment of house-tax

2. ——— and s. 3. cl. 17—"*Sarkhat*—*Receipt* The defendant in a suit on a bond set up as a defence that the bond had been paid in part in sugarcane juice, and as evidence of this fact produced a document called a "sarkhat," alleged to be signed by the plaintiff acknowledging the receipt of sugarcane juice, the price of which exceeded R20. There was nothing in this document which showed that the sugarcane juice had been ... *Held* that

3. ——— *Receipt—Entry signed by creditor in debtor's book discharging debt.* An entry made by a creditor in the khatta-book of ... for the payment of a

I. L. R. 11 Calc.

STAMP ACT (I OF 1879)—*contd.*

1. ——— Sch. I, Art 54—*Release—One-anna adhesive stamp—Full stamp duty leviable.* A release chargeable with four-annas stamp duty was executed on paper bearing a one-anna adhesive receipt stamp *Held*, that in calculating the stamp due the one-anna stamp ought not to be taken into consideration. *Reference under Stamp Act, s 46, I L R 8 Mad 87*, followed REFERENCE UNDER STAMP ACT, S 50. I. L. R. 15 Mad. 259

2. ——— *Release—Partition, deed of* A Hindu executed in favour of his father as representing the interest of the other members of his family, an instrument by which he relinquished his rights over the general property of the family in consideration of certain lands being allotted to him for life, and certain debts incurred by him being paid The instrument further provided that the lands allotted to the executant for life should go towards the shares of his sons at any partition effected after his death *Held*, that the instrument was not a deed of partition, but a release and should be stamped accordingly REFERENCE UNDER STAMP ACT, S 46. I L R 18 Mad. 233

1 ———Sch. I, Art 57—*Settlement—Stamp duty* Under Art 57 of Sch I of the Stamp Act, 1879, stamp duty on a settlement is to be calculated on the value of the property settled as set forth in such settlement. *Held*, that these terms do not mean the value of the interest or interests created by the settlement, but refer to the value of the property settled, which, it was intended by the Legislature, should be set forth in the settlement REFERENCE UNDER STAMP ACT, 1879. I. L R. 8 Mad. 453

2. ——— and Art. 54 and s. 3 (19)—*Settlement—Testamentary document—Trust-deed.* An instrument called a trust-deed by the party executing it was intended to have immediate operation It vested the property in the trustees at once, and the provisions as to the management and the ultimate beneficial interest in the property

——— Sch I, Art. 60—*Transfer of estates*

I. L. R. 5 Mad. 15

——— Sch. II, Art. 1 (b)—*Affidavit S*, being desirous of obtaining copies of certain records

STAMP ACT (I OF 1879)—*contd.*

——— Sch. II, Art. 1 (b)—*contd.*

in a suit in the Court of the Subordinate Judge of Sirsi, appeared before the nazir and clerk of that Court, and made an affidavit to the effect that she was the heir and legal representative of one of the defendants in that suit, and needed the copies for the purpose of producing them in a suit filed

stamped paper, referred the case to the High Court. *Held*, that the affidavit was exempt from stamp duty under Sch II, Art 1 (*b*), of the Stamp Act (I of 1879) *In re the application of* SHESHAMMA

I. L. R. 12 Bom. 276

1. ——— Sch. II, Art 2 (a)—*Agreement*

that this document was exempt from duty under Sch. II, Art 2 (*a*) of the Indian Stamp Act, 1879. REFERENCE UNDER STAMP ACT, S 46

I. L. R 10 Mad. 27

2. ——— *Exemption—Agreement for the sale of goods.* An agreement for the sale of goods does not require stamp under the

——— Sch. II, Art. 11, and Sch. I, Art. 27—*Vakil—Entry on roll of advocates—Exemption from duty* By Art. 11 (*a*) of Sch II of the Stamp Act, 1879 (which exempts from duty the entry

said Act *In re* PARTHASARADI

I. L. R. 8 Mad. 14

1. ——— Sch. II, Art. 12 (b)—*Security bond for due accounting for "property" received by virtue of office.* The question was whether a bond executed by the sureties of an officer of

to his charge was or was not exempted from stamp duty by the provisions of art. 12 (*b*)

STAMP ACT (I OF 1879)—*contd.*

——— Sch. II, Art. 12 (b)—*concld.*

"or other property" must be taken to mean proper-

Art. 12 (*b*) of Sch. II of Act I of 1879 "or the due accounting for money received by virtue thereof" should be regarded as mere surplusage, and the "due execution of an office" and the "due accounting for money received by virtue thereof" be considered one and the same thing, and as the due accounting for property received by him by virtue of his office was the "due execution of his office" by the officer in this case, such bond was one for the "due execution of an office," and was therefore exempted from stamp duty. *Per* SPANKIE, *J.*, and STRAIGHT, *J*, that, inasmuch as the words in Art 12 (*b*) of Sch II of Act I of 1879 could not be regarded as mere surplusage, and there was a distinction drawn by the Legislature between the "due execution of an office" and the "due accounting for money received by virtue thereof," such bond was not one for the "due execution of an office," and being one for the due accounting for "property," it was not one for the due accounting for "money," and therefore it was not exempted from stamp duty. REFERENCE BY BOARD OF REVENUE, N.-W. P.

I. L. R. 3 All. 788

1. ——— Sch. II, Art. 13, cl. (b)—*Lease by a cultivator—Definite term—Annual rent.* Cl. (*b*), Art 13 of Sch. II of Act I of 1879, exempts all leases executed in the case of a cultivator without the payment or delivery of any fine or premium, whatever the reserved or annual rent may be, provided it be for a definite term not exceeding one year, and also whatever the term may be, provided the annual rent reserved does not exceed R100 *In re* BHAVAN BADHAR . . . I. L. R. 6 Bom. 691

2. ——— *Lease for planting cocoanut trees—Cultivator* A person whose occupation is that of a cultivator and who takes a lease of land for planting cocoanut trees is, in respect of that occupation, a "cultivator" A lease given by

I. L. R. 15 Bom. 73

3. ——— and cl. (c)—*Lease granted to a cultivator—Kabuliat—Exemption from stamp duty* By the term "cultivator" in Art 13, Sch. II of the Stamp Act, 1879 only those persons ...
noted who a...
who cultivat...
or by their ...
their own or...
or actual agriculturists is meant, not farmers, middlemen, or lessees ...

STAMP ACT (I OF 1879)—*concld.*

——— Sch. II, Art. 13 cl. (c)—*concld.*

lease) was for a ...

PRASAD . . . I. L. R. 5 All. 360

4. ——— cl. (c)—*Counterpart of lease of salt-pans.* A counterpart of a lease of salt-pans held not to be exempt from stamp duty as it did not purport to be a counterpart of a lease granted to a cultivator. MANJUNATH MANGESHAYA BAINDUR *v.* MANGESH SHESHAGIRIAPA GOKARNKAR

I. L. R. 18 Bom. 546

1. ——— Sch. II, Art. 15 (a)—*Receipt—Endorsement of payment of mortgage-deed.* An endorsement on a mortgage acknowledging the receipt of the sum thereby secured is exempt from stamp duty under Sch II, Art 15 (*a*), of the Indian Stamp Act, 1879 REFERENCE UNDER STAMP ACT, s 46. . . . . I. L. R. 10 Mad. 64

2. ——— *Receipt given by Secretary of club to a member for club bill.* Where a receipt in writing is given by the Secretary or other manager of a club to a member acknowledging a payment above R20 on account of a club bill, it is liable to stamp duty. REFERENCE UNDER STAMP ACT, s 46 . . I. L. R. 10 Mad. 85

3. ——— and s. 3, cl. 17—*Receipt—Barrister's fee—Consideration—Honorarium not merces.* A receipt given by a Barrister for a fee is exempted from stamp duty by Art 15 (*b*) of Sch II of the Stamp Act, 1879 REFERENCE UNDER STAMP ACT, 1879 . . I. L. R 9 Mad. 140

4. ——— *Payment of money without consideration—Receipt for Council's fees.* A receipt given by Council for a sum above R20 paid to him as a fee for professional services is exempt from stamp duty REFERENCE FROM THE BOARD OF REVENUE, N.-W. P. AND OUDH

I. L. R. 16 All. 132

STAMP ACT (II OF 1899).

See STAMP ACT, 1879, s. 24.
I. L. R. 24 Bom. 257

See STAMP DUTY.

See STAMP DUTY—HATCHITTA
11 C. W. N 1123

——— *Bill of Exchange—Sufficiency of stamp—Construction of instrument.* In determining the question whether a particular instrument is sufficiently stamped, the Court should only look at the instrument as it ... I. L. R. ... Tottenham ... AKHARAM ... (1902)

I. L. R. 27 Bom. 279

STAMP ACT (II OF 1899)—*contd.*

1. ——— s. 2 (*1*) (b)—*Promissory Note.* The defendant passed to the plaintiff a document to this effect: "I have this day taken from you in cash R48 (forty-eight) " I have received this amount. I shall repay this money without taking any objection, when you should demand [it] " The document was attested by two witnesses. It bore a one-anna adhesive stamp *Held*, on a construction of the document that it was a bond within the meaning of s. 2 (5) (*b*) of the Indian Stamp Act (II of 1899), since the document was attested and was not payable to order or bearer, and the executant obliged himself to pay the money to another VENKU *v.* SITARAM (1905) . I. L. R. 29 Bom 82

2. ——— *Transactions comprised in a document—Agreement to lend money for*

...

the document. The transactions comprised in a

...

working of the mill. A question having arisen as to what was the proper stamp duty payable on the document. *Held*, that the document was only liable to stamp duty as a transfer of mortgage and as an agreement, that is, to R5 8 0 in all. An agreement to lend money does not create an obligation to pay money within cl (5) (*b*) of s. 2 of the Indian Stamp Act (II of 1899) An agreement to lend money to a partnership is

...

1. ——— s. 2, cl. (15)—*Partition—Un-*

...

that the four documents formed, when read together, an instrument of partition within the meaning of s 2, cl 15, of the Stamp Act II of (1899) Each document formed the title of the

...

2. ——— s. 2 (15)—*Civil Procedure Code (Act XIV of 1882), s 396—Decree for partition—Commissioner's report—Decree in accordance—Final order—Instrument of partition—Stamp.* A decree

STAMP ACT (II OF 1899)—*contd.*

——— s. 2—*concld*

for partition passed in accordance with a Commissioner's report under s. 396 of the Civil Procedure Code (Act XIV of 1882), is a final order for effecting a partition passed by a Civil Court and must therefore be stamped as an instrument of partition under s. 2 (15) of the Indian Stamp Act (II of 1899) BALARAM *v.* RAMKRISHNA (1905)

I. L. R. 29 Bom. 366

3. ——— *Instrument of partition—Award—An award by an arbitrator directing a partition* An award began by saying, "We decide as below. The parties should act accordingly" It went on, the defendant "should take into his possession as below after passing a legal release." It added other directions with regard to the action of the defendant, and provided "in connection with whatever is settled to be given to the 'defendant' and to be taken by him, we direct that the 'defendant' should take into his possession the

...

I. L. R. 31 Bom. 66

——— s. 2 (15), Sch. I, Art. 45.

See PARTIES, ADDITION OF.

I. L. R. 32 Calc. 483

——— ss. 2 and 7, and Sch. I, Art. 47, cl A.

See BILL OF LADING.

I. L. R. 30 Calc. 565

——— s. 5—*Agreement with numerous landholders for mining rights—Community of interest—Stamp.* A Company, having obtained from the Secretary of State for India the right to search for and work minerals in a certain district, prepared an indenture with the object that it should

...

of one rupee and a royalty, granted to the company a license to prospect and work upon a piece of land

...

instrument was chargeable with the aggregate amount of the duties with which separate

STAMP ACT (II OF 1899)—*contd.*

——— s. 5—*concld.*

instruments relating to the same matter would be chargeable. Upon the face of it, the instrument dealt with several distinct matters, namely, with agreements with several persons with regard to their separate property, and the proper stamp to be

——— s. 5 and Sch. I, Art. 35—*Lease for three years, containing covenant by lessor to renew, at option of lessee, for a further period of one or two years from the expiration of the original term—Stamp duty—Not an instrument comprising or relating to several distinct matters.* A lease for three years at a speci-

an instrument contains but one contract, namely, a demise. The option to renew is ancillary to, and forms part of, the consideration for entering into the lease. REFERENCE UNDER STAMP ACT, s 57 (1901) . . . I. L. R. 25 Mad. 3

——— ss. 5, 6

See ARBITRATON . 13 C. W. N. 63

——— s. 7.

See ante, SS. 2 AND 7.

——— s. 12—*Stamp—Promissory note—Stamp not cancelled—Evidence of consideration for debt aliunde admissible.* Plaintiff sued for the recovery of a loan secured by a promissory note. When the promissory note was produced in Court it was found that the stamp on it had not been cancelled, and it was therefore treated as an unstamped document and the Court refused to allow other evidence to be given of the debt. *Held*, that evidence of the debt was admissible *aliunde*. When

maturity, may always as a rule sue for the original consideration, provided that he has not endorsed or lost or parted with the bill or note under such circumstances as to make the debtor liable upon it to some third person. *Sheikh Akbar* v *Sheikh Khan, I. L. R 7 Calc 256*, followed BANARSI PRASAD v. FAZAL AHMED (1905) . I. L. R. 28 All. 298

——— s. 23 Sch. I, Arts. 1, 5, cl. (b)—*Stamp Act (II of 1899), Sch. I, Art. 5, cl (b) Art 1 and s 23—Hatchitta containing stipulation to pay interest—Acknowledgment or agreement—Stamp*

STAMP ACT (II OF 1899)—*contd.*

——— s. 23, Sch. I, Art. 1, 5, cl (b)—*concld.*

duty. Held, that the document sued upon was not a mere acknowledgment of a debt, inasmuch as it contained a stipulation that the amount should bear interest at a certain rate, and should therefore have been stamped as an agreement or memorandum of agreement with a stamp of 8 annas under cl (*b*) of Art. 5 of Sch. I of the Stamp Act. *Luxumi Bai* v *Ganesh Raghu Nath, I. L. R. 25 Bom. 373*, relied on MULCHAND LALA v KASHIBULLAH BISWAS (1907) . . . 11 C. W. N. 1120

——— s 24—*Mortgage-deed—Exemption from duty—Statute—Construction—Exemption.* The proviso to s 24 of the Stamp Act (II of 1899) contemplates that to entitle the mortgage to a deduction thereunder, the property transferred should be identical with that mortgaged and should not merely form a portion thereof. An enactment

——— s. 24 and Sch. I, Art 23—*Convey-*

I. L. R. 27 Bom.

——— s 26, Sch, I, Art 57 (b)—*Security for fulfilment of duties as cashier—Duty payable* In 1895, first defendant (for himself and on behalf of his sons) executed a mortgage in favour of Ragava Chetty, who in 1896 assigned it to McDowell and Company. In 1899 first defendant (for himself and on behalf of his sons), McDowell and Company, and the present plaintiffs entered into another agreement whereby the former mortgage was transferred by McDowell and Company to the plaintiffs, a company with limited liability and the instrument also related to the

STAMP ACT (II OF 1899)—*concld.*

——— s. 26 Sch. I, Art. 57 (b)—*contd.*

accountability of the first defendant, who was their cashier, to the plaintiffs, and constituted a mortgage executed as security for the due fulfilment of his duties as cashier, and for the repayment of any sum that first defendant might be found liable for, [illegible]

[illegible] mortgage being made [illegible] 62 (c) of Sch. I of the Act, and the duty payable in respect of the other portion of the instrument being also a fixed sum under Art 57 (b) Though the latter instrument contained a promise by first defendant to pay plaintiffs the amount payable by him under the previous mortgage, this was not a fresh contract, entered into for consideration, but must be understood to operate only as an admis- [illegible]

later document, the claim was unaffected by it even if it could have been treated as one requiring the payment of an *ad valorem* duty McDOWELL & Co *v* RAGAVA CHETTY (1904)

I. L. R. 27 Mad. 71

——— ss. 32 and 57—*Reference to High Court—Determination by Collector as to duty leviable, final—"Case"—Jurisdiction of High Court* An adjudication by a Collector, under the powers conferred on him by s 31 of the Stamp Act, 1899 as to the duty with which an instrument is chargeable, [illegible]

——— s 33—*Seizure of documents under search-warrant—Document that "comes" before a Magistrate.* Complaint having been made against a person for having committed offences [illegible]

——— s. 35.

See ARBITRATION . 13 C. W. N. 63

——— ss. 35 and 42—*Stamp—Penalty—Unstamped receipt* In applying proviso (b) to s 35 of Act II of 1899, the Court should not levy the duty of one anna as well as the penalty of

STAMP ACT (II OF 1899)—*concld.*

——— s. 35—*concld.*

[illegible]

——— s. 37.

See post, SCH. I, ART. 1

——— ss. 40, 44, 48 and 55—*et seq.—Stamp—Improperly stamped document tendered in evidence—Stamp-duty from whom recoverable.* If a plaintiff produces in Court in support of his claim an unstamped or improperly stamped document, he primarily is the person from whom the [illegible] and penalty may be recovered [illegible]

271

——— s. 42.

See ante, ss. 35 AND 42

——— s. 52 (*a*), Sch I, Art. 30, exemp

See STAMP DUTY

I. L. R. 36 Calc. 645

——— s. 57.

See ante, ss. 32 AND 57.

——— *Certificate by Deputy Collector under s 40(1) (a), exempting document* [illegible] *Board of Revenue* [illegible]

[illegible] that they were exempt [illegible] The Inspector General of Registration disagreed with the opinion formed by the Deputy Collector, and reported the matter to the Board of Revenue for orders The Board of Revenue referred the question as to the stamp duty, if any, payable on the documents to the High Court, under s. 57 of the Act: *Held* (the Chief Justice dissenting), that the High Court had no jurisdiction to decide the question. REFERENCE UNDER STAMP ACT, s. 57 (1901) . . . I. L. R. 25 Mad. 752

——— s. 62, cl. (b)—*Receipt not duly stamped granted by a firm—Master of the firm, if* [illegible] *not granted in his presence or under* [illegible]

was due and a receipt not duly stamped was granted evidencing payment of the money to the firm and the accused, who was the sole surviving member of the firm, admitted receipt of the money paid, but there was no proof, either that the receipt was written or granted by the gomastha in the presence or under the authority of the accused. *Held,* that the accused could not be rightly convicted of an

STAMP ACT (II OF 1899)—*contd.*

——— s. 62—*concld.*

offence under cl. (*b*) of s. 62 of the Stamp Act. GOLAM HOSSAIN ARIFF *v.* EMPEROR (1904)
8 C. W. N. 378

——— s. 69—*Court Fees Act (Act VII of 1870), as amended by Act XII of 1891), s. 34—Sale by thief of stolen stamps—Offence.* A person who had been convicted of stealing two stamps was charged, under s 69 of the Stamp Act, 1899, *with having sold them, he not being a licensed* vendor of stamps · *Held*, that the words "sells or offers for sale," which occur in s. 69 of the Stamp Act and in s. 34 of the Court Fees Act, include the [illegible]

SCHEDULE I

1. ——— **Art. 1**—*Act II of 1899 (Indian Stamp Act), s 37, and Sch I, Art 1—Notification (Government of India) No 786 S R, dated the 17th February, 1899, Rule 16—Acknowledgment stamped with a postage stamp instead of a receipt stamp—Such stamp not "a stamp of sufficient amount but improper description."* S 37 of the Indian [illegible]

improper description" a description of stamp appropriate to purposes altogether outside the Stamp Act, but is confined to a stamp which is used for the purpose of denoting the stamp duty chargeable on an instrument, but which is improper in a particular [illegible]

[illegible] All. 216

2. ——— *Construction of document—Promissory note—Acknowledgment* Three persons borrowed money from a fourth, and at the time a memorandum signed by the borrowers was drawn up in the following terms:—"Account (*lekha*) of Bhawani Din Kalwar, Katwari Kalwar and Bindesri Kalwar, 8th February 1901, interest 1 per cent. per mensem, payable 3rd May 1901, R500 borrowed from Udit Upadhya for a sugar factory" The document contained no promise to repay the money. *Held*, that this was a mere memorandum, which might perhaps amount to an acknowledgment such as would require a 1-anna stamp, which it bore, but was certainly neither a promissory note nor an acknowledgment coupled with a promise to repay, which would require a stamp of higher value, and would not exclude parol evidence of the contract. UDIT UPADHYA *v.* BHAWANI DIN (1905) **I. L. R. 27 All 84**

STAMP ACT (II OF 1899)—*contd.*

SCHEDULE I—*concld.*

——— Art. 1—*contd.*

3. ——— *Stamp—Construction of document—Memorandum of account—Acknowledgment of debt—Admissibility of evidence.* The plaintiff sued for the recovery of certain sums of money lent by her deceased husband to the defendants, a firm of bankers, and she produced in support of her claim two documents described in the lower Courts as *sarkhats.* These were documents in the form of extracts from bankers' books showing a credit and debit side and in one case a balance, struck, but they were not signed by the parties or either of them, and they contained no acknowledgment of or promise to pay a debt. They were not stamped *Held*, that these papers were merely memoranda, which might be given in evidence for what they were worth, but did not require to be stamped. *Udit Upadhya v. Bhawani Din, I. L R 27 All 84,* referred to. DULMHA KUNWAR *v* MAHADEO PRASAD (1906). **I. L. R. 28 All. 436**

4. ——— **Arts. 1 and 5**—*Acknowledgment—Stamp—Agreement.* Plaintiff sued upon an acknowledgment passed by the defendant to the following effect—"This day rupees two hundred and forty-one I received The interest thereon is by agreement fixed to be at the rate of *R1 per cent.* per month. This is the account in respect of the name" The acknowledgment bore an anna stamp *Held*, that the above acknowledgment was an agreement, and, as such, required an eight-anna stamp. LAXUMIBAI *v.* GANESH RAGHUNATH (1900)
I. L. R. 25 Bom. 373

——— **Art. 5**—*Cl (b)—Agreements to deliver goods in exchange for goods—Price* Agreements or memoranda of agreements to deliver goods in exchange for goods are not agreements of sale under Art. 5, Sch. I, of the Indian Stamp Act (II of 1899), and are liable to stamp duty of eight annas each, as agreements "not otherwise provided for." SAMARATMAL UTTAMCHAND *v.* GOVIND (1901)
I. L. R. 25 Bom. 696

——— **Art. 23.**

See ante, S. 24 AND SCH. I, ART. 23.
See post, ARTS 55, 23 AND 62 (*e*)

——— *Pressing factory—Partnership—Transfer of a share in consideration of a certain sum—Document—Release—Conveyance on sal of property* Where by a document, the executing party, purporting to be entitled to a share in a going pressing factory, transfers absolutely the whole of that share to the other person interested [illegible] a certain sum, the [illegible] of property. [illegible] (1908) [illegible] 32 Bom. 505

——— **Art 24**—*Copy—Extract—Account books—Civil Procedure Code (Act XIV of 1882), ss. 141A, 142A.* A copy or extract from an entry in an account book, filed under the provisions of ss. 141A and 142A of the Civil Procedure Code,

STAMP ACT (II OF 1899)—*contd.*

SCHEDULE I—*contd*

——— Art 24—*concld*

requires no stamp. KASTUR DANAJI MARWADI *v* FAKIRIA HAJIA PATIL (1902)
I. L. R. 26 Bom. 522

——— Arts 32 and 40—*Mortgage—Further charge—Stamp* Certain property was mort-

written on a stamp paper of R1 *Held*, that the

I. L. R 25 Bom. 370

——— Art 35.

See ante, s. 5 AND SCH I, ART. 35.

——— Art. 40.

See ante, ARTS. 32 AND 40

——— Art. 43

See ARBITRATION . 13 C. W. N. 63

——— Art. 47, cl. A.

See ante, ss 2 AND 7 AND SCH I, ART 47, CL. A.

——— Art. 47, cl. D—*Certificate of membership—Policy of life insurance* The certificate of membership of a Provident Society was to the following effect:—"You have, on condition of your conforming to the rules and regulations of this society from time to time in force, insured your life in the class of this society at the age of "The name of Mr. , residing at , has been registered as that of the person to whom the amount due under the rules of this society after

I. L. R. 25 Bom. 376

——— Art. 53 (c)— *Stamp—Receipt for rent—Receipt for money paid out of Court in*

I. L. R. 31 All. 36

STAMP ACT (II OF 1899)—*concld.*

SCHEDULE I—*concld*

——— Arts. 55, 23, and 62 (e)—*Stamp—Conveyance—Release—Document executed by a benami purchaser professing to relinquish in favour of the real purchaser any claims which he might have in virtue of the purchase Held*, that a document, by means of which the certified purchaser of property sold by auction in execution of a decree purported to relinquish, in favour of a person whom he alleged to be the real purchaser of the property, any claims which he might have in respect of the property by reason of his being the certified purchaser thereof, was to be stamped as a release, according to Art 55 of the first Schedule to the Indian Stamp Act, 1899 REFERENCE UNDER S. 57 OF ACT II OF 1899 (F B 1902) . . I. L R. 24 All. 372

——— Art 62.

See ante, ARTS, 55, 23 AND 62 (*e*)

STAMP DUTY.

See HATCHITTA . 11 C. W. N. 1122

See STAMP.

See STAMP ACTS.

See STAMP DUTY, REFUND OF.

——— levy of.

See APPELLATE COURTS—EXERCISE OF POWERS IN VARIOUS CASES SPECIAL CASES . I. L. R. 15 Mad. 29

——— payment of.

See PAUPER SUIT—APPEALS
I. L R. 1 Bom. 75
I. L R. 8 Mad. 214
I. L. R. 11 Calc. 735

——— right to recover.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION —AGREEMENT . I. L. R. 21 Bom. 126

See PAUPER SUIT—SUITS
2 B. L. R. Ap. 22

See SET-OFF—GENERAL CASES.
I. L R. 21 Bom. 126

KASHIBULLAV BISWAS (1907)
I. L. R. 35 Calc. 111

STAMP DUTY—*concld.*

2. ———— **Relinquishment of claim by reversioner**—*Release* The relinquishment of his claim by a reversioner is a release and must be *stamped* accordingly. KRISHNAJI NARAYAN *v.* BALKRISHNA VENKATESH (1909)

. . *I. L. R.* **33 Bom. 657**

STAMP DUTY, REFUND OF.

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

1 Ind Jur. O. S. 57 : 1 Hyde 149
Marsh 274
1 Mad. 127
12 W. R. 376

See STAMP ACT, 1879, s. 51.

I. L. R. 16 Mad. 459
I. L. R. 18 Mad. 235

See STAMP DUTY

1. ———— **Remanded case.** The stamp duty is refundable, and should *not be charged to* the respondent, in a case remanded MASSEYK *v.* JUGOBUNDHOO DUTT . **1 W. R. Mis 12**

2. ———————— *Held*, by the ma-

DUTT

B. L. R. Sup. Vol. 511 : 6 W. R Mis. 65
1 Ind. Jur. N. S. 401

In re PROSUNNO CHUNDER ROY CHOWDRY

11 B. L. R. 372 note

S C. PROSUNNO CHUNDER ROY CHOWDHRY *v* NUBO KRISTO CHATTERJEE . **18 W. R. 434**

3. ———— **Compromise pending appeal**

In re ABDUL HAMED CHOWDRY

4 B L. R Ap. 96 note

4. ———— **Refund of excess of stamp duty**—*Court Fees Act (VII of 1870), ss. 13, 14, and 15*

The Subordinate

. . . the Court had no power to grant it, its power being limited to cases specified in ss. 13, 14, and 15 of the Court Fees Act; but that there is nothing in the law preventing the Government from refunding any amount which they may think the plaintiff was improperly ordered to pay. *In the matter of the petition of* ZOYNOODDEEN HOSSEIN KHAN . . . . . **11 B. L. R. 370**

S C. ZOYNOODDEEN HOSSEIN KHAN *v.* SECRETARY TO THE BOARD OF REVENUE

20 W. R. 106

5.

R100, and the result was a remand in respect to a portion of the property of which the value was R1,756, it was *held* that, as the appellant was successful in his appeal in respect of property representing a value which must of itself have required a stamp duty of R100, that portion of his appeal in

6. ———— **Compromise of appeal before hearing.** Where an appeal had been compromised before a Bench of the Sudder Court, and in the presence of the parties, before it had been entered in the cause list hung up in the Court-room —*Held*, that appellant was entitled to a refund of the full amount of stamp duty paid by him. *In the matter of* GUJENDRO NARAIN ROY

11 W. R. 158

7. ———— **Attorney—Entry on Roll of advocates**—*Refund of Stamp duty—Stamp Act (II of 1899), s. 52 (a), Sch. 1, Art 30, Exemption.* *B*, who had been enrolled as an attorney of the High Court of Calcutta and paid the requisite stamp duty of R250, was subsequently enrolled as an advocate of the same Court and paid a stamp duty of R500. On an application by *B* for a refund of the latter stamp duty, by virtue of the Exemption to Article 30, Schedule 1 of the Indian Stamp Act of 1899 —*Held*, that exemption could be claimed and that the stamp duty of R500 should be refunded. *In re* R. BAXTER (1909)

I. L. R. 36 Calc. 645

STARE DECISIS.

———————— *Its value in the department of procedure.* The principle of *stare decisis* is of undoubted value in its bearing on the law of property, but the doctrine is not of the same importance in the department of procedure when the practice of one Court is to be brought into conformity with the settled practice of other Courts and the plain terms of the Code. MANILAL HARGOVANDAS *v.* VANMALIDAS AMRATLAL (1905)

I L. R. 29 Bom. 621

STATEMENT IN PREVIOUS DEPOSITION.

See EVIDENCE ACT (I OF 1872), s. 32.

12 C. W. N. 266

STATEMENTS MADE OUT OF COURT

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION
I. L. R. 14 Bom. 572

——— statements recorded by Police in Special Diary—

See WITNESS
I L. R. 36 Calc. 560

STATUTE.

See OUDH ESTATES ACT
8 C. W. N. 699
L R 31 I. A. 132

See OUDH RENT ACT
I. L R. 26 All. 299
8 C. W. N. 521
L. R. 31 I A. 116

See PROBATE AND ADMINISTRATION ACT.
8 C. W. N. 578

See STATUTES, CONSTRUCTION OF.

——— promulgation of—

See ONUS OF PROOF—MORTGAGE
B. L. R. Sup. Vol. 415

——— repeal of, effect of—

See APPEAL—RIGHT OF APPEAL, EFFECT OF REPEAL ON.

See CIVIL PROCEDURE CODE, 1882, s. 3.

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION.

See LIMITATION—STATUTES OF LIMITATION—LIMITATION ACT, 1871.
I. L. R. 1 Bom. 287

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS ACT III OF 1865.
I. L R. 1 Mad. 223

See OFFENCE BEFORE PENAL CODE CAME INTO OPERATION. I. L. R 1 All. 599
I. L. R 2 Calc. 225

——— 5 and 6 Edw. III, c. 16—

See SALARY . . 3 Moo. I. A. 435

——— 32 Hen. VIII, c. 34—

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS
I. L. R. 14 Calc. 176

——— 13 Eliz, c. 5—

See DEBTOR AND CREDITOR
1 Hyde 178
2 Ind. Jur. O. S. 7
1 W. R 41
I. L R. 10 Calc. 616
L. R. 11 I A. 10
I. L. R. 11 Bom. 666
I. L. R. 13 Bom. 434

See INSOLVENCY ACT, s 26.
I. L. R. 3 Calc. 434

STATUTE—*contd.*

——— 13 Eliz., c. 5—*concld*

See TRANSFER OF PROPERTY ACT, s. 53.
I. L. R. 22 Calc 185
I. L R. 23 Mad. 184
I. L. R. 25 Bom. 202
I. L. R. 27 Bom. 146

——— **Doctrine of fraudulent conveyance void against creditors** The doctrine of a fraudulent conveyance being void as against creditors *held* to be a principle of Hindu as it is of English law under 13 Elizabeth, c. 5. SHAMKISSORE SHAW *v* COWIE . 2 Ind. Jur O. S. 7

See SOODHEEKEENA CHOWDHRAIN *v.* GOPEE MOHUN SEIN . . . . 1 W. R. 41

——— 27 Eliz, c. 4—

See DEBTOR AND CREDITOR 1 W. R. 41

See TRANSFER OF PROPERTY ACT, s. 53.
I. L R. 22 Calc. 185
I. L. R. 25 Bom. 202

See VOLUNTARY CONVEYANCE
22 W. R. 60

——— 43 Eliz, c. 4—

See BOMBAY MUNICIPAL ACT, 1888, ss 143, 144 . I. L. R 16 Bom 217

See WILL—CONSTRUCTION.
14 B. L. R. 442

——— 3 Jac I, c 7—

Stat 3 Jac. I, c. 7, has not been extended to India. WILKINSON *v.* ABBAS SIRKAR
3 B L. R. O. C. 96

——— 21 Jac I, c 16—

See ENGLISH LAW—LIMITATION.
5 Moo I. A. 43; 234

See LIMITATION—STATUTES OF LIMITATION—STAT. 21 JAC. I, c. 16.
5 Moo. I. A. 43

See STATUTES, CONSTRUCTION OF.
5 Moo I. A. 234

——— 29 Car. II, c 3—

See GUARANTEE . 5 B L. R. 639

See STATUTE OF FRAUDS.

——— 29 Car II, c 7—

See LORD'S DAY ACT.

——— 31 Car II, c. 2—

See FOREIGNERS . I. L. R. 18 Bom. 636

See HABEAS CORPUS . 6 B. L. R. 392

——— 2 & 3 Anne, c. 4, s 1—

See VENDOR AND PURCHASER—NOTICE.
I. L. R. 6 Bom. 168

——— 6 Anne, c. 2, s 4 (Ireland)—

See VENDOR AND PURCHASER—NOTICE.
I. L. R. 6 Bom. 168

STATUTE—*contd.*

——— 6 Anne, c. 35, s 1—

See VENDOR AND PURCHASER—NOTICE.
I. L. R. 6 Bom. 168

——— 7 Anne, c 20—

See VENDOR AND PURCHASER—NOTICE.
I L. R 6 Bom. 168

——— 8 Anne, c 14—

See LANDLORD AND TENANT—PAYMENT OF RENT—GENERALLY
3 B. L. R. O. C. 56

——— 7 Will. III, c 3, s 2—

See WAGING WAR AGAINST THE QUEEN.
7 B. L. R. 63

——— 7 Geo. I, c 21, s. 5—

See BOTTOMRY BOND . 5 Bom. O. C. 64

——— 8 Geo II, c. 6, s. 1—

See VENDOR AND PURCHASER—NOTICE
I. L. R. 6 Bom. 168

——— 14 Geo. III, c. 48—

See CONTRACT—WAGERING CONTRACTS.
I L. R. 23 Bom. 191

——— 21 Geo. III, c 70, s 5—

See HIGH COURT, JURISDICTION OF—MADRAS—CIVIL I. L. R. 8 Mad. 24

——— s 8—

See MANDAMUS . 11 B L. R. 250

See RIGHT OF SUIT—ACTS DONE IN EXERCISE OF SOVEREIGN POWERS.
I. L. R. 1 Calc. 11

——— s 17—

See CONTRACT ACT, s. 27, 14 B. L. R. 76

See GUARANTEE . 5 B. L. R. 639

See LANDLORD AND TENANT—BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS.
I. L R. 8 Calc. 582
I. L. R. 5 Calc. 688

See LANDLORD AND TENANT—CONTRACT OF TENANCY, LAW GOVERNING
I. L. R. 5 Calc. 688

See STATUTE OF FRAUDS.
5 B L. R. 639 ; 643

——— *Construction of section—" Inheritance and Succession." Per* PONTIFEX, J —The true construction of s. 17 of 21 George III, c 70, must confine the words " their inheritance and succession " to questions relating to inheritance and succession by the defendants. SARKIES *v* PROSONOMOYEE DOSSEE
I. L. R. 6 Calc. 794 : 8 C. L. R. 76

STATUTE—*contd.*

——— 21 Geo. III, c. 70—*concld*

——— s 21—

See PRIVY COUNCIL, PRACTICE OF—VALUATION OF APPEAL . 5 W. R. P. C 34
1 Moo. I. A. 363

——— s. 24—

See JUDICIAL OFFICERS, LIABILITY OF.
2 Moo. I. A. 293

——— 37 Geo. III, c. 142, s 10—

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS.
7 Bom. Cr. 6

——— 39 & 40 Geo. III, c. 70, s. 3—

See HIGH COURT, JURISDICTION OF—MADRAS—CIVIL . I. L. R. 8 Mad. 24

——— 49 Geo. III, c. 128—

See SALARY . 3 Moo. I. A. 435

——— 52 Geo. III, c. 101 (Lord Romilly's Act)—

See RIGHT OF SUIT—CHARITIES AND TRUSTS . I. L. R 17 Mad. 462
I. L R. 24 Calc. 418

——— 53 Geo. III, c 155, ss. 99 and 100—

See JURISDICTION OF CIVIL COURT—REVENUE . . I. L. R 1 Mad. 89

——— s 105—

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS.
7 Bom. Cr. 6

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.
6. Bom. Cr. 14

——— s 111—

See ADVOCATE GENERAL.
4 Moo. I. A. 190

——— 56 Geo III, c 100—

See HABEAS CORPUS.
5 B. L. R. 418 ; 557

——— 4 Geo IV, c. 34, s 3—

See ACT XIII OF 1859
I. L. B. 21 Calc. 262

——— 4 Geo. IV, c. 71, s 17—

See HIGH COURT, JURISDICTION OF—MADRAS—CIVIL . I. L. R. 8 Mad. 24

——— 4 Geo IV, c 81—

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS.
13 B. L. R 474

——— 6 Geo IV, c. 16—

See ENGLISH LAW—BANKRUPTCY.
2 Moo. I. A. 263

STATUTE—*contd*

——— 6 Geo IV, c 85—

See SALARY . . 3 Moo. I. A. 435

——— 9 Geo IV, c. 33 (Fergusson's Act)—

See LAND TENURE IN BOMBAY.
4 Bom. O. C. 1

——— 9 Geo IV, c 73, s. 36—

See INSOLVENCY ACT, 9 GEO IV, c. 73.
1 Moo. I. A. 87

——— 2 & 3 Will. IV, c 34—

See SUPREME COURT, MADRAS
3 Moo I. A. 329

——— 2 & 3 Will. IV, c 51—

See PRACTICE—CIVIL CASES—ADMIRALTY COURT . . I. L. R. 22 Calc. 511

——— 2 & 3 Will. IV, c 71—

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR . 3 B. L R. O. C. 18
6 B. L R. 85 : s. c, on appeal
12 B. L. R. 406
L R. I. A. Sup Vol. 175
15 B. L. R. 361
I L. R. 14 Calc. 839

——— 2 & 3 Will. IV, c. 114—

See ENGLISH LAW—BANKRUPTCY.
2 Moo. I. A. 263

——— 3 & 4 Will. IV, c. 41—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . 5 Moo. I. A. 499

See PRIVY COUNCIL, PRACTICE OF—SPECIAL LEAVE TO APPEAL
1 Ind Jur. O. S. 117 : 8 Moo. I. A. 270

——— 3 & 4 Will. IV, c. 42—

See OUDH RENT ACT, s. 141.
I. L R. 26 All. 297

——— 3 & 4 Will. IV, c. 42, s. 28—

See INTEREST—CASES UNDER ACT XXXII OF 1839 . . 6 Moo. I. A. 232

——— 3 & 4 Will. IV, c. 85, s. 43—

See CESSION OF BRITISH TERRITORY IN INDIA . I. L. R 1 Bom. 367
L. R. 3 I. A. 102
10 Bom. 37

——— 3 & 4 Will. IV, c. 123—

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS.
7 Bom. Cr. 6

——— 5 & 6 Will. IV, c. 54—

See MARRIAGE . . 2 Hyde 65

STATUTE—*contd*

——— 7 Will. IV, and 1 Vict., c. 85, s. 2—

See OFFENCE ON THE HIGH SEAS
1 B. L. R. O. Cr. 1

——— 1 Vict., c. 26, s 9—

See WILL—ATTESTATION.
13 B. L. R. 392

——— 2 & 3 Vict., c. 39—

See CUSTODY OF CHILDREN.
1 Hyde 99

——— 3 & 4 Vict., c. 56—

See SHIP, REGISTERING OF
4 Moo. I. A. 179

——— 3 & 4 Vict., c. 65—

See JURISDICTION—ADMIRALTY AND VICE-ADMIRALTY JURISDICTION
5 Bom. O. C. 64
10 Bom. 110

——— 5 & 6 Vict., c. 39, ss. 1 and 3—

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS . 1 Ind. Jur. O. S. 17
1 W. R. P. C. 43 : 9 Moo. I. A. 140

——— 5 & 6 Vict., c. 45—

See COPYRIGHT . I. L. R. 17 Calc. 951
I. L. R. 19 Bom. 557

——— 5 & 6 Vict, c. 100—

See COPYRIGHT . 8 B. L. R. 298

——— 5 & 6 Vict., c. 122—

See INSOLVENCY ACT, s 60 . 2 Hyde 1

——— 6 & 7 Vict., c. 65—

See COPYRIGHT . 8 B. L. R. 298

——— 6 & 7 Vict., c. 94—

See CONSULAR COURT.
I. L. R. 3 Bom. 58

——— 7 & 8 Vict., c. 69—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . 5 Moo. I. A. 499

——— 8 Vict, c. 18 (Lands Clauses Consolidation Act), s. 63—

See LAND ACQUISITION ACT, 1894, s. 23.
I. L. R. 25 Calc. 346

——— 8 & 9 Vict., c. 109—

See CONTRACT—WAGERING CONTRACTS.
4 Moo. I. A. 339
I. L. R. 23 Bom. 191

See ENGLISH LAW—WAGERS.
4 Moo. I. A. 339

STATUTE—*contd.*

——— 11 & 12 Vict., c. 21—

See INSOLVENCY.

See INSOLVENCY ACT.

——— 12 & 13 Vict., c. 83 (Local and Personal)—

See RAILWAY COMPANY.
I. L. R. 15 Bom. 537
I. L. R. 16 Bom. 434

——— 12 & 13 Vict., c. 96—

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.
8 Bom. Cr. 63
I. L. R. 5 Mad. 23

See OFFENCE ON THE HIGH SEAS
8 Bom. Cr 63

——— 12 & 13 Vict., c. 106, s. 65—

See INSOLVENCY ACT, s 60.
I. L. R. 21 Calc. 1018

——— 13 & 14 Vict., c. 104—

See COPYRIGHT . 8 B L. R. 298

——— 14 & 15 Vict., c. 19, s. 5—

See OFFENCE ON THE HIGH SEAS.
1 B. L. R O. Cr. 1

——— 15 & 16 Vict., c. 82, s. 41—

See PATENT . I. L. R. 9 All. 191
I. R. 13 I. A. 134

——— 16 & 17 Vict., c. 95—

See TERRITORY, TRANSFER OF.
2 Bom. 112 : 2nd Ed. 106

——— 17 & 18 Vict., c. 104—

See MERCHANT SEAMEN'S ACT, 1859.
I. L. R. 12 Calc. 43

See MERCHANT SHIPPING ACT, 1854.
Bourke O. C. 388
1 Ind. Jur. N. S. 95, 371
8 Mad. 85

See OFFENCE ON THE HIGH SEAS
I. L. R. 21 Calc. 782

——— 17 & 18 Vict., c. 125—

See CONTRACT ACT, s. 28.
I. L. R. 1 Calc. 42 ; 466

See WITNESS—CIVIL CASES—SWEARING OR AFFIRMATION OF WITNESSES
2 Mad. 246

——— 18 & 19 Vict., c. 91, s. 21—

See OFFENCE ON HIGH SEAS
I. L. R. 21 Calc. 782

——— 20 & 21 Vict., c. 55, s. 28—

See DIVORCE ACT (IV OF 1869), ss. 7, 11, AND 45 . . . 7 C. W N. 504

STATUTE—*contd.*

——— 20 & 21 Vict, c 66, s. 67—

See MILITARY COURTS OF REQUEST.
1 Mad 443

——— 20 & 21 Vict., c. 85—

See DIVORCE ACT, s. 22 *et seqq.*
I. L R. 26 All 553

——— 21 & 22 Vict, c 27 (Lord Cairns' Act)—

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY . I. L. R. 13 Bom. 252

——— 21 & 22 Vict, c 70—

See COPYRIGHT . 8 B L. R. 298

——— 21 & 22 Vict., c 106—

See CROWN LANDS.
I. L. R. 26 Mad. 268

See DOMICILE . I. L. R. 4 Calc. 106

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN.
1 Hyde 37

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—THEFT.
I. L. R. 10 Bom. 166

See PARTIES—PARTIES TO SUITS—GOVERNMENT . I. L. R. 14 Calc. 256

See RIGHT OF SUIT—ACTS DONE IN EXERCISE OF SOVEREIGN POWERS
I. L. R. 1 Calc. 11

See TERRITORY, TRANSFER OF
2 Bom. 112 : 2nd Ed. 106

——— ss. 41, 42 and 65—*Construction—Suit to recover damages—"Liabilities lawfully contracted and incurred"—Secretary of State in Council.* The term "Government of India" in s. 42 of the Statute points to its bearing the meaning not of the Governor General in Council, but of the [illegible] control of the coun- [illegible]

furnish a clue to the character of the charge, [illegible] than *to the conditions*, which can bring it into being, and in the later section to indicate the mode in which the liability may be enforced, and not the circumstances under which it may be incurred. SHIVABHAJAN *v.* THE SECRETARY OF STATE FOR INDIA (1904) . . . I. L R. 28 Bom 314

——— 21 & 22 Vict, c 126—

See ARREST—CIVIL ARREST 1 Hyde 253

——— 22 & 23 Vict, c 41—

See CROWN LANDS.
I. L. R. 26 Mad. 268

STATUTE—*contd.*

——— 23 & 24 Vict., c 88—

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.
I. L. R 5 Mad. 23
8 Bom. Cr. 63

See OFFENCE ON THE HIGH SEAS.
8 Bom Cr. 63

——— 24 Vict., c 10—

See JURISDICTION—ADMIRALTY JURISDICTION.

——— 24 & 25 Vict., c 67—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW
I. L. R 1 Calc. 431

See BOMBAY CITY IMPROVEMENT ACT
I. L. R. 27 Bom. 424

See CESSION OF BRITISH TERRITORY IN INDIA . . I. L. R. 1 Bom. 367
L R 3 I A 102
10 Bom. 37

See DIVORCE ACT, s. 2.
I. L. R. 10 Bom. 422

See FOREIGNERS.
I. L. R. 18 Bom. 636

See HIGH COURT, JURISDICTION OF—N. W P.—CIVIL I. L. R 11 All. 490

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See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION
I. L. R. 3 Calc. 63
I. L. R. 4 Calc. 172
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See STATUTES, CONSTRUCTION OF.
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See TERRITORY, TRANSFER OF
2 Bom 112 : 2nd Ed. 106

——— 24 & 25 Vict., c 73—

See COPYRIGHT . 8 B L R 298

——— 24 & 25 Vict., c 104—

See CHARTER ACT.

See LETTERS PATENT, HIGH COURTS.

See RULES OF HIGH COURT, MADRAS.
I. L. R. 1 Mad. 24

——— s 7—

See HIGH COURT, JURISDICTION OF—N.-W. P.—CIVIL . I. L. R. 9 All. 625

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I. L. R. 16 All. 136
I. L. R. 20 All. 267
L. R. 25 I A. 54

See TRANSFER OF CRIMINAL CASE—GROUND FOR TRANSFER.
I L. R. 28 Calc. 709

STATUTE—*contd.*

——— 24 & 25 Vict. c. 104—*contd.*

——— s 9—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW.

See CESSION OF BRITISH TERRITORY IN INDIA . . I. L. R. 1 Bom. 367
L R 3 I A 102
10 Bom 37

See JURISDICTION OF CIVIL COURT—POLITICAL OFFICERS.
7 B L R. 452 note

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.
I. L R. 3 Calc. 63
I. L. R. 4 Calc. 172
L R 5 I A 178

——— s 11—

See INSOLVENCY ACT, s 5.
I. L R. 21 Bom. 405

——— ss 11 and 13—

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.
I. L R. 3 Calc. 63
I. L. R. 4 Calc. 172
L R 5 I A 178

——— s 12—

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL . . 24 W. R 366

——— s 13—

See LETTERS PATENT, HIGH COURT, CL. 15.
I. L. R. 17 Mad. 100

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 27 . . 2 N. W. 117
Agra F B Ed 1874, 196

——— s 14—

See CHIEF JUSTICE, POWER OF.
I L. R. 8 Calc. 63

——— ss. 14, 15—

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, 1882, s. 622
I. L. R. 30 Calc. 588

——— s. 15—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . 13 B. L. R. 103

See CRIMINAL PROCEDURE CODE, 1898, ss. 145, 435 . I. L. R. 31 All. 160

See LAND ACQUISITION ACT, 1870
15 B. L. R. 187

See LEGAL PRACTITIONER'S ACT, 1879, s. 36 . . . I. L. R 31 All 174

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE . I. L. R. 19 Calc. 127

See REVIEW—POWER TO REVIEW
6 B. L. R. 222, 224 note

STATUTE—*contd.*

—— 24 & 25 Vict. c. 104—*concld.*

—— s. 15—*contd.*

See REVISION, CRIMINAL CASES—GENERAL RULES FOR EXERCISE OF POWER. I. L. R. 24 All. 315

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—LEAVE TO SUE I. L. R. 18 Mad. 236

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s 15.

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES I L. R. 30 Calc. 508

—— s. 16—

See JUDGE OF HIGH COURT
I. L. R. 16 All. 136
I. L. R 20 All. 267
L R 25 I. A. 54

—— s. 18—

See DIVORCE ACT, s 2
I. L. R 10 Bom. 422

—— 24 & 25 Vict., c. 154

See N.-W. P. ACT (LOCAL) II OF 1901, s 20.

—— 26 Vict., c. 24—

See JURISDICTION—ADMIRALTY AND VICE-ADMIRALTY JURISDICTION
10 Bom. 110
6 B. L. R. 323

—— 28 Vict., c. 25, s. 3—

See HIGH COURT, JURISDICTION OF—N -W. P —CIVIL.
I. L R. 18 All. 375

—— 28 & 29 Vict., c. 15—

See PROCLAMATION.
I L. R. 35 Calc. 701

—— 28 & 29 Vict , c. 15, ss. 3 and 6—

See DIVORCE ACT, s 2.
I L. R. 10 Bom. 422

See HIGH COURT I. L. R. 35 Calc. 701

—— 28 & 29 Vict., c. 17 (preamble)—

See HIGH COURT, JURISDICTION OF—N.-W. P —CIVIL.
I. L. R. 11 All. 490

See STATUTES, CONSTRUCTION OF
I. L. R. 11 All. 490

—— 30 & 31 Vict., c. 13, s 99—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MILITARY MEN
2 B. L. R. S. N. 3; 7

—— 30 & 31 Vict., c. 124, s. 11—

See OFFENCE ON THE HIGH SEAS.
7 Bom. Cr. 89
I. L. R. 14 Bom. 227

STATUTE—*contd.*

—— 31 Vict , c. 4—

See SPECIFIC PERFORMANCE—SPECIAL CASES . I. L. R. 17 Bom. 232

—— 32 & 33 Vict., c. 29—

See CROWN LANDS.
I. L. R. 26 Mad. 268

—— 32 & 33 Vict., c 71—

See INSOLVENCY ACT, s 40.
13 B. L. R Ap. 2; 9

—— 32 & 33 Vict., c. 98, s. 1—

See HIGH COURT, JURISDICTION OF—N.-W. P.—CIVIL.
I. L. R. 11 All. 490

See STATUTES, CONSTRUCTION OF
I. L. R. 11 All. 490

—— 33 & 34 Vict., c. 59—

See CROWN LANDS.
I. L. R. 25 Mad. 268

—— 36 & 37 Vict., c. 66, s. 25—

See TRANSFER OF PROPERTY ACT, s. 132
I. L. R. 21 Bom. 60

—— 37 & 38 Vict., c. 27—

See COURTS (COLONIAL) JURISDICTION ACT, 1874.

See OFFENCE ON THE HIGH SEAS
I. L. R. 14 Bom. 227
I. L. R. 21 Calc. 782

—— s. 3—

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION—OFFENCE COMMITTED ON THE HIGH SEAS
I. L. R. 25 Bom. 636

—— 39 & 40 Vict , c. 46—

See CONSULAR COURT
I. L R. 3 Bom. 58

—— 42 & 43 Vict., c. 33, s. 144—

See ARMY DISCIPLINE ACT.
7 C. L. R. 336

—— 43 & 44 Vict , c. 16, s. 10—

See MERCHANT SEAMEN'S ACT, 1859.
I. L. R. 12 Calc. 438

—— 44 & 45 Vict., c. 41, s. 7—

See VENDOR AND PURCHASER—BREACH OF COVENANT . I. L. R. 25 Calc. 298

—— s. 17—

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION . I. L. R. 10 All. 295

STATUTE—*concld.*

———— 44 & 45 Vict , c. 58—

See Army Act, 1881

See Small Cause Court, Mofussil—Jurisdiction—Army Act
I. L. R. 13 Calc. 143
I. L. R. 10 Bom. 218
I. L. R. 10 Mad. 319

See Small Cause Court, Presidency Towns—Jurisdiction—Army Act
I. L. R. 13 Calc. 37
I. L. R 18 Calc. 144 ; 372

———— 46 & 47 Vict., c. 52—

See Insolvency Act (11 & 12 Vict , c 21), s 40　I. L. R. 26 Bom. 623

———— 51 Vict , c 4, s. 7—

See Small Cause Court, Presidency Towns—Jurisdiction—Army Act
I. L R. 18 Calc. 144 ; 372

———— 53 & 54 Vict., c. 27—

See Admiralty or Vice-Admiralty Jurisdiction . I. L. R. 29 Calc. 402

———— 55 & 56 Vict., c. 14—

———— s. 5—

See Bombay City Improvement Act.
I. L. R. 27 Bom. 424

———— 58 Vict., c. 7—

See Army (Annual) Act, 1895.

STATUTE OF DISTRIBUTION.

See Parsis . I. L. R. 2 Bom. 75

STATUTE OF FRAUDS (29 Car. II, c. 3).

See Evidence—Parol Evidence—Varying or Contradicting Written Instruments . 9 B. L. R. 245

———— sufficiency of signature under—

See Contract—Alteration of Contracts—Alteration by Party
8 B. L R. 305

1. ———— *Application of, to Parsis* The Statute of Frauds (29 Car II, c. 3), except so far as it has been repealed, applies to Parsis in India　Bai Maneckbai *v* Bai Merbai
I. L. R. 6 Bom. 363

2. ———— *Application of—* [illegible] ıme [illegible] 4th [illegible] Ma- [illegible] [illegible] 1

3. ———— *Application of, to the High Court, Original Civil Side. Quære:* Does the Statute of Frauds form any part of the procedure of the High Court in its original

STATUTE OF FRAUDS—*concld.*

jurisdiction ? Ram Saqur Dutt *v.* Nobogopaul Mookerjee . . . Bourke O. C 367

4. ———— s. 4—*Application of European defendant* The 4th section of the Statute of Frauds applies to cases in the mofussil in which the defendant alone is a British-born subject. Muttya Pillai *v* Western . 1 Mad. 27

5. ———— *21 Geo. III, c 70. s 17—Hindu defendant.* The 4th section of the Statute of Frauds does not apply to suits in which the defendant is a Hindu　Nekram Jemadar *v.* Iswariprasad Pachuri
5 B. L. R. 643 : 14 W. R. 305

6 ———— *Hindu and Mahomedan defendants* Where a contract is proved to have been entered into, but no memorandum [illegible]

Borrodaile *v.* Chainsook Buxyram
1 Ind. Jur. O S. 70 : 1 Hyde 51

7. ———— *21 Geo III, c. 70. s 17—Contract of guarantee* A contract of guarantee is a "matter of contract and dealing" within the terms of s. 4 of 21 Geo. III, c. 70, and therefore such a contract made by a Hindu is not affected by s 4 of the Statute of Frauds. Jagadamba Dasi v. Grob . . 5 B L. R. 639

———— s 7—

See Charitable Trusts.
I. L. R. 33 Bom. 509

STATUTES, CONSTRUCTION OF.

See Construction of Statutes.

See Bengal Municipal Act, 1884, s 339.
I. L. R. 17 Calc. 329

See Bengal Tenancy Act, 1885, ss. 15 and 16 . I. L. R. 22 Calc. 337

See Bengal Tenancy Act, s 174
I. L. R. 14 Calc. 636

See Bombay Abkari Act, 1878, s. 53
I. L. R. 17 Bom. 154

See Bombay Act III of 1866, s. 1, cl. 2.
4 Bom. Cr. 9

See Bombay District Municipal Act, 1873, s. 73 . I. L. R. 14 Bom. 180

See Bombay Municipal Act, 1888, s. 248 . I. L. R. 20 Bom. 617

See Bombay Revenue Jurisdiction Act, s 11 . I. L. R. 20 Bom. 803
I. L. R. 22 Bom. 583

See Certificate of Administration—Certificate under Bombay Regulation VIII of 1872, etc.
I. L. R. 13 Bom. 37

See Civil Procedure Code, 1882, s. 102 . . . 10 C. W. N. 991

STATUTES, CONSTRUCTION OF—*contd*

See Dekkhan Agriculturists' Relief Act, s 56 . I. L. R. 14 Bom. 516

See Execution of Decree—Effect of Change of Law pending Execution.

See Guardians and Wards Act, s 39.
I. L. R. 18 Bom. 375
I. L. R. 25 Calc. 909

See Judge of High Court
I. L. R. 16 All. 136

See Limitation—Statutes of Limitation—Generally
13 B. L. R. 177; 254
I. L. R. 1 Bom. 19
I. L. R. 3 Bom. 207
I. L. R. 6 Bom. 26

See Limitation Act, 1877, s 1.
See Limitation Act, 1877, s 14
I. L. R. 8 All. 475

See Limitation Act, 1877, s 26
I. L. R. 14 Bom. 213

See Madras Municipal Act, 1878, s. 192
I. L. R. 2 Mad. 362

See Madras Regulation XXV of 1802.
14 B. L. R. 115
L. R. 1 I. A. 268; 282

See Madras Towns Improvement Act, 1871, ss 58, 62 I. L. R. 3 Mad. 129

See Magistrate, Jurisdiction of—Powers of Magistrates.
I. L. R. 18 Bom. 380

See Minor—Cases under Bombay Minors Act . I. L. R. 4 Bom. 635

See Pensions Act, 1871
I. L. R. 1 Bom. 523; 531
I. L. R. 2 Bom. 294; 346

See Pre emption—Right of Pre-emption . . I. L. R. 13 All. 224

See Prerogative of the Crown.
See Security for Costs—Suits.
I. L. R. 21 Calc. 832

See Signature . I. L. R. 24 All. 319

See Supreme Court, Bombay
3 Moo. I. A. 468; 488
5 Moo. I. A. 234

See Transfer of Property Act, s 2
I. L. R. 12 Calc. 583

See Transfer of Property Act, s 95
10 C. W. N. 626

See Transfer of Property Act, s 99
I. L. R. 19 Mad. 382

——— Codes—

See Bengal Tenancy Act (VIII of 1885), s. 5 (5) . 6 C. W. N. 825

——— distinction between enactments affecting vested rights and those regulating procedure—

See Provident Funds Act, s 4.
I. L. R. 26 Mad. 440

STATUTES, CONSTRUCTION OF—*contd.*

——— issue of orders before commencement of Statute—

See Bengal Irrigation Act, ss 1, 6
I. L. R. 28 Calc. 487

——— the ejusdem generis rule—

See Mooktear . I. L. R. 29 Calc. 890

See Penal Code, s. 216B.
I. L. R. 25 All. 261

See Rent, Suit for
I. L. R. 28 Calc. 485

1 ——— Mode of construction. The meaning of an Act is to be gathered solely by reference to the Act itself. Muddoosooden Dey v Bamachurn Mookerjee . . 1 Hyde 100

2. ——— In interpreting statutes the more literal construction ought not to prevail if it is opposed to the intention of the [illegible] and if the [illegible] *v. North British Railway Company, L R 6 Ap Cas. 114*, referred to Queen-Empress v. Hori
I. L. R. 21 All. 391

3. ——— *Duty of Court.* [illegible] clear and plain, it is [illegible] ands. [illegible] 409

4. ——— *Preamble.* A rule of construction is that the enacting words of a statute may be carried beyond the preamble, if words be found in the former strong enough for the purpose Chinna Aiyan v. Mahomed Fakrudin Saib . . . . 2 Mad. 323

5 ——— *Act XIII of 1859, Preamble, and s 2.* Where the enacting sections of a statute are clear, the terms of the preamble cannot be called in aid to restrict their operation or to cut them down Queen-Empress v. Indarjit . . . . I. L. R. 11 All. 262

6 ——— *Pre-existing state of law.* The pre-existing state of the law, as recognized by the tribunals, is one of the chief means of interpreting laws of procedure Prabhakarbhat v. Vishwambhar . I. L. R. 8 Bom. 313

7. ——— *Reasons for enacting law—Motives of parties* If the words of a law are clear and positive, they cannot be controlled by any consideration of the motives of the party to whom it is to be applied, nor limited by what the Judges who apply it may suppose to have been the reasons for enacting it. Jodoonath Bose v. Shumsoonnissa Begum Buzloor Reheem v. Shumsoonnissa Begum
8 W. R. P. C. 3: 11 Moo. I. A. 551

8. ——— *Intention of Legislature in framing Act.* It is not for a Civil Court to speculate upon what was in the mind of the Legislature in passing a law, but the Court must

STATUTES, CONSTRUCTION OF—*contd.*

be bound by the words of the law judicially construed. MOHESH CHUNDER DOSS *v.* MADHUB CHUNDER SARDAR . . . 13 W. R. 85

9. ———— *Madras Municipal Act (I of 1884)—Inaccuracy in Act.* Where in an Act of the Legislature the context discloses a manifest inaccuracy, the sound rule of construction is to eliminate the inaccuracy, and to execute the true intention of the Legislature JENNINGS *v* PRESIDENT, MUNICIPAL COMMISSION, MADRAS I. L R. 11 Mad. 253

10 ———— *"Objects and reasons" of Act—Forms in which Bill came before Council* For the purpose of ascertaining the in-

permissible to refer, for this purpose, to the various forms in which the Bill was brought before the Legislature MOOSA *v* ESSA I. L. R. 8 Bom. 241

11. ———— *Specific Relief Act (I of 1877), s 9—Objects and reasons for Bill—Intention of Legislature Quære* Whether in construing an Act the "objects and reasons" for the Bill before it was passed as indicating the intention of the Legislature, can be referred to *Moosa v Essa, I. L R 8 Bom. 241,* referred to TADU JHALA *v* GOUR MOHUN JHALA I. L R. 19 Calc. 544

12. ———— *Reference to objects and reasons and to report of Select Committee* In construing a statute the Court cannot refer to the statement of objects and reasons attached to a Bill or to the report of a Select Committee, or to the debates of the Legislature, but can only look to

13. ———— *Penal Code, s 295, construction of—Reference to report of Indian Law Commissioners and of Select Committee* For the purpose of construing a section of an Act and ascertaining the intention of the Legislature, the

I. L. R. 17 Calc. 852

RAMCHANDRA JOISHI *v* HAZI KASSIM I. L. R. 16 Mad. 207

14 ———— *Administrator-General's Act (II of 1874)—History of passing of* ... *report of Se-* ... legislation ... fice of Ad- ... and powers ... Act II of

1874 *Per* TREVELYAN, *J*—The history of the passing of an Act and the intention of the Legislature in introducing it, though not admissible in England to explain a statute, have been in this country taken into consideration in construing Acts of the Legislature *Per* PRINSEP, *J.*—The objects and reasons given by the Legislature on the introduction of a Bill, and the Report of the Select Committee on it, may be referred to in construing any Act to show the intention of the Legislature in passing it *Queen-Empress* v. *Kartick Chunder Das, I L R 14 Calc. 721,* referred to ADMINISTRATOR GENERAL OF BENGAL *v.* PREM LALL MULLICK . . . I. L. R. 21 Calc. 732

Held, by the Privy Council on appeal, that it is not required that in a consolidating statute each enactment, when traced to its source, must be construed according to the state of things which existed at a prior time when it first became law; the object b
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intention, at a prior time, gathered from previous legislation on the matter. Proceedings of the Legislature in passing a statute are excluded from consideration on the judicial construction of Indian, as well as British, statutes ADMINISTRATOR-GENERAL OF BENGAL *v* PREMLAL MULLICK I. L. R. 22 Calc. 788 L. R. 22 I. A. 107

15 ———— *Proceedings of Legislature. Per* PIGOT, *J.* Proceedings of the Legislature cannot be referred to as legitimate aids to the construction of an Act *Administrator-General of Bengal* v. *Premlal Mullick, I. L R. 22 Calc. 788 : L R. 22 I. A. 107,* followed. QUEEN-EMPRESS *v* SRI CHURN CHUNGO I. L. R. 22 Calc. 1017

QUEEN-EMPRESS *v.* BAL GANGADHAR TILAK I. L R. 22 Bom. 112

16. ———— *Khoti Settlement Act (Bom Act I of 1880)—Reference to Debate on Bill in Legislative Council* For the purpose of construing an Act the debate upon the Bill when before the Legislative Council is not to be referred to. GOPAL KRISHNA PARACHURE *v.* SAKHOJIRAV I. L. R. 18 Bom. 133

17. ———— *Marginal notes to sections of Act* Marginal notes are no part of an enactment. DUKHI MOLLAH *v* HALWAY I. L. R 23 Calc. 55

18. ———— *Marginal notes to sections of Act.* Marginal notes to sections of an Act do not form part of the Act. *Sutton* v. *Sutton, L. R. 22 Ch. D 511,* and *Dukhi Mollah* v. *Halway, I L. R. 23 Calc. 55,* followed. PUNARDEO NARAIN SINGH *v.* RAM SARUP ROY I. L. R. 25 Calc. 858 2 C. W. N. 577

19. ———— *Codifying, object of.* The object of codifying a particular branch

STATUTES, CONSTRUCTION OF—*contd.*

of the law is that on any point specifically dealt with the law should thenceforth be ascertained by interpreting the language used in that enactment instead of, as before, searching in the authorities to discover what may be the law, as laid down in prior decisions The language of such an enactment must receive its natural meaning, without any assumption as to its having probably been the intention to leave unaltered the law as it existed before. *Bank of England v Vagliano, [1891] A. C. 107*, referred to. NORENDRO NATH SIRAR *v.* KAMALABASINI DASI

I. L. R. 23 Calc. 563
L. R. 23 I. A. 18

20. ——— *Chutia Nagpore Encumbered Estates Acts (VI of 1876 and V of 1884)—Deo Estates Act (IX of 1886)—Marginal Notes to Acts* The State publication of the Indian Acts being framed with marginal notes, such notes may be used for the purpose of interpreting an Act KAMESHAR PRASAD *v* BHIKHAN NARAIN SINGH. BHIKHAN NARAIN SINGH *v* KAMESHAR PRASAD . . . I. L. R. 20 Calc. 609

21. ——— *Statutes of limitation.* Statutes of limitation being in limitation of common right are not to be extended by construction to cases not clearly included within their terms. PARASHRAM JETHMAL *v* RAKHMA

I L. R. 15 Bom 299

22. ——— *Practice in contravention of the law—Hardship* A practice which is in contravention of the law, even if it is the prac-

[illegible]

of hardship BALKARAN RAI *v* GOBIND NATH TEWARI . . . . I. L. R. 12 All. 129

23. ——— *Distinction between affirmative commands and negative prohibition—Irregularities and illegalities* As a principle of the interpretation of statutes, a distinction must be drawn between cases in which a Court

[illegible]

DIN SINGH . . . . I. L. R. 12 All 510

24. ——— *Stamp duty, charge of.* If the express words of an Act do not warrant or necessitate a demand of duty or charge, it is not competent to a Court of law to extend such enactment or to give to the words a meaning beyond their strict and literal signification, so as to include any case which may reasonably come within the spirit of the enactment. *In the matter of the* PORT CANNING LAND COMPANY . 16 W. R. 208

STATUTES, CONSTRUCTION OF—*contd.*

25. ——— *Special and general procedure.* Inconvenience pointed out of introducing into Acts relating and intituled as relating to special jurisdiction only provisions affecting civil procedure generally. JUDOW MULJI *v* CHHAGAN RAICHAND . I L. R. 5 All. 306

26. ———Retrospective effect of Act —Statutes are *primâ facie* deemed to be prospective only. "*Nova constitutio futuris formam imponere debet non præteritis.*" *Moon v. Durden, 2 Exch. 22*, approved of. DOOLUBDASS PETTAMBERDASS *v.* RAMLOLL THACKOORSEYDASS

5 Moo. I. A. 109

CHUTTERDHAREE MISSER *v.* NURSINGH DUTT SOOKOOL . . . . . 3 Agra 371
Agra F. B. Ed. 1874, 163

27. ——— *Alteration in procedure—Retrospective effect of Act.* Alterations in forms of procedure are retrospective in effect, and apply to pending proceedings HAJRAT AKRAMNISSA BEGAM *v.* VALIULNISSA BEGAM

I. L. R. 18 Bom. 429

BALKRISHNA PANDHARINATH *v.* BAPU YESAJI
I. L. R. 19 Bom. 204

28 ——— *Acts relating to procedure—Retrospective operation of Act—Dekkhan Agriculturists' Relief Act (XVII of 1879), s 73—Dekkhan Agriculturists' Relief (Amendment) Act (VI of 1895)* In this suit the Subordinate Judge of Karmala held that the defendant was an agriculturist, and that therefore the suit could not be maintained without a certificate under s. 47 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). Under s 73 of that Act the finding of the Subordinate Judge upon the point was final The plaintiff appealed, the appeal including other points of objection to the decree as well as that with regard to the status of the defendant Pending his appeal, Act VI of 1895 was passed, which repealed s 73 At the hearing of the appeal the Judge considered the [illegible] and held [illegible] the [illegible] point. [illegible] enter- [illegible] t VI

taining the question. The provisions of 1895 altered the procedure, and were therefore applicable to proceedings already commenced at [illegible] *Held* also, that, even [illegible] 6, applied [illegible] ly concern- [illegible] ct the pro- [illegible] t itself, but [illegible] g to proce-

dure GANGARAM *v.* PUNAMCHAND NATHURAM
I. L. R. 21 Bom. 823

29 ——— *Hereditary Office* [illegible] S. 2 [illegible] *Act V of 1886*), s. 2. [illegible] ment Act [illegible] espective. [illegible] RAY [illegible]

I. L. R. 22 Bom. 118

STATUTES, CONSTRUCTION OF—*contd.*

30. ——— *Retrospective effect of Acts, principle as to—Mad. Act VIII of 1865* In a suit for rent for 1865, 1866, it was objected that pottahs and muchalkas were not exchanged as required by Act VIII of 1865, which came into force on 1st January 1866 *Held* (reversing the decision of the Civil Judge), that Act VIII of 1865 was inapplicable to the case The general principle is that rights already acquired shall not be affected by the retro-action of a new law. Rules as to procedure are not exceptions, but the question here was not one of processual, but of material law MORRIS *v.* SAMBAMURTI RAYAR . . 6 Mad. 122

31. ——— *Retrospective operation—Gujarat Talukhdars' Act (Bom. Act VI of 1888), s 31, cl 2—Collector refusing to confirm sale without sanction under act passed whilst decree was under execution* A decree upon a mortgage-bond passed against part of a talukhdar's estate on the 15th August 1887 was transferred

not intend to interfere with that vested right. That presumption was not rebutted by any intention to interfere appearing in the Act itself KALIAN MOTI *v* PATHUBHAI FALJIBHAI I L. R. 17 Bom 289

32. ——— Penal provisions in statute—*Retrospective effect.* Retrospective effect is not to be given to the penal provision of s 2, Bengal Act VI of 1862. NOBOKANTH DEY *v* BARODAKANTH ROY . . . . . 1 W. R. 100

33. ——— *Penal Statute—Bengal Excise Act (Beng Act VII of 1878)* Penal statute must be construed strictly, *i.e.*, nothing is to be regarded as within the meaning of the statute which is not within the letter and clearly and intelligibly described in the very words of the statute itself EMPRESS *v.* KOLA LALANG I. L. R. 8 Calc. 214 ; 10 C. L. R. 155

34. ——— *Penal statute—*

[illegible]

35 ——— *Penal Code (Act XLV of 1860), s 499—English law of defamation* *Semble* · S. 499 of the Indian Penal Code should be construed without reference to the English law. *In re* NAGARJI TRIKAMJI I. L. R. 19 Bom. 340

36. ——— Repeal by implication—*Repugnancy.* Statutes are not to be held to be repealed by implication, unless the repugnancy between the new provision and a former statute be plain and unavoidable. SITAPATHI NAYUDU *v* QUEEN . . . . . I. L. R. 6 Mad. 32

37. ——— *Implied repeal—Civil Procedure Code, 1859, s 187—Act IX of 1850, s 101* A special enactment is not impliedly repealed by a subsequent general enactment, if

MUDALIYAR . . . . . 1 Mad. 110

38. ——— *Repeal, effect of, on right of action.* A right of action is not taken away by a change in the law, unless by express enactment, but in the case of mere procedure, unless ...

3 Bom. O C. 49

39 ——— *Effect of repeal—Retrospective effect—Dekkhan Agriculturists' Relief Act, 1879—General Clauses Consolidation Act, 1868, s. 6.* The general rule is that a repealed statute cannot be acted on after it is repealed ; but, as provided in s 6 of the General Clauses Act, 1868, all matters that have taken place under it before its repeal remain valid But a new order of a Court, not ancillary or provisional, but directing

passed to promote some public important object, such as the protection of the property of the Dekkhan agriculturists, may be given on that account, a retro-active operation, if necessary, as the rule against such operation rests itself on such a general public interest, which may, under the circumstances, be deemed of less importance than the one embodied in the Act SHIVRAM UDARAM *v.* KONDAJI MUKTAJI . I. L. R. 8 Bom 340

40. ——— Alteration of law—*Law governing suit when law is changed pending suit.* The law as it exists when a suit is commenced must

41. ——— *Alteration of law while suit is pending—Act XIX of 1857, s 219—Repeal, effect of* Where the law is altered while a suit is pending, the law as it exists when

STATUTES, CONSTRUCTION OF—*contd.*

the action was commenced must decide the rights of the parties, unless the Legislature, by the language used, shows a clear intention to vary the mutual relations of such parties. GUJERAT TRADING COMPANY *v.* TRIKAMJI VELJI

3 Bom. O. C. 45

42. ——— **Right of suit**—*Act XVI of 1842—Act VIII of 1868, s. 1—Act XIV of 1870, s. 1.* On the 27th of June 1866 it was agreed by and between *B*, a zamindar, and *D*, a raiyat, that the latter should pay R20 annually as the rent of his holding and that for the future no further sum in excess should be demanded or suit brought for enhancement of rent. At the date of the agreement Act XVI of 1842 was in force. The settlement of the district, where the land in respect of which the agreement was made was situate, expired on the 1st of July 1870, before when Act XVI of 1842 was repealed by Act VIII of 1868, which Act was repealed by Act XIV of 1870, both Acts saving any right or title which had already accrued. *Held*, that no right of action to avoid or right to repudiate the engagement of the 27th of June 1866 accrued to the zamindar before the passing of those Acts DEOJEET *v.* BHUGWANT

6 N. W. 373

43. ——— **Statutes making contracts void and those prohibiting actions on them**—The distinction between enactments which declare contracts absolutely void and those which simply provide that no action shall be brought upon such contracts pointed out. VISSAPPA *v.* RAMAJOGI . . . . 2 Mad. 341

44. ——— **Statute imposing duty**—*Action for failure to perform it* Where a statute imposes a duty, it, without express words, gives an action for the failing to perform that duty, and for wrongfully performing it PONNUSAMY TEVAR *v.* COLLECTOR OF MADURA . 3 Mad. 35

45. ———"**Must" and "shall"**—*Limitation Act, XIV of 1859, ss. 20, 21* In interpreting statutes, the words "must" and "shall" may, in some cases, be substituted for the word "may," but only for the purpose of giving effect to the intention of the Legislature. In the absence of [illegible]

LONDON BANK *v.* URCHARD

I. L. R. 3 Calc 47: L. R. 4 I. A. 127

46. ——— **Provisos**—*Hindu Wills Act.* [illegible]

47. ——— **Land Acquisition Acts**—*Acts.* Acts relating to the acquisition of lands for public purposes must be construed strictly in favour of the subject SORABJI NASSARVANJI DUNDAS *v.* JUSTICES OF THE PEACE FOR THE CITY OF BOMBAY

12 Bom 250

48. ——— **Rules of construction**—*Statute of Limitations, 21 Jac. I, c. 16.* Where words have been long used in a technical sense, and have been judicially construed to have a certain meaning, and have been adopted by the Legislature as having a certain meaning prior to a particular statute in which they are used, the rule of construction of satutes requires that the words used in such statute should be construed according to the sense in which they have been so previously used, although that sense may vary from the strict literal meaning of the words. The words in the Statute of Limitations, 21 Jac. I, c. 16, s 7, "beyond the seas," are synonymous in legal import with the words "out of realm," or "out of the land" or "out of the territories," and are not to be construed literally. RUCKMABOYE *v.* LULLOOBHOY MOTTICHUND . . 5 Moo. I. A. 234

49. ——— *Bengal Rent Act X of 1859, s 77—Meaning of "determined"* The word "determined" meant "legally decided by a Court of competent jurisdiction" GHALIB ALI *v.* KHILLOO

3 N W. 51: Agra F. B. Ed. 1874, 243

50. ——— *Road Cess Act (Beng. Act X of 1871)—Interpretation clause, construction of.* In a suit on a bond by which certain land, admittedly lakhiraj, was mortgaged, the purchaser of a portion of the mortgaged property at an [illegible]

of the plaintiffs' claim. Although the effect of an interpretation clause is to give the meaning assigned by it to the word interpreted in all places in the Act in which that word occurs, it is not the effect of an interpretation clause that the thing defined has annexed to it every incident which may seem to be attached to it by any other Act of the Legislature. It does not follow therefore, that, because lakhiraj property is defined in the Road Cess Act, 1871, to be a tenure, all the interests and consequences attached by other Acts to tenures generally, or to particular classes of tenures, become annexed to lakhiraj property. UMACHURN BAO *v.* AJADANNISSA BIBEE

I. L. R. 12 Calc. 330

51. ——— *Tax illegally levied.* A statute not only enacts its substantive provisions, but as a necessary result of legal logic, it also enacts as a legal proposition everything essential to the existence of the specific enactments. Where the Legislature has imposed certain duties

STATUTES, CONSTRUCTION OF—*contd.*

both upon the tax-payer and upon the Municipal Commissioners, and those duties as to the tax-payer enforceable by penalties, are to be performed at a particular time —*Held*, that there was implied a "latent proposition of law," which is as clear and binding as if it had been explicitly declared. That proposition is that there shall be a legally sanctioned tax at the period at which the duties are to be performed LEMAN *v* DAMODARAYA . . . . I L. R 1 Mad 158

52. ———————— *Acts imposing taxes—Ambiguity in Acts* In order to impose a tax, due, rate, or toll upon a subject, the framers of the Act or bye-law under which such tax, etc, is imposed must use clear and unambiguous words to effect their purpose When the words used are ambiguous, the intendment of the Courts will be in favour of the subject upon whom the tax is sought to be imposed. Thus where the framers of the Surat bye-law imposed a tax of R1 per Surat mân upon "copper" imported into Surat for consumption, it was held that copper wrought up into pots did not fall within the words of the bye-law. *Semble* That when a tax is imposed upon goods imported into a town for consumption, and such goods, after having been subjected to the tax upon being imported into the town, are afterwards taken out for sale into the neighbouring villages and brought back unsold, such goods are not liable to be subjected to tax a second time DULLABH SHIVLAL *v.* HOPE . 8 Bom. A. C. 213

53. ———————— *Bombay Municipal Act (III of 1872), s 195—Act for public benefit.* Where an Act gives power to a Municipality

HOMED . . . I. L. R. 12 Bom. ...

54. ———————— *Letters Patent, High Court, cl 12.* Every statute is to be interpreted and applied so far as its language admits, so as not to be inconsistent with the comity of nations or with the established rules of interna-

KESSOWJI DAMODAR JAIRAM *v.* KHIMJI JAIRAM I L R. 12 Bom. 507

55. ———— **Legislative power of the Governor-General in Council**—*Stat. 24 & 25 Vict, c. 67, s 22—"Indian territories now under the dominion of Her Majesty"—"Said territories"—28 & 29 Vict., c. 17, Preamble—32 & 33 Vict, c. 98, s. 1.* The Governor-General in Council has power to make laws and regulations binding on all persons within the Indian territories under the dominion of Her Majesty, no matter when such territories were acquired His legislative powers are not limited to those territories which, at the date when the Indian Councils Act (24 & 25 Vict., c 67), received the Royal assent (*i e*, the 1st August 1861), were under the dominion of Her Majesty In the preamble to the 28 & 29 Vict., c 17, and in s. 1 of the 32 & 33 Vict, c 98. Parliament has placed this construction upon s. 22 of the Indian Councils Act Even if that construction was erroneous, it has been so declared by Parliament as to make its adoption obligatory. Though a mistaken opinion of the Legislature concerning the law does not make the law, yet it may be so declared as to operate in future. *Postmaster-General of the United States* v. *Early, Curtis' Rep, U S, p. 86*, referred to. It must be presumed that the laws and regulations of the Governor-General in Council are known to Parliament *Empress* v *Burah, I. L R 3 Calc. 143 I. L R. 4 Calc. 183*, referred to ABDULLA *v* MOHAN GIR . . I. L. R. 11 All. 490

56. ———— **Repeal of statute which repeals another, effect of**—*General Clauses Consolidation Act (X of 1887), s 7—Reformatory Schools Act (V of 1876), s 2—Criminal Procedure Code (Act X of 1872), s 318; (X of 1882), ss. 3 and 399* The repeal of a Statute repealing another statute does not revive the repealed

... I L R. 12 Mad 94, and *Queen-Empress* v. *Manaji, I L R 14 Bom 381*, referred to and approved of DEPUTY LEGAL REMEMBRANCER *v.* AHMED ALI . . I. L. R 25 Calc. 333 2 C. W. N. 11

57. ———— **Codifying statute.** In dealing with the interpretation of an Act intended to codify, a particular branch of the law, the proper course is, in the first instance, to examine the

...DHRY *v* EMPEROR (1902) . 7 C. W. N. 301

58 ———— **Liberty of subject.** In construing a statute which affects the liberty of the subject, the Courts should not only adopt the natural and ordinary construction, but should construe strictly expressions occurring therein. BISSUMBHUR SINGH *v.* QUEEN-EMPRESS (1900) 5 C. W. N. 108

59 ———— **Previous law.** In interpreting a statute, it should not be considered what the law was before the passing of that statute, but what the Legislature has said is to be of the law *after* the passing of the same. *Bank of England v. Vagliano, [1891] A. C. 107, 144; Narendra Nath*

... 8 C. W. N. ...

STATUTES, CONSTRUCTION OF—*concld.*

60. ——————— *Enactments relating to substantive rights—Effect on pending suits—Enactments relating to procedure, effect of.* It is a general rule that when the Legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them. *An exception to this general rule is where* enactments merely affect procedure, but do not extend to rights of action. VEDAVALLI NARASIAH *v.* MANRAMMA . . I. L. R. 27 Mad. 538

61. ——— **Proceedings in Legislative Council**—*Construction of Act—Probate and Administration Act—High Court.* In construing an Act the proceedings in the Legislative Council cannot be referred to SARAT SUNDARI BARMANI *v.* UMA PRASAD ROY CHOWDHRY (1904)
8 C. W. N. 578

62. ——— **Jurisdiction**—*Construction of —Pensions Act (XXIII of 1871), s. 4—Bombay Revenue Jurisdiction Act (X of 1876), s 4, proviso.* The general presumption is against construing a statute as ousting or restricting the jurisdiction of the superior Courts. The intention must be expressed in clear terms, not merely implied, but necessarily implied : the general rights of the Queen's subjects are not hastily to be assumed to be interfered with and taken away by Act of Parliament Such statutes are to be strictly construed when their language is doubtful A construction, which would impliedly create a new jurisdiction, is to be avoided, especially where it would have the effect *of depriving the subject of his free-hold or of any* common law right, or of creating an arbitrary procedure No doubt when a power has been conferred in unambiguous language by statute, the Courts cannot interfere with its exercise and substitute their own discretion for that of persons or bodies selected by the Legislature for the purpose Nor does any presumption arise against the finality of a decision by an authority with statutory powers to pronounce in respect of a duty or liability created by the statute. BALVANT RAMCHANDRA *v.* SECRETARY OF STATE (1905)
I. L. R. 29 Bom 480

63. ——— **"Immediately"**—*Land Acquisition Act (I of 1894), ss 12 and 18—Notice by the Collector—Reference to Court—Meaning of word "immediately"* Where a statute or written contract provides that a certain thing shall be done "immediately" regard must be had, in construing that word, to the object of the statute or contract as the case may be, to the position of the parties and to the purpose for which the Legislature or the parties to the contract intend that it shall be done immediately. *In re* LAND ACQUISITION ACT (1905) . . . I. L. R. 30 Bom. 275

64. ——— **Doubtful expressions**—*Bombay City Police Act (Bom. Act IV of 1902), ss. 12, 16, 18* In construing an expression of doubtful import occurring in a statute, the Court may well have regard to considerations outside the language of the Act. EMPEROR *v.* ATMARAM (1907)
I. L. R. 31 Bom. 480

STATUTES, INTERPRETATION OF.

See CONSTRUCTION OF STATUTES.

See STATUTES, CONSTRUCTION OF.

STATUTORY POWERS.

See INJUNCTION—SPECIAL CASES—PUBLIC OFFICERS WITH STATUTORY POWERS

See RAILWAY COMPANY.
10 B. L. R. 241
I. L R. 27 Bom. 344

See ZAMINDAR . 14 B. L. R. 209
L. R. 1 I. A. 364

STATUTORY ROAD.

See PORT COMMISSIONERS' ACT (BENG. ACT V OF 1870), ss. 5, 6, 31, 38, 39.
I. L R. 33 Calc. 1243

STAY OF EXECUTION.

See APPEAL TO PRIVY COUNCIL—STAY OF EXECUTION PENDING APPEAL.

See EXECUTION OF DECREE.
I. L. R. 34 Calc. 1037

See EXECUTION OF DECREE—STAY OF EXECUTION.

See PRIVY COUNCIL, PRACTICE OF—STAY OF EXECUTION PENDING APPEAL.

STAY OF PROCEEDINGS.

See ACCUSED PERSON . 5 C. W. N. 110

See ARBITRATION ACT, 1899, s. 19
I. L. R. 34 Calc. 443

See CIVIL PROCEDURE CODE (ACT V OF 1908), O. XIV, r. 13
13 C. W. N. 690

See CRIMINAL PROCEEDINGS.
I. L. R. 18 Bom. 581
I. L. R. 23 Calc. 610
2 C. W. N. 498; 639
3 C. W. N. 758

See FALSE EVIDENCE—GENERAL CASES.
5 C. W. N. 44

See INSOLVENCY ACT, s. 9.
I. L R. 21 Bom. 297

See LETTERS PATENT, HIGH COURTS, 1865, CL. 15 . 5 C. W. N. 781

See MORTGAGE—FORECLOSURE—RIGHT TO FORECLOSURE . 6 C. W. N. 654

See PARTITION . 13 C W. N. 690

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE. I. L R. 30 Calc. 112

See PRACTICE—CIVIL CASES—STAY OF PROCEEDINGS. I. L. R. 21 Calc. 561
I. L. R. 18 Bom. 65
I. L. R. 35 Calc. 541

CRIMINAL CASES—STAY OF PROCEEDINGS.

STAY OF PROCEEDING—*contd.*

——— until trial of test case—

See PRACTICE—CIVIL CASES—TEST CASE.
I. L. R. 29 Calc. 140

1 ——— Suits in respect of same subject-matter in different Courts—*Civil Procedure Code, 1877, s 20* A, who was employed by

& Co instituted the present suit against A for an account and for damages caused by his alleged negligence *Held*, that, as in both suits practically the same issues were triable, A was entitled as having been first to institute his suit, to proceed in the Court in which he had chosen to bring his suit and to have the other suit stayed, but without prejudice to the right of the plaintiffs in the latter suit to institute a cross claim in the Calicut Court MECKJEE KHETSEE *v* KASOWJEE DEVA CHUND
4 C. L. R. 282

2 ——— Right of plaintiff to choose place of trial—*Procedure—Venue—Civil Procedure Code (Act XIV of 1882), ss 27 and 53* The plaintiff brought this suit in the High Court at Bombay against the defendant for defamation alleged to be contained in a notice that appeared in the *Bombay Gazette* on the 9th April 1888 The defendant was the Chairman of the Hinganghat Mill Company The plaintiff had been for some years secretary and manager of that Company In April 1888 he was dismissed from his appointment, and shortly afterwards he filed a suit (No 1 of 1888) in the Court of the Deputy Commissioner at Wardha, in the Central Provinces (which was the Court of the district in which Hinganghat is situated), for wrongful dismissal The present suit was filed in July 1888 The defendant took out a summons calling on the plaintiff to show cause why the suit should not be stayed and the plaint returned to the plaintiff, in order that, if he thought proper,

suit (No. 1 of 1883) was pending at Wardha, and that the decree of that suit would decide the present case also *Held*, that the plaintiff was entitled to sue in Bombay. GEFFERT *v* RUCKCHAND MOHTA
I. L. R. 13 Bom. 178

3 ——— Preliminary decree, appeal against—*Civil Procedure Code (Act XIV of 1882), ss 545, 546—Partition suit, preliminary decree in —Powers of Appellate Court to stay subsequent proceedings* There is no provision in the Code of

passed the decree subsequent to the passing of such decree. BASANTA KUMAR SIRCAR *v.* BHUT NATH SIRKAR . . . 1 C. W. N. 264

STAY OF PROCEEDINGS—*concld.*

4. ——— Proceedings for committal for contempt of Court—*Notice of motion for committal—Service of notice—Personal service necessary—Service upon attorneys not sufficient—Appeal pending from order* When proceedings are taken for committal of a person for contempt of a Court's order, the Court is not obliged to stay those proceedings merely because an appeal has been filed from such order. *Gordon* v. *Gordon, [1904] P 163*, followed BAI MOOLBAI *v* CHUNILAL PITAMBER (1909) . I. L. R. 33 Bom. 630

STAY OF PROSECUTION.

——— pending civil litigation.

See CRIMINAL PROCEDURE CODE, s 195
13 C. W. N. 398

STEAM-TUGS.

1. ——— Regulation as to tugs—*River navigation—Towing* A party having two tugs, *A* and *B*, undertakes to supply tugs to two vessels *P* and *Q*, in the order of their engagements as soon as the tugs are free *A* is first free, and tows *P*, which has the prior claim, to Diamond Harbour where she becomes disabled. *B* subsequently tows *Q*, and, finding *A* disabled at Diamond Harbour, leaves *Q* and tows *P* out to sea, returning subsequently for *Q*. *Held*, that *B* was not justified in leaving *Q*, but that she ought to have towed her out to sea without interruption NOWRJEE NUSSERWANJEE *v* JOHANNES . . 1 Hyde 293

2. ——— Government pilots—*Order to Government pilots prohibiting their engaging tugs at exorbitant charge* The Government may prohi-

STEP IN AID OF EXECUTION.

See EXECUTION OF DECREE.

STOCKS.

——— confinement in—

See MADRAS REGULATION—1816—XI, s 10 . . I. L. R. 24 Mad. 271

STOLEN PROPERTY.

	Col.
1 OFFENCES RELATING TO . . .	12185
2. DISPOSAL OF, BY THE COURT . .	12191

See CHARGE TO JURY—SPECIAL CASE—STOLEN PROPERTY

See PENAL CODE, s. 411.

See STAMP ACT (II OF 1899), s. 69
I. L. R. 24 Mad. 319

——— trial for receiving—

See CRIMINAL PROCEDURE CODE, s. 233.
13 C. W. N. 418

STOLEN PROPERTY—*contd.*

1. OFFENCES RELATING TO.

1. ——— **Concealment of stolen property**—*Penal Code, ss. 411, 414. Held*, that the

received stolen property under s 411, Penal Code, and of assisting in the concealment of stolen property under s 414, which applies to persons whose dealing with the stolen property is not of such a kind as to make them guilty of dishonestly receiving or retaining it. GOVERNMENT *v.* NOWLIA 1 Agra Cr. 9

2. ——— *Penal Code (Act XLV of 1860), s 411—Evidence—Pointing out stolen property concealed in a place not under the accused's control* Where the sole evidence against a person charged with an offence under s. 411 of the Penal Code consisted of the fact that the accused had pointed out the place where some of the stolen property was concealed in the field of another person. *Held*, that this was not in itself sufficient evidence to support a conviction under the above-mentioned section QUEEN-EMPRESS *v* GOBINDA I. L. R. 17 All. 576

3. ——— **Assisting in concealing or**

REG *v* HARISHANKAR FAKIRBHAT 2 Bom. 136 : 2nd Ed. 130

4. ——— **Voluntarily assisting in the disposal of stolen property**—"*Believe*"—"*Suspect*"—*Penal Code, s. 414.* The word "believe" in s 414 of the Penal Code is much stronger than the word "suspect," and involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property, with which he was dealing, was stolen property. It is not sufficient in such a case to show that the accused person was careless, or that he had reason to suspect that the property was stolen, or that he did not make sufficient inquiry to ascertain whether it had been honestly acquired EMPRESS *v* RANGO TIMAJI . . . . I. L. R. 6 Bom. 402

5. ——— *Penal Code, ss. 193 and 414—Intention to get innocent person punished*

that the Magistrate was right in convicting and punishing the petitioner for the two separate offences of fabricating false evidence for use in a stage of a judicial proceeding under s. 193 of the Penal Code, and of voluntarily assisting in concealing stolen property under s. 414, Penal Code. EMPRESS *v* RAMESHAR RAI . I. L. R. 1 All. 379

STOLEN PROPERTY—*contd.*

1. OFFENCES RELATING TO—*contd.*

6. ——— **Money obtained on forged money orders**—*Penal Code, s 410.* Money obtained upon forged money orders is not "stolen property" within the definition thereof given in the Penal Code, s 410. QUEEN *v.* MON MOHUN ROY 24 W. R. Cr. 33

13 W. R. Cr. 70

8. ——— *Evidence—Penal Code (Act XLV of 1860), s 411.* To constitute the offence of receiving stolen property there must be some proof that some person other than the accused had possession of the property, before the accused got possession of it ISHAN MUCHI *v.* QUEEN EMPRESS . . I. L. R. 15 Calc. 511

of trust. QUEEN *v* SHUNKUR 2 N. W. 51

10. ——— *Property stolen at dacoity—Penal Code, s. 412—Proof of commission of dacoity* In order to sustain a conviction, under s 412 of the Penal Code, of receiving property

JOGESHUR BAGDEE . . . 7 W. R. Cr. 109

QUEEN *v.* BISHOO MANJEE 9 W. R Cr. 16

11. ——— *Evidence of dishonest receipt of property.* Where stolen property is found with a person who admits having received it, it may be fairly presumed that the receipt was a dishonest one, unless the receiver's conduct is satisfactorily explained. *In the matter of the petition of* RAMJOY KURMOKAR . . 25 W. R. Cr. 10

12. ——— *Habitually receiving stolen property—Penal Code, s. 413.* A person cannot be said to be an habitual receiver of stolen goods who may receive the proceeds of a number of different robberies from a number of different thieves on the same day. In order to

different occasions and on different dates.
EMPRESS *v.* BABURAM KANSARI I. L. R. 10 Calc. 190

13. ——— **Animal "nullius proprietas"**—*Penal Code, s. 411—Bull set at large in accordance with Hindu religious usage—*

STOLEN PROPERTY—*contd*

1. OFFENCES RELATING TO—*contd.*

Appropriation of bull. A person was convicted and sentenced under s. 411 of the Penal Code for dis-

of performing funeral ceremonies *Held*, that the bull was not, at the time of the alleged misappropriation, "property" within the meaning of the Penal Code, inasmuch as not only was it not the subject of ownership by any person, but the original owner had surrendered all his rights as its proprietor; that it was therefore "*nullius proprietas,*" and incapable of larceny being committed in respect of it; and that the conviction must be set aside. QUEEN-EMPRESS v. BANDHU I. L. R. 8 All. 51

14. ———— Doli incapax—*Penal Code, ss. 83, 411—Discharge of child-thief—Proof of theft—Conviction of receiver* The fact that a child has been tried for theft and discharged under s 215 of the Code of Criminal Procedure, 1872, on the ground of want of understanding within the meaning of s 83 of the Penal Code, is no bar to the conviction of a person charged under s 411 of the Penal Code with receiving the property alleged to have been stolen. QUEEN v. BEGARAYI KRISHNA SARANU . . . I. L. R. 6 Mad. 373

15. ———— Possession of stolen property—*Evidence of theft* Possession of property which has been stolen from the owner is generally at best only evidence of theft when the date of the theft is so recent as to make it reasonable to presume in the absence of explanation, that the person in whose possession the property is found must have obtained the possession by stealing QUEEN v. POROMESHUR AHEER . . 23 W. R. Cr. 16

16. ———————— *Guilty knowledge, inference of* Where property sufficiently identified to be the property of one person is found to be in the possession of another person without leave or license or any legal permission of the owner, it is for the party in whose possession the property is found

I. L. R. 20 Bom. 348

18 ———————— *Presumption—Penal Code, s 411—Receiver of stolen property—Pre-*

which the accused was tried for receiving stolen pro-

question of what is or is not a recent possession of stolen property is to be considered with reference to the nature of the article stolen. *Rex* v. *Adam*, *3 C. & P 600; Rex* v. *Cooper, 5 C. & P. 318; Rex* v. *Partridge, 7 C & P. 551,* followed INA SHEIKH v. QUEEN-EMPRESS I. L. R. 11 Calc. 161

19. ———————— *Penal Code, s. 411—India-rubber, possession of—Smuggling* Where

19 W. R. Cr. 37

QUEEN v. DASSORUT DASS . 18 W. R. Cr 63

And *see* QUEEN v. GOUREE CHURN DOSS. 19 W. R. Cr. 38 note

20. ———————— *Presumption—Dishonest receipt of stolen property—Dacoity—Jury* In considering whether the possession of stolen goods raises a presumption of dishonest receipt of stolen property, the attention of the jury should be drawn to the necessity of satisfying themselves that the possession is clearly traced to the accused. The fact of stolen property being found concealed in a man's house would be sufficient to raise a presumption that he knew the property to be stolen property, but it would not be sufficient to show that it had been acquired by dacoity. EMPRESS v MALHARI . . I. L. R. 6 Bom. 731

21. ———————— *Possession of members of joint family—Finding stolen property in joint family house. Held*, that the bare finding of stolen property and arms in the house of a joint Hindu family is not such evidence of possession on the part of each of its members as would form a sufficient basis for a conviction. QUEEN-EMPRESS v NIRMAL DASS . . I. L. R. 22 All. 445

22. ———————— *Penal Code, ss. 411, 414—Concealment of stolen property—Husband*

STOLEN PROPERTY—*contd.*

1. OFFENCES RELATING TO—*contd.*

and wife. The only evidence of the receipt of stolen property by a wife was the fact that the property was found in the house where she lived with her husband. *Held,* that that constituted the possession of the husband rather than that of the wife. QUEEN v. DESILVA . 5 N. W. 120

[illegible]

ders and abandons all proprietary rights in the animal, which thereafter is not " property " which is capable of being made the subject of dishonest receipt or possession within the meaning of ss 410 and 411 of the Penal Code *Queen-Empress* v. *Bandhu, I L R 8 All 51,* and *Queen-Empress* v. *Jamura, All Weekly Notes (1884) 87,* referred to QUEEN EMPRESS v NIHAL . I. L. R. 9 All. 348

24 ———————— *Penal Code, ss 403, 429—Bull dedicated to an idol* A bull dedicated to an idol and allowed to roam at large is not *feræ bestiæ* and therefore *res nullius,* but *primâ facie* the trustee of the temple, where the idol is [illegible]

25. ——— **Retaining stolen property** —*Penal Code, s 411—Knowledge* The offence of dishonest retention of stolen property under s. 411 of the Penal Code may be complete without any guilty knowledge at the time of the receipt. ANONYMOUS 4 Mad Ap. 42

26. ——— *Evidence of guilty knowledge.* Evidence of guilty knowledge is necessary to a conviction on a charge of dishonestly retaining stolen property. QUEEN v DOYAL SHILDAR . . . . . . 6 W. R. Cr. 87

27. ———————— *Penal Code, s 411—Proof that the property is stolen property necessary—Guilty knowledge of retainer.* Where a person is accused of an offence under s 411 of the Penal Code, he cannot, where the circumstances do not raise the presumption that he received the property knowing it to be stolen, be convicted of that offence merely because he is in possession of the property and does not account for his possession. The prosecution must prove both that the property was stolen and that the accused received it dishonestly QUEEN-EMPRESS v BURKE . I. L. R. 6 All. 224

28. ———————— *Evidence Act (I of 1872), s 114—Presumption—Possession of stolen property* *Held,* that the finding in the possession of a person six months after the commission of a dacoity, of articles stolen in that dacoity, such articles consisting of jewelry of a very ordinary type and by no means distinctive appearance, is not sufficient to form the basis of a conviction for participation in the dacoity *Queen-Empress* v. *Burke, I. L R. 6 All. 224,* and *Ina Sheikh* v. *Queen-Empress, I. L. R. 11 Calc. 160,* referred to. EMPEROR v. SUDHAR SINGH (1906) . I. L. R. 29 All. 138

29. ———————— *Penal Code s 411—Dishonest retention of stolen property—Property belonging to different owners—Separate convictions.* Where a person was found in possession of stolen property identified as belonging to different owners, but it did not appear that he had received such property at different times :—*Held,* that such person could not properly be tried and convicted under s. 411 of the Penal Code separately [illegible]

I. L. R. 15 All. [illegible]

30. ———————— *Dishonestly retaining stolen property—Penal Code, s. 411—Legal presumption.* Where a document, purporting to be [illegible]

this kind, it was right to raise legal presumptions arising out of the ordinary course of business and to dispense with direct evidence of the document having been actually on the record or stolen from it. Though it be true that, before a man can be con- [illegible]

imitation of it in its place showed that it must have been taken with a dishonest object. ISHAN CHANDRA CHANDRA v QUEEN-EMPRESS I. L. R. 21 Calc. 328

31. ———————— *Penal Code (Act XLV of 1860), ss. 224, 411—Escape from lawful custody—Actual thief arrested by private person while in possession of stolen property—s. 411 of the Indian Penal Code not applicable to the thief himself* S 411 of the Indian Penal Code does not apply to the person who is the actual thief. Where, therefore, a person, whose bullock had been stolen in his absence, traced it to the house of the thief, and there and then arrested him, and made him over to a [illegible]

a lawful custody. *Queen-Empress* v. *Potadu, I. L. R. 11 Mad 480,* referred to. KING-EMPEROR v. JOHRI (1901) . . I. L. R. 23 All. 266

32. ——— **Liability of head of the family or managing member**—*Penal Code (Act XLV of 1860), s 411—Possession of stolen property —Joint Hindu family.* Stolen property consisting of a considerable quantity of cloth, weighing about five maunds, was discovered on search by the police in a locked room in a house belonging to

STOLEN PROPERTY—*contd.*

1. OFFENCES RELATING TO—*concld*

and inhabited by a joint Hindu family composed of a father, son and grandson The son was found to be the managing member of the family, and the key of the room in which the stolen property was found was produced by him The circumstances were such that it was very improbable that the cloth could possibly have been placed where it was found without the connivance of some or all of the members of the family *Held*, that, under the above circumstances, the conviction of the managing member of the family under s 411 of the Indian Penal Code was a proper conviction *Queen-Empress* v *Sangam Lal, I L R 15 All 129*, referred to EMPEROR v BUDH LAL (1907) . I. L. R. 29 All. 598

2. DISPOSAL OF, BY THE COURT.

1. ——— Right to stolen property—*Property in cash or notes* The property in stolen cash, and bills or notes payable to bearer which circulate as cash, is inseparable from possession ordinarily The property in stolen goods remains in the person from whom they are stolen ANONYMOUS 1 N. W. Ed. 1873, 298

2. ——— Currency note—*Right to, as between Government and the person from whom it has been stolen, where thief has cashed it at treasury* A R10 currency note was changed by one *M* at the Government Treasury on the Shevaroy Hills *M* was subsequently convicted by the Sessions Court of Salem of having stolen the note from one *S* The note was produced in evidence at the trial, and the Court directed it to be given up to *S* from whom it had been stolen *Held*, that the Sessions Court was wrong A note of this kind being in

matter of the petition of COLLECTOR OF SALEM 7 Mad. 233

3 ——— Order of Court as to disposal of property—*Restoration of property by Criminal Court—Remedy by suit in Civil Court* If personal property, of which a complainant has been forcibly or illegally deprived, comes into the Magistrate's hands, he may order its restoration to its owner, otherwise the complainant must seek to recover it, or its value through the Civil Court RAMJEEBUN DOOBEY v LUCHMONEE DABEA W. R. 1864 Cr 5

4. ——— *Criminal Procedure Code, 1861, 1869, s 132A.* Under s. 132A, Criminal Procedure Code (Act VIII of 1869), no order can be passed with reference to the disposal of any property in a Criminal Court, unless that property is produced before the Court: such order must be made at the time of passing judgment. *In the matter of the petition of* RASH MOHUN GOSHAMY. RASH MOHUN GOSHAMY *v.* KALI NATH RAHA . . . . 19 W. R. Cr 3

STOLEN PROPERTY—*contd.*

2. DISPOSAL OF, BY THE COURT—*contd.*

5. ——— *Disposal of, by Magistrate where no order had been made by lower Court—Criminal Procedure Code, 1869, ss. 132A,*

6. ——— *Disposal of, where prisoner acquitted* Where a person was accused of dishonestly receiving stolen property, knowing it to be stolen, and was discharged by the

NILAMBHAR BABU . I. L. R. 2 All. 276

7. ——— *Disposal of, by Criminal Court—Criminal Procedure Code, 1872, Ch. XXX, ss 415, 416, 417—Restoration of property made over by the police. A* was charged before the police with theft of certain property. The police considered that no theft had been committed, and reported the matter to a second class

has been an inquiry, or a trial, and the accused person is discharged or acquitted by any Criminal Court, that Court is bound to restore that property into the possession of the person from whom it is

trate. *In re* ANNAPURNABAI I. L. R. 1 Bom. 630

In matter of the petition of BASUDEB SURMA GOSSAIN. BASUDEB SURMA GOSSAIN *v* NAZIPOODDEEN . . I. L. R. 14 Calc. 834

But see *In re* HAREE BUNDHOO SASTRA 5 W. R. Cr. 55

8. ——— *Criminal Procedure Code, 1882, s. 517—High Court's Criminal Procedure Act (X of 1875), s. 115—"Any property"*

STOLEN PROPERTY—*contd.*

2. DISPOSAL OF, BY THE COURT—*contd.*

—*Reference to Police Magistrate—Evidence on reference—Review.* The words "any property" in s 115 of the High Court's Criminal Procedure Act (X of 1875) include as well property voluntarily produced before the Magistrate by a witness in the case as property seized by the police or found on the person of the prisoner. The reference to a Magistrate under s. 115 of the High Court's Criminal Procedure Act, X of 1875, is not a trial for the final determination of the rights of the parties, and it is not incumbent upon the Magistrate on such reference to hear witnesses, but he may rightly order the delivery of property to that one of the rival claimants whom he considers, upon the statements of their respective cases, to have made out a *primâ*

9. ———— *Criminal Procedure Code, 1882, s 523—Code of Criminal Procedure, 1872, ss. 415, and 416—Delivery of property seized or stolen—Inquiry into ownership* The provisions of s 523 of the Code of Criminal Procedure (Act X of 1882) are wider than the corre-

the person from whom it is taken. *In re Annapurnabai, I. L. R 1 Bom 630,* distinguished QUEEN-EMPRESS *v* JOTI RAJNAK

I. L. R. 8 Bom. 338

10. ———— *Criminal Procedure Code, 1882, ss 517, 520, 523—Order of Magistrate restoring property alleged to be stolen—District Magistrate, power of, to set aside such order.* Where on acquittal a Criminal Court passes an order for restoration of property under s 517 of the Criminal Procedure Code (Act X of 1882), the proper course for the District Magistrate, if he thinks the order improper, is to direct it to be stayed under s. 520, and not to treat the property as subject to an order under s. 523 of the Code, and set it aside. QUEEN EMPRESS *v* ABHRAM UMAR

I. L. R. 8 Bom 575

11. ———— *Criminal Procedure Code, 1882, s 517—Order as to property as to which offence has been committed—Discharge of accused* On the dismissal of a charge against certain persons of criminal misappropriation of an elephant, the Magistrate, under s 517 of the Criminal Procedure Code, ordered the elephant to be given to the Executive Engineer of the district, holding that it was the property of Government.

no power to order restitution of the elephant. *In the matter of the petition of* BASUDEB SURMA GOSSAIN. BASUDEB SURMA GOSSAIN *v.* NAZIRUDDIN . . . . . I. L. R. 14 Calc. 834

12. ———— *Criminal Procedure Code, s 517—Disposal of calf, not in esse at time of theft.* *R's* cow having been stolen, the thief, after a lapse of a year and a half, was convicted. Six months after the theft, *V* innocently purchased the cow which, while in his possession, had a calf The Magistrate, under s. 517 of the Code of Criminal Procedure, ordered that the cow and calf should be delivered up by *V* to *R* *Held,* that, as the calf was not even in embryo at the date of the theft, the order to deliver up the calf was illegal. *In re* VERNEDE . . I. L. R. 10 Mad. 25

13. ———— *Criminal Procedure Code (Act X of 1882), ss 517 and 523—Disposal of property produced before a Court during an inquiry—Restoration of previous possession if no offence has been committed.* S. 517 of the Code of Criminal Procedure is the only section under which a Court can make an order for the disposal of property produced before it in the course of an inquiry or trial. And it has jurisdiction to pass the order only if the case falls within the section, that is, if it is property "regarding which an offence appears to have been committed, or which has been used for the commission of an offence." Otherwise, the only legal order which the Court can pass is one restoring the previous possession. A Presidency Magistrate, finding the evidence not sufficient to warrant a conviction, discharged the accused, but ordered the property which had been produced during the inquiry to be detained until the title of the rightful owner was proved before a Civil Court On a subsequent day he, apparently acting under s 523 of the Code, ordered the property to be delivered to the complainant, from whose pos- ... *Held* that both the ... e- ... al ... 7, ... ie ... is

possession. *In re* DEVIDIN DURGAPRASAD

I. L. R. 22 Bom. 844

14 ———— *Criminal Procedure Code (Act X of 1882), ss. 517 523, 524—Order as to standing crops on land of which person asks to be restored to possession.* On 27th September 1897 ... trespass

On the 17th November 1897 the case was ... by the third class Magistrate, who convicted *E* of the offence charged. On the following day (18th November 1897) the complainant applied to the Criminal Magistrate under s. 522 of the Code of Criminal

STOLEN PROPERTY—*contd.*

2. DISPOSAL OF, BY THE COURT—*contd.*

were not such property as is referred to in s 517, 523, or 524 of the Criminal Procedure Code NARAYAN GOVIND *v* VISAJI . I. L. R. 23 Bom. 494

15 — ——————— *Criminal Procedure Code, 1882, ss 517 and 523—Evidence of ownership—Evidence Act (I of 1872), s. 25—Confession made to police officer, admissibility of, for other*

16. ——————— *Criminal Procedure Code, 1882, s. 517—Order for the disposal of*

Some property was found by the police to have been so concealed in the house of a third person. The

STOLEN PROPERTY—*concld.*

2. DISPOSAL OF, BY THE COURT—*concld*

complainant caused the property in the custody of the police to be attached and sold in execution of his decree against the accused. At the Court-sale the complainant himself purchased the property, and thereupon the Magistrate ordered the property to be handed over to him This order was reversed on appeal by the Sessions Judge. *Held,* that the order of the first class Magistrate for the disposal of the property was not, and could not have been, made under s 517 of the Criminal Procedure Code (Act X of 1882), as the Magistrate did not hold any inquiry, nor form any opinion on the conclusion of such inquiry as to whether " any offence appeared to have been committed regarding such property." The Sessions Judge had therefore no jurisdiction to hear any appeal from the first class Magistrate's order. *In re* ANANT RAMCHANDRA LOTLIKAR

I. L. R. 10 Bom. 197

17. ——————— *Criminal Procedure Code, 1882, ss. 517, 520.* An order passed under s. 517 of the Code of Criminal Procedure may be revised by a Court of appeal, although no appeal has been preferred in the case in which such order was passed. QUEEN-EMPRESS *v* AHMED

I. L. R. 9 Mad. 448

18. ——————— *Criminal Procedure Code (Act V of 1898), s. 517—Disposal of stolen property on conviction of the thief—Babashahi coin—Legal tender—Customary coin.* A witness for the prosecution in a case of theft produced a

under s 517 of the Criminal Procedure Code (Act V of 1898), ordered the money to be restored to the complainant from whom it had been stolen. *Held,* that the order was right. The stolen coins were not current coin of the realm, and were neither by statute nor by the law of merchants in British

STOPPAGE IN TRANSITU.

See SALE OF GOODS.

I. L. R. 17 Bom. 62

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.

2 Agra 11

I. L R. 14 Bom. 57

STORING JUTE.

STORING JUTE—*concld.*

the Criminal Procedure Code, 1861, as required by s. 34 of the former Act. QUEEN *v.* BHAGWAN CHUNDER KOONDOO . . 19 W. R. Cr. 4

STRANGER

——— introduction of, into joint family—

See HINDU LAW — JOINT FAMILY — POWERS OF [ALIENATION BY MEMBERS —OTHER MEMBERS
I. L. R. 1 All. 429
I. L. R. 2 All. 898

See HINDU LAW—PARTITION—RIGHT TO PARTITION—PURCHASER FROM WIDOW.
18 W. R 23
I L. R. 9 Calc. 580
I. L R. 12 Calc. 209

——— in possession—

See RECEIVER . I. L. R. 36 Calc. 713

STREET.

See PRIVATE STREET

See PUBLIC ROAD, HIGHWAY, STREET OR THOROUGHFARE.

——— *Discharge into drains not forming part of street—Definition of street.*

STRIDHAN.

See HINDU URDU LAW
I. L. R. 32 Calc. 281
9 C. W. N. 109; 119
I. L R. 33 Calc. 315; 345
I. L. R. 30 Bom. 431
I. L R. 33 Bom. 452

See HINDU LAW—STRIDHAN.

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION . 3 W. R. 49; 105
8 W. R. 519
2 Agra 230
1 Mad. 85
5 Mad 111
I. L. R. 1 Mad. 281
I. L. R. 2 Mad. 333

See MITAKSHARA. I. L. R. 30 Bom. 333

See MORTGAGE . 9 C. W. N. 914

See WILL . . 9 C. W. N. 769

STRIDHAN—*concld.*

——— ajautuka—

See HINDU LAW—STRIDHAN.
10 C. W. N. 1; 510; 802

STRIKING OFF EXECUTION-PROCEEDINGS.

See ATTACHMENT—STRIKING OFF EXECUTION-PROCEEDINGS.

See EXECUTION OF DECREE—STRIKING OFF EXECUTION-PROCEEEDINGS

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167; 1859, s. 20)—STEP IN AID OF EXECUTION—STRIKING CASE OFF FILE, EFFECT OF.

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167; 1859, s 20)—STEP IN AID OF EXECUTION—SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER.
I. L. R. 4 Calc. 877

STRIKING OFF PROCEEDINGS

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—STRIKING OFF PROCEEDINGS.

SUB-LEASE.

See BENGAL TENANCY ACT, s. 85, CL. (2)
11 C. W. N. 190

See SUB-LETTING

——— by occupancy raiyat—

See LANDLORD AND TENANT.
I. L. R. 34 Calc.04
13 C. W. N. 220

SUB-LETTING.

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS
2 Agra, Pt II, 202
W. R. 1884, Act X, 31
I. L. R. 20 All. 469

See LANDLORD AND TENANT—TRANSFER BY TENANT I. L. R. 14 Bom 384
I. L. R. 15 All. 219; 231
I. L. R. 29 Calc. 148
6 C. W. N. 916; 919

See SALE FOR ARREARS OF RENT—INCUMBRANCES I. L R. 28 Calc. 205

SUB-MORTGAGE.

See MORTGAGE . I. L. R 33 Calc. 638
I. L R. 29 All. 385

See TRANSFER OF PROPERTY ACT, s. 90.
I. L. R. 31 All. 353

SUBORDINATE COURT.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . I. L. R. 3 Calc. 522

See CRIMINAL PROCEDURE CODE, s. 437.

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION.
I. L. R. 23 Calc. 487

SUBORDINATE COURT—*concld.*

——— duty of—*Conflict of opinion in High Courts.* The lower Courts are bound to follow the

s.c. KORBAN ALI MIRDHA *v* PITUMBARI DASI
13 C. L. R. 256

SUBORDINATE JUDGE, JURISDICTION OF.

See CIVIL COURTS ACT (XII OF 1887), s 13.
13 C W. N. 265

See COMPANIES ACT, s 130
I L R 17 All. 252

See DEKKAN AGRICULTURISTS' RELIEF ACT, s 3
I L. R. 15 Bom. 30
I L R. 16 Bom. 128

See DEKKAN AGRICULTURISTS' RELIEF ACT, s 4 . I. L. R 19 Bom. 46

See DEKKAN AGRICULTURISTS' RELIEF ACT, s 15 (*d*). I. L. R. 16 Bom. 351

See EXECUTION OF DECREE—TRANSFER OF DECREES FOR EXECUTION AND POWER OF COURT, ETC . I. L. R. 18 Bom. 61

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.
I. L. R 21 Bom. 45

See PLAINT—RETURN OF PLAINT.
I. L. R. 20 Bom. 675

See PROBATE—JURISDICTION IN PROBATE CASES . I. L. R. 25 Calc. 341

See RIGHT OF SUIT—CHARITIES AND TRUSTS . . I. L. R. 15 Bom. 148
I. L. R. 21 Bom. 48

See VALUATION OF SUIT—SUITS.
I. L. R 14 Mad. 183
I. L. R. 22 Bom. 315

2 ——— Complaint under Mad. Reg. IV of 1816, s. 35, cl 1. A Subordinate Judge

I. L. R. 5 Mad. 222

3. ——— Trial of suit for land—*Officer appointed in the Sonthal Pergunnahs under s. 2, Act XXXVII of 1855—Bengal Civil Courts Act, 1871—Reg III of 1872, s. 5* An officer in the Sonthal

suits in regard to land, etc., where the value of

SUBORDINATE JUDGE, JURISDICTION OF—*contd.*

the matter in dispute exceeds the value of R1,000. RAM RUNJUN CHUCKERBUTTY *v* RAM PROSAD DASS
5 C. L. R. 128

4. ———
causes of
of 1859),
Civil Courts Act ...

5 ——— *Suit for account—Claim valued at less than R5,000 but value to be accounted for exceeds that sum* *Quære* · Whether a first class Subordinate Judge has jurisdiction to try

6. ——— Appeal transferred—*Bengal Civil Courts Act, 1871—N.-W. P. Rent Act, 1881,*

36, followed. LODHI SINGH *v.* ISHRI SINGH
I. L. R 6 All. 295

7. ——— Appeal transferred—*Act XII of 1881, ss. 185, 206, 207, 208.* The defendant in a

transfer the appeal to the Subordinate Judge, who had not the power vested in the Appellate Court by s. 208. RAM PRASAD *v.* RAI KISHEN
I. L. R. 6 All. 38

8 ——— *N.-W. P. Rent Act (XII of 1881), ss. 93, 206, 207, and 208—Bengal, N.-W. P., and Assam Civil Courts Act (XII of 1887), s 22, cl. 3—Transfer of appeal in a Rent Court suit from the District Judge to the Subordinate*

SUBORDINATE JUDGE, JURISDICTION OF—*contd.*

Judge—Powers exercisable by the Subordinate Judge. Cl. (3) of s. 22 of Act XII of 1887 makes ss. 206, 207, and 208 of Act XII of 1881 applicable to appeals in suits within s. 93 of Act XII of 1881 when such appeals have been transferred under s. 22 of Act XII of 1887 by a District Judge to a Subordinate Judge and are being heard by such Subordinate Judge. NANDAN PRASAD *v.* CHANGUR
I. L. R 16 All. 363

9. ———— **Appeal referred by District Judge**—*Bengal Civil Courts Act (VI of 1871), s. 26—Power of review—Civil Procedure Code, 1859, s. 376.* Where a Subordinate Judge hears and disposes of an appeal referred to him by the District Judge under Act VI of 1871, s 26, he does so as District Judge, and has therefore by implication the same power of reviewing his judgment as a District Judge has under s 376, Act VIII of 1859 *In the matter of* SHAMA CHURN BHUTT *v.* PAYNE & Co
18 W. R. 292

10. ———— **Appeal from Munsif after Act XIV of 1869**—*Assistant Judges in Bombay Presidency.* A decision passed on appeal from a

the Act did not alter the procedure as regards appeals against decisions passed by Courts constituted under the old Regulations, under which the Assistant Judges had power to hear appeals. SAKHO NARAYAN KHANDALKAR *v.* NARAYAN BHIKAJI KHANDALKAR . . 6 Bom A. C. 238

11. ———— **Power to enquire into application for execution of decree against ancestor of Sirdar**—*Agent for Sirdars.* Where a person's name was entered in red ink in the Dekkan Sirdars' list, indicating that he was entitled only to the rank and precedence of a third class

GIR *v.* ANANDRAV . . 8 Bom. A. C 25

as mortgagee The Subordinate Judge raised the

Court, which concurred in his opinion and answered the question in the affirmative. PURSHOTAM SIDHESHVAR *v.* DHONDU AMRIT
I. L. R. 6 Bom. 582

13. ———— **Mortgage lien, inquiry into**—*Collateral inquiry into a mortgage lien on attached property—Insolvency of a judgment-debtor* The plaintiff obtained a decree against *N* and *R* for R165-11-0 in the first class subordinate Court of Satara, and applied for execution against the person of *R* When brought before the Court, *R* applied to be declared an insolvent under s. 344 of the Civil Procedure Code (Act X of 1877). The

decree to the Vita Court and granted a certificate to the plaintiff under ss. 223 and 224 of the Civil Procedure Code. The Satara Court also informed the Vita Court that proceedings were pending in the Satara Court regarding the insolvency of *R*. On the application of the plaintiff, the Vita Court attached certain immoveable property belonging to *N* and *R*. Thereupon one *V T* claimed a mortgage lien on it for R9,415-9-3. The Vita Court therefore referred for the opinion of the High Court

that execution in that Court against *R* was to

v. NARSINGHRAV . . I. L. R. 6 Bom. 584

Causes, does not on that account become a Court of Small Causes, nor his Court such a Court within the meaning of the Civil Procedure Code. He therefore has power, within the limits of his ordinary pecuniary jurisdiction, to receive and file awards of arbitrators under s. 525 of the Civil Procedure Code (Act X of 1877). BALKRISHNA *v.* LAKSHMAN . . I. L. R. 3 Bom. 219

15. ———— *Difference between Courts of Small Causes constituted under Act*

nate Judges invested with the jurisdiction of a

SUBORDINATE JUDGE, JURISDICTION OF—*contd.*

Judge of a Small Cause Court under s 28 of Act XIV of 1869 do not thereby become "Courts of Small Causes constituted under Act XI of 1865." They merely exercise a similar jurisdiction This makes their decisions final in the cases to which the jurisdiction extends, but it does not imply that the variations of procedure prescribed expressly for the Courts constituted under Act XI of 1865 are applicable to Courts constituted under a different Act and subject to different conditions The Court of a Subordinate Judge exercising Small Cause Court powers is, under s 5 of the Code of Civil Procedure (Act XIV of 1882), one of the "other ... of a Court of Small

... to be recorded in

DAYALJI v BALU ...

16 ———— *Suit for interest due on a mortgage.* The plaintiff sued to recover interest due on a mortgage of immoveable property The defendant pleaded that the plaintiff had re-

the plaintiff Held, on application to the High Court, that the defence being virtually that the the debt had been paid off, and that nothing was due to the plaintiff, the Subordinate Judge had jurisdiction to decide the suit BABURAV AMRIT PETHE v GANPATRAV DAMODAR

I. L. R. 10 Bom 69

17. ———— *Civil Procedure Code (Act XIV of 1882), s 295—Decree passed by Subordinate Judge—Decree by same Court in exercise of its Small Cause jurisdiction—Rateable distribution of assets.* Certain moveable property was at first attached in execution of a money-decree

execution of a money-decree passed in his favour by the same Subordinate Judge in his Small Cause jurisdiction, and prayed for rateable distribution of the proceeds along with other decree-holders. *Held*, that the application must be allowed.

SUBORDINATE JUDGE, JURISDICTION OF—*contd.*

Although a Subordinate Judge invested under Act XIV of 1869, s 28, with Small Cause powers, acquires *the jurisdiction of two Courts, he does not* become the Judge of two Courts, but remains the Judge of a Subordinate Court. MALHARI v NARSO KRISHNA . . . I. L. R 9 Bom. 174

18. ———— *Execution of decree—Transfer of decree for execution—Act XI of 1865, s 20—Act XIV of 1869, s 28* The plaintiff having obtained a money-decree against *H* and

of the assets the defendant, who also had obtained a money-decree against the same judg-

instance of the plaintiff. The Court, under s. 295 of the Civil Procedure Code (Act XIV of 1882), rateably distributed the proceeds of the sale be-

been followed *Held*, that, as ruled in *Bhagavan Dayalji v Balu, I. L. R 8 Bom 230*, a Subordinate Judge invested with Small Cause Court powers has generally to follow the procedure prescribed in the Code of Civil Procedure. This governs his proceedings both in trial and execution, whether the

nary jurisdiction is wider locally than the Small Cause jurisdiction, the Court is, in that part of its territory which lies outside the Small Cause Court

transmission as to a distant Court. DHARAMDAS SANTIDAS v. VAMAN GOVIND

I. L. R. 9 Bom. 237

19. ———— *Civil Procedure Code (Act XIV of 1882), s 111—Set-off exceeding pecuniary jurisdiction of the Small Cause powers of the Subordinate Judge—Practice.* In a suit

SUBORDINATE JUDGE, JURISDICTION OF—*contd.*

in trying the set-off. RAMPRATAB *v.* GANESH RANGANATH . . . I. L. R. 12 Bom. 31

20. ———— *Appeal—Suit cognizable by a Court of Small Causes—Act XI of 1865, ss. 2, 6, 12, 21—Bombay Civil Courts Act (XIV of 1869), s 28—Final decision.* The plaint-

The Subordinate Judge rejected the plaintiff's claim An appeal was made to the District Court, which reversed the Subordinate Judge's decree, and awarded the claim *Held*, that, the suit having really been a Small Cause, no appeal lay to the District Court, though the Subordinate Judge did not use the procedure of Act XI of 1865 Having the Small Cause Court jurisdiction, the Subordinate Judge must be taken to have dealt with the case under that jurisdiction, even if he was not quite alive to it at the time. A suit taken cognizance of under s 2, 6, or 12 of the Mofussil Small Cause Court Act (XI of 1865) does not cease to be a suit tried under the Act, because of some divergence from its summary procedure. A surplusage of form and elaborateness does not change the character of the decision for the purpose of its finality. S 28 of the Bombay Civil Courts Act (XIV of 1869) does not, when jurisdiction is given under it, necessarily divide the Court into two separate Courts; but still it creates an additional and distinct jurisdiction Since Act IX of 1887 came into force, the Court is to be regarded as two Courts in such cases. PITAMBAR VAJIRSHET *v.* DHONDU NAVLAPA

I. L. R. 12 Bom. 486

21. ———— *Suit against Trustee—Person collecting or receiving subscriptions for building a temple—Civil Procedure Code (Act XIV of 1882), s 30* A person collecting and receiving subscriptions for the purpose of building a temple, in pursuance of a resolution come to at a meeting of the community, holds them in the capacity of a trustee, and a suit in respect thereof should be filed

22. ———— **Power of Subordinate Judge to try Munsif's case**—*Act XVI of 1868, ss 13, 15, 16—Bengal Civil Courts Act (VI of 1871), ss 19, 20—Civil Procedure Code, ss. 15, 578* Per PETHERAM, *C.J.*, and BRODHURST, MAHMOOD, and DUTHOIT, *J.J* —The object of ss 19 and 20 of the Bengal Civil Courts Act, 1871, was to create in the District Judge, Subordinate Judge and Munsif concurrent jurisdiction up to R1,000. *Per* PETHERAM, *C.J.*—S. 15 of the Civil Procedure Code is a proviso to those sections. The word "shall" in that section is imperative on the suitor. The word is used for the purpose of protecting the Courts. The suitor shall be obliged to

benefit, the donee may exercise the same or not at his pleasure The proviso is for the benefit of the Court of the higher grade, and it is not bound to take advantage of it. If it does not wish to try the suit, it may refuse to entertain it. If it wishes to retain the suit in its Court, it may do so; it is not

Munsifs is not to allow to a Subordinate Judge discretion as to accepting or not accepting for trial by himself suits cognizable by the inferior tribunal. BRODHURST and MAHMOOD, *JJ.*—S 15 of

v. Begum Bibee, 25 *W. R.*, 219, followed OLDFIELD, *J.*—S. 15 of the Civil Procedure Code is

RAM, *C.J.*, and OLDFIELD, BRODHURST, and MAHMOOD, *JJ.*, where a Subordinate Judge had tried a suit which a Munsif, a Court of a lower grade, might have tried, that the Subordinate Judge had not acted without jurisdiction. The plaint in such suit had been in the first instance presented to the

rule of procedure as essential, the Under the

HUSAIN . . . I. L. R.

SUBORDINATE JUDGE, JURISDICTION OF—*contd.*

23. ———— *Civil Procedure Code (Act XIV of 1882), s 15—Munsif, jurisdiction of.* S 15 of the Civil Procedure Code does not preclude a Subordinate Judge from trying a suit within the jurisdiction of the Munsif's Court *Ledgard* v *Bull, L R 13 I A 134,* distinguished MATRA MONDAL v HARI MOHAN MULLICK

I. L. R. 17 Calc. 155

See AUGUSTINE v. MEDLYCOTT

I L. R. 15 Mad. 241

24. ———— *Bengal Civil Courts Act (VI of 1871), s 18—Sale in execution of decree—Local limits of jurisdiction* Where a

Obhoy Churn Coondoo v *Golam Ali, I L R 7 Calc 410,* and *Prem Chand Day* v. *Mokhoda Debi, I. L R, 17 Calc. 699,* followed. DAKHINA CHURN CHATTOPADHYA v. BILASH CHUNDER ROY

I. L. R. 18 Calc. 526

25. ———— *Concurrent jurisdiction with District Munsif—Suit of less than R2,500, in value. Quære* Whether a Subordinate Judge has not concurrent jurisdiction with a District Munsif in suits less than R2,500 in value *Matra Mondal* v. *Hari Mohan Mullick, I. L R. 17 Calc 155,* and *Nidhi Lal* v *Mazhar Husain, I L. R. 7 All 230,* followed. KRISHNASAMI v. KANAKASABAI . . I. L R. 14 Mad. 183

26. ———— *Bombay Civil Courts Act (XIV of 1869), s 28—Provincial Small Cause Courts Act (IX of 1887), s 33—Judge exercising Small Cause Court jurisdiction* S. 33 of

27. ———— *Bengal, N.-W P., and Assam Civil Courts Act (XII of 1877), s. 13, cl. 2—District Judge, power of—Transfer of Property Act (IV of 1882), ss 88, 90—Sale in execution of mortgage decree—Execution of decree.* When Subordinate Judges are appointed by the Local Government with jurisdiction over the whole

Court competent to entertain an application for the execution of the decree and to make an order in furtherance thereof, even when the execution is sought by the sale of property other than the mortgaged property lying within the district, but outside the area assigned to it by the District Judge BACHU KOER v GOLAB CHAND

I. L R 27 Calc. 272

28. ———— *Transfer to Subordinate Judge of appeal petition heard by and pending before District Judge—Jurisdiction of*

trict Judge had no power to transfer to a Subordinate Judge an appeal which was part heard and

jurisdiction to hear or determine any appeal S. 13

Subordinate Court not having inherent jurisdiction. KUMARASAMI REDDIAR v. SUBBARAYA REDDIAR . . . I. L. R. 23 Mad. 314

29. ———— *Act XIV of 1869, ss 23 and 24—Subordinate Judge appointed to assist another Subordinate Judge, powers of.*

Subordinate Judge transferred it for execution to the second class Subordinate Judge who had been appointed, under Act XIV of 1869, to assist him, and whose jurisdiction extended to R5,000 only. The second class Subordinate Judge ordered execution to issue The defendant appealed, and this order was reversed. The plaintiff appealed to the High Court, and raised, for the first time, an objection that the second class Subordinate Judge had no jurisdiction to entertain the application for execution The defendant contended that this objection was taken too late on second appeal. *Held,* that the second class Subordinate Judge has no jurisdiction to entertain and deal with the plaintiff's application for execution, and that the plaintiff's

SUBORDINATE JUDGE, JURISDICTION OF—*contd.*

objection should be allowed. An objection to the jurisdiction, the validity of which is patent on the face of the proceedings, can be taken at any stage of the proceedings. SIDHESHWAR PANDIT *v.* HARIHAR PANDIT . **I. L. R. 12 Bom. 155**

30. ———— *Malicious prosecution—Suit against a Mamlatdar for malicious prosecution undertaken by him at the instance of his superior officer, to clear his character—Subordinate Judge, power of, to try such suit* The defendant, who was a Mamlatdar, was required by his superior officer to clear his character from certain charges of bribery which had been brought against him in an anonymous letter, and he accordingly prosecuted the plaintiffs whom he suspected of having written the letter. The plaintiffs were convicted and sentenced by a Magistrate, but on appeal were acquitted by the Sessions Judge The plaintiffs thereupon brought this suit in a Subordinate Judge's Court to recover damages from the defendant for malicious prosecution. The jurisdiction of the Subordinate Judge to try the suit being questioned, he referred the case to the High Court *Held*, that the Subordinate Judge had jurisdiction to try the suit The defendant was sued in his individual, and not in his official, capacity; and the fact that he was a Mamlatdar when he prosecuted the plaintiffs could not affect the character in which he was sued BANKAT HARGOVIND *v.* NARAYAN VAMAN DEVBHANKAR. . . **I. L. R. 11 Bom. 370**

31. ———— *Malicious prosecution—Prosecution, when official—Bombay Civil Courts Act (XIV of 1869), s 32—Bombay Act X of 1876, s 15—Prosecution instituted by order of superior officer* An officer of Government who prosecutes for an injury personal to himself is not generally acting in his official capacity as prosecutor.

the consent or the order of his superior will not make the act an official one which in its nature is not so, lying outside his official functions. The defendant was a forest officer in the service of Government He prosecuted a certain person for theft in the Magistrate's Court at Sirsi. The accused was defended by the plaintiff, who was a pleader. During the hearing of the case the defendant in

SUBORDINATE JUDGE, JURISDICTION OF—*contd.*

done to him by the defendant. The defendant thereupon lodged a complaint before the Divisional Magistrate at Sirsi, charging the plaintiff, under

defendant for malicious prosecution. The defendant pleaded that in lodging the complaint against the defendant he had acted in his official capacity and under the orders of his superior officer with

Judge had no jurisdiction. The Subordinate Judge held that he had no jurisdiction, being of opinion that the defendant had prosecuted the plaintiff in his character as a public servant, and that therefore the present suit against the defendant was one in which an officer of Government in his official capacity was a defendant, and as such was cognizable by the District Judge only, under s 32 of the Bombay Civil Courts Act (XIV of 1869) He

—peal, the Act-
on that the
ion; but he
as wrong in
ng the plaint
He, there-
Subordinate Judge,

that the defendant was sued as a private
and that the
Subor-
s there-
directed

to dispose of the appeal on its merits. GOPI MAHABLESVAR BHAT *v.* SHESO MANJU **I. L. R. 12 Bom. 358**

32. ———— *Suit against Collector—Act done in official capacity—Bombay Revenue Jurisdiction Act (X of 1876), s 15* The plaintiff sued the Collector of Dharwar and his chitnis for having destroyed certain certificates of efficiency which had been given to him by Mamlatdars in

The defend-

not entertain the suit.
COLLECTOR OF DHARWAR **I. L. R. 15 Bom. 441**

33 ———— *Bombay Civil Courts Act (XIV of 1869), s 32, as amended by the Bombay Revenue Jurisdiction Act (X of 1876), s. 15, and by Bom. Act XV of 1880, s 3—Bom. Reg. II of 1827, s. 43—Suit against officer of Government—Acts done by the defendant in his official capacity—Civil Procedure Code, 1882, s. 424* On the death

SUBORDINATE JUDGE, JURISDICTION OF—*contd*

of the talukhdar of Kerwada, leaving a widow and a minor son, the Mamlatdar of Amod, acting under the order of the Collector of Broach, entered the

damages for these wrongful acts The suit was filed in the Court of the Subordinate Judge. *Held*, that the acts complained of were done by the de-

I. L. R. 21 Bom. 704

34 ———— *Patil and kulkarni of village—Impressment of bullocks by patil and kulkarni of village for use of Government officer*

them for damages in the Court of a Subordinate Judge. The defendants pleaded (*inter alia*) that the Subordinate Judge had no jurisdiction to try the suit under the Bombay Revenue Jurisdiction Act (X of 1876). *Held*, that the suit was properly instituted in the Court of the Subordinate Judge, as the defendants were sued in their private capacity.

I. L. R. 21 Bom. [illegible]

35. ———— *Money lent to*

the Supervisor, Public Works Department, in charge of the works. From time to time defend-

has not usually authority to borrow money for the purpose of the work of which he may be in charge, or any way to pledge the credit of Government, the mere statement of the defendant when he

SUBORDINATE JUDGE, JURISDICTION OF—*concld.*

borrowed the moneys that he wanted them to pay the labourers was not under the circumstances enough to show that the defendant borrowed them

36 ———— *Dismissal of suit by Munsif on preliminary point—Remand by Subordinate Judge on appeal—Fresh appeal before Second Subordinate Judge, who disagrees with the finding of the former Subordinate Judge.* Where

PRASAD BHAGAT *v.* DURDHARI RAI
I. L. R. 14 All. 348

37 ———— *Application for declaration of heirship—Bom Reg. VIII of 1827, s 2—Subordinate Judge invested with function of District Court under Act VII of 1889.* A Subor-

RAM . . . I. L R 17 Bom. 230

38. ———— *Act XII of 1887 (Bengal Civil Courts Act), s. 10—Jurisdiction—Act XII of 1881 (N.-W. P. Rent Act), s. 189—Powers of Subordinate Judge in charge of the office of the District Judge—Revenue Court appeal.* *Held*, that a

SUBORDINATE MAGISTRATE.

———— **refusal of, to take proceedings—**

See MAGISTRATE—POWERS OF MAGISTRATES . I. L. R. 29 Calc. 242

SUB-REGISTRAR.

See MAGISTRATE, JURISDICTION OF—TRANSFER OF MAGISTRATE DURING SUIT. . I. L. R. 15 Mad. 132

See REGISTRAR.

SUBROGATION.

See COMPANY—WINDING UP—DUTIES AND POWERS OF LIQUIDATORS.
I L. R. 16 Calc 31

See TRANSFER OF PROPERTY ACT, 1882, ss 82, 100 . **I. L. R. 31 All. 166**

SUBSCRIPTION.

See ATTACHMENT. **I. L. R. 35 Calc. 641**

See RIGHT OF SUIT—SUBSCRIPTION.
10 C. L. R. 197
I. L. R. 14 Calc. 64

SUBSISTENCE-MONEY.

1. ——— **Payment of subsistence-money**—*Civil Procedure Code, 1859, s 276.* According to Act VII of 1859, as it stood at the end of 1876 and until October 1877, the batta for the maintenance of a debtor could not become payable until he was arrested and brought before the Court and the order made for his committal to the civil jail. KASTURCHAND *v.* RAOJI SADASHIV
I. L. R. 4 Bom. 65

2. ——— *Illegal commitment—Duty of jailor.* Unless subsistence-money is paid before the commitment, the commitment is illegal. The jailor is bound by the words of the Act It is for him, and not for the prisoner, to see that the money is paid. *In the matter of* THOMSON . . . . . **Bourke O. C. 421**

3. ——— **Fixing subsistence-money**—*Detention in jail on decree of defendant arrested prior to decree—Right to discharge.* Where a defendant is arrested prior to decree under Act VIII of 1859, s 78, and a decree is afterwards obtained against him in the suit, the plaintiff, if he wishes to detain the defendant in prison, must have him brought before the Court, and his subsistence-money fixed, in the same way as in the case of an arrest in execution of a decree; and if he fails to do so, the defendant is entitled to his discharge from prison. *In the matter of* CALLACHAND DASS
1 Ind. Jur. N. S. 827

s c. RAMPERSAUD ROY *v.* CALLACHAND DOSS.
Bourke O. C. 423

4. ——— *Order for allowance—Application for discharge in absence of order—Civil Procedure Code, 1859, ss 276, 278* S H and two other debtors in the custody of the Sheriff on a *ca sa* appeared on a *habeas corpus* for the

order for the allowance had been made by the

SUBSISTENCE-MONEY—*contd.*

be remanded to jail. *Held*, also (PEACOCK, C.J., *dissentiente*), that a prisoner arrested on a *ca sa.* must, within a convenient time, be brought before the Court to have his allowance fixed; that an "allowance" within the meaning of s. 276 or 278 of Act VIII of 1859 meant subsistence-money fixed by order of the Court; that the Court must have

charged; that a decree must be carried into execution by and under the direction of the Court

less the preliminary payment of subsistence has been made in compliance with the order of the Court; and that the jailor cannot lawfully detain a judgment-debtor when the time limited for payment of any subsistence-money under the order of the Court passes without due payment accordingly. *In re* SUMBOO CHUNDER HALDAR. *In re* DOORGAPERSAUD MITTER. *In re* RAKHAB DOSS
Bourke O. C. 59

5. ——— **Right of debtor to discharge**—*Omission to make order for allowance—Civil Pro-*

Court; that no one is to be imprisoned in execution of a decree unless subsistence-money for a month in advance be paid to the person to whose custody he is committed, that a similar payment must be received in advance every successive month pending the imprisonment; that if any such payment be not made, the prisoner is entitled to be released, that the "allowance" referred to in s 276 of Act VIII of 1859 meant subsistence money of 4 annas per diem; that s 276 of Act VIII of

C. 52

6. ——— *Non-payment of subsistence-money in advance—Civil Procedure Code, 1859, s. 276.* The monthly subsistence-money under s. 276 of Act VIII of 1859 must be paid in

SUBSISTENCE-MONEY—*contd.*

advance; therefore, where a debtor was arrested and subsistence-money paid for January, but no further deposit was made till 4th February, the prisoner was *held* entitled to his discharge. *In re* KOYOY LOLL DOSS . . Brouke O. C. 51

7. ——— ——— Application for discharge on non-payment of subsistence-money—Petition for discharge—Civil Procedure Code, 1859, s 278 A prisoner was arrested on the 30th of December on a *ca sa* dated the 24th of December, on which day the execution-creditor paid subsistence-money for thirty days This failing, on the [illegible] charge was required from a prisoner applying for his discharge for non-payment of subsistence-money; that subsistence-money must be paid in advance by the execution-creditor before putting a writ of *ca sa* in force; that the discharge by the Sheriff of a prisoner detained on a writ of *ca sa* was equally imperative on the happening of any of the contingencies specified in s 278 of Act VIII of 1859, and that on failure of subsistence-money the prisoner should be released, and further detention of him by the person in whose custody he is was illegal. SPEYER *v* JANSSEN.

Bourke O. C. 28

8. ——— ——— *Non-payment of subsistence-money in advance—Act VIII of 1859, ss 276, 278.* A prisoner was arrested on August 4th, and committed to prison on the evening of the same day. Before his committal, the execution-creditor paid into the hands of the Jailor a sum sufficient for his subsistence-money for twenty-seven days, at the established rate of 4 annas per day. On the 5th August a writ of *habeas corpus* was applied for to bring the prisoner up, and on the 6th a further sum of 4 annas was paid to the Jailor to cover any deficiency in the former payment. [illegible]

9. ——— ——— *Mode of payment of subsistence-money* On the 30th of September, the plaintiff, a detaining creditor, paid to the Jailor of the Calcutta Jail subsistence-money for thirty days, for a prisoner confined at the suit of the plaintiff, the Jailor then having a balance of 4 annas over from the subsistence-money for September. *Held*, that there was a sufficient compliance with s 276 of Act VIII of 1859 HALADHAR DEY *v.* AMBIKA CHARAN BOSE . 5 B. L. R. Ap. 8

10. ——— **Refund of subsistence-money**—*Release at request of creditor—Bom. Act IV of 1865* Where the defendants were arrested though the Munsif's Court in execution of a decree, but were released at the request of the execution-creditor before they had been sent to the civil jail,

SUBSISTENCE-MONEY—*concld*

it was *held* that the execution-creditor was entitled to a refund of the balance of subsistence- [illegible]

5 Bom A. C. 84

11. ——— **Effect of discharge of debtor**—*Non-payment of subsistence-money*— [illegible] by the Court, bars a second arrest and imprisonment in execution of the decree. APPIAH CHETTY *v* CHENGADOO . . . . 4 Mad. 76

SUB-SOIL RIGHTS.

See DIGWARI TENURE

I L. R. 34 Calc 753

See LEASE . I. L. R 33 Calc 203

See MINERAL RIGHTS.

See MINES AND MINERALS.

See SERVICE TENURE 12 C. W. N. 193

SUBSTANTIAL INJURY.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—SUBSTANTIAL INJURY—IRREGULARITY.

SUBSTANTIAL QUESTION OF LAW.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH AN APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW.

See QUESTION OF LAW.

SUBSTITUTION OF EXECUTOR IN PLACE OF SUPPOSED LEGAL REPRESENTATIVE.

See BENGAL TENANCY ACT (VIII OF 1885), s 106 . . 12 C. W. N. 8

SUBSTITUTION OF NAMES.

See LIMITATION ACT, 1877, SCH. II, ART. 175A. . . 11 C. W. N. 158

See SUBSTITUTION OF PARTIES.

——— *Appeal, abatement of.* An application for the substitution of the legal representative of a deceased appellant was made more than six months after his death. No [illegible] that question. TRIPURA SUNDARI DEBI *v.* DAKSHINA MOHUN ROY (1906) . 11 C. W. N. 698

SUBSTITUTION OF PARTIES.

See MORTGAGES . 13 C. W. N. 787

See PARTIES—SUBSTITUTION OF PARTIES.

SUB-TENANT.

See SUPERIOR LANDLORD.
I. L. R. 36 Calc. 256

SUCCESSION.

See ADVERSE POSSESSION
I. L. R. 27 All. 436

See CIVIL PROCEDURE CODE, 1882, s 215A
I L. R. 27 All. 374

See CIVIL PROCEDURE CODE, 1882, ss. 278 AND 283 I. L. R. 27 All. 464

See CONVERTS

See COURT FEES ACT, s 7, SCH I
I. L. R. 27 All 447

See CRIMINAL PROCEDURE CODE, 1898, ss 87, 88 AND 89 . I. L. R. 27 All. 572

See CUTCHI MEMONS
I L R. 30 Bom. 197 ; 270

See ENGLISH LAW—PRIMOGENITURE
5 Bom. O. C. 172

See HEREDITARY OFFICES ACT (BOM ACT III OF 1874), ss. 4, 5
I. L. R. 25 Bom 470

See HINDU LAW.
I. L. R. 31 Calc. 224
I. L. R. 26 All. 119 ; 472
I. L. R. 29 Bom. 91
I. L R 27 All 96 ; 581 ; 634
I L. R. 33 Calc. 187 ; 247 ; 307 ; 345 ; 458
I. L. R. 30 Bom. 607
10 C. W. N 95 , 510 ; 802

See HINDU LAW—

CUSTOM—INHERITANCE AND SUCCESSION ;

ENDOWMENT—SUCCESSION IN MANAGEMENT ,

INHERITANCE

STRIDHAN . I. L. R. 33 Bom. 452

See INHERITANCE

See JOINT PROPERTY.
I. L. R. 27 All. 153

See LANDLORD AND TENANT.
10 C. W. N. 17

See MAHOMEDAN LAW—DEBTS.
I L. R. 4 Calc. 142
I. L. R. 4 All. 361
I. L. R. 7 All. 822

See MAHOMEDAN LAW—INHERITANCE.

See MALABAR LAW—INHERITANCE.

See MARRIAGE SETTLEMENT
1 Ind. Jur. N. S. 290

SUCCESSION—*contd.*

See N.-W. P. RENT ACT (XII OF 1881), s. 9.
I. L. R. 31 All. 51

See OUDH ESTATES ACT, ss. 2, 10, 13, 14, 15 and 22 I. L. R. 26 All. 119 ; 393

See OUDH ESTATES ACT, s. 8.
8 C. W. N. 201

See PARSIS . . I. L. R. 1 Bom. 506
I. L. R. 2 Bom. 75
I. L. R. 4 Bom. 537
I. L. R. 5 Bom. 506
I. L. R 6 Bom. 151
I. L. R. 11 Bom. 1
I. L. R. 22 Bom. 355 ; 909

See PLEADINGS . I. L. R. 27 All. 78

See PRACTICE . . 10 C. W. N. 230

See PRIVY COUNCIL, PRACTICE OF—REVIVOR OF APPEAL.
I. L. R. 21 Calc. 997
L. R. 21 I. A. 163

See PROVINCIAL SMALL CAUSE COURTS ACT, SCH. II, ART. 28.
I. L. R. 27 All. 622

See RAJ, SUCCESSION TO.

See RELIGIOUS ENDOWMENT.
I. L. R. 33 Calc. 689

See SALSETTE, LAW APPLICABLE IN
I. L. R. 19 Bom. 680

See SPES SUCCESSIONIS.

See SUCCESSION ACT.

——— deed altering course of, by Hindu law—

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE
6 B. L. R. 202
13 Moo. I. A. 497

——— shebait—

See HINDU LAW—SUCCESSION
8 C. W. N. 809

——— to foreign State—

See JURISDICTION.
I. L. R. 35 Calc. 777

——— to istemrari mokurrari tenure—

See LEASE—CONSTRUCTION
I. L. R. 30 Calc. 883

——— to permanent tenure—

See BENGAL TENANCY ACT, s. 16
I. L. R. 24 Calc. 241

——— to raj—

See HINDU LAW—CUSTOM—INHERITANCE AND SUCCESSION.

See HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY—IMPARTIBLE RAJ.
11 B. L. R. 244

See JUDGMENT IN REM .
14 Mo. I. A. 367

SUCCESSION—*contd.*

——— **to recover profits of sir land in an undivided mahal—**

See LIMITATION . I. L. R. 7 All. 348

——— **to set aside mortgages on the ground of insanity—**

See CONTRACT ACT, s. 12
I. L. R. 27 All. 1

——— **to talukdari—**

See OUDH ESTATES ACT (I OF 1869)

1. ——— **Nawab of Tonk**—*Primogeniture—Impartible estate—Special family custom—* [illegible]

the elder line, was [illegible] who was nearer in degree. *Held*, that the effect of the British settlement of the villages in suit with the appellant's father was not to create a fresh estate subject to the ordinary law of inheritance, but to continue to the chief for the time being, as [illegible]

[illegible]

2 ——— **Hindu Law**—*Dharwar district —Sister—Brother's widow.* In the district of Dharwar a sister is preferred as an heir to a brother's widow RUDRAPA *v.* IRAVA (1904)
I. L. R. 28 Bom. 82

3. ——— *Hindu Law—* [illegible]

[illegible] father before his married daughter. The first Court allowed the claim. On appeal by one of the defendants (married daughters) the Judge varied the decree by allowing the plaintiff a third share in the property. On second appeal by the plaintiff

SUCCESSION—*contd*

[illegible]

be entitled to succeed to her father's property only in default of either married or unmarried daughters. TARA *v.* KRISHNA (1907) . I. L. R. 31 Bom. 495.

4. ——— *Hindu law—Competition between full sister and half-brother's son —Mitakshara—Sister's place in the line of heirs—Vyavahara Mayukha, views of, on the point—Value* [illegible]

being higher in the line among heirs specifically [illegible]

[illegible] plained *Per* CHANDAVARKAR, *J.*—The commentary of Balambhatta on the Mitakshara is not regarded in this Presidency as an authority to be accepted in the interpretation of the former work without question. These observations apply more or less to Nanda Pandita also It is a well established rule of the Bombay High Court that where the Mitakshara is silent or obscure, the Court must, generally speaking, invoke the aid of the Vyavahara Mayukha to interpret it, and harmonise both the works, so far as that is reasonably possible. BHAGWAN *v.* WARUBAI (1908)
I. L. R. 32 Bom. 300

5 ——— *Hindu Law—Mitakshara—Stridhan—Maiden's stridhan—Priority between maternal grandmother and father's mother's sister* Under the Mitakshara, the father's mother's sister *is entitled to succeed to the stridhan* of a maiden in preference to her maternal grandmother. JANOLUBAI *v.* JETHA APPAJI (1908)
I. L. R. 32 Bom. 409

6. ——— *Hindu Law—Mother inheriting to her son takes a limited estate.* Under the Hindu Law applicable in Bombay a mother succeeding as heir to her son takes a limited estate. VRIJBHUKANDAS *v.* BAI PARVATI (1907)
I. L. R. 32 Bom. 26

7. ——— *Hindu law—Mitakshara—Adopted son—Adoptive mother entitled*

SUCCESSION—*concld.*

to succeed in preference to adoptive father Under the Mitakshara school of Hindu law the adoptive mother is entitled to succeed in preference to the adoptive father, to a son taken in adoption. ANANDI *v.* HARI SUBA (1909)

I. L. R. 33 Bom. 404

8. ——— **Mahomedan Law**—*Shia branch —Descendants of paternal uncles and aunts—Stirpital succession.* The heirs by consanguinity under the Shia law of inheritance fall into three classes In the first class are, first the parents, and secondly children and other lineal descendants In the second class there are first grand-parents and ascendants and secondly brothers and sisters and their descendants. And in the third class come paternal and maternal uncles and aunts of the deceased and his parents and their descendants Succession in the third class, like that in the first and second class is *per stirpes* and not *per capita* AGA SHERALLI *v* BAI KULSUM KHANAM (1908) . . **I. L. R. 32 Bom. 540**

SUCCESSION ACT (X OF 1865).

See ADMINISTRATION BOND

10 C. W. N 673

See CONVERTS . **I L. R. 10 Mad. 69**
I. L R 20 Bom. 53

——— **ss. 2 and 3**—*Minor* The definitions of "minor" and "minority" in the Succession Act do not apply to cases in which a person enters into a contract on his own behalf, and not in any representative character under that Act SULTAN CHAND *v.* SMYTH

12 B. L. R. 358 : 21 W. R. 221

——— **ss. 3, 179, 187, 260**

See EVIDENCE . **I. L. R. 32 Calc. 710**

——— **s. 4**—

See DIVORCE ACT, s 35

5 B L. R. Ap. 9
I. L. R. 5 Calc. 357
I. L. R. 9 Mad. 12

See HUSBAND AND WIFE

8 B. L. R. 372
I. L. R. 1 Calc. 285

1. ——— *Operation of section—Rights acquired before passing of Act.* The provisions of s. 4 of the Succession Act are prospective, and leave rights unaffected which had already been acquired before the Act passed. SARKIES *v.* PROSONOMOYEE DOSSEE

I. L. R. 6 Calc. 794 : 8 C. L. R. 76

2 ——— *Married woman, liability of—Separate estate—Restraint on anticipation—Husband and wife—Married Women's Property Act (III of 1874), s 8.* In a suit against a husband and wife, and the trustees of the wife's marriage settlement on two joint and several promissory notes given by the husband and wife after their marriage, but before the passing of the Married Women's Property Act (III of 1874), the

SUCCESSION ACT (X OF 1865)—*contd.*

——— **s. 4**—*concld.*

plaintiff sought to render liable property settled on the marriage upon the wife for her separate use without power of anticipation The marriage was ...

apply to contracts made before the passing of the Act. *Semble: per* COUCH, *C.J.*—If the contract had been made after that Act came into operation, the plaintiff would have had a remedy against the wife's separate estate, notwithstanding the clause restraining anticipation. PETERS *v* MANUK

13 B. L. R. 383 : 22 W. R. 175

3. ——— **and s 44**—*Husband and wife—Parties with English domicile married in India—Succession to moveable property.* H M, a British subject having his domicile in England, married in Calcutta, in April 1866, C, a widow, who at the time of the marriage had also an English domicile C, after her marriage with H M, became entitled as next of kin to shares in the moveable properties of her two sons by her former marriage: these shares ...

next of kin of her sons were realized In a special case for the opinion of the Court under Ch. VII, Act VIII of 1859:—*Held*, that the domicile of the parties being in England, the English law was to be applied, and therefore the Official Assignee, as assignee of the estate of *H M*, was entitled to the whole fund realized by such shares in the hands of the Administrator-General S. 4 of the Succession Act does not apply in respect of the moveable property of persons not having an Indian domicile. MILLER *v* ADMINISTRATOR-GENERAL OF BENGAL . . . . **I. L R. 1 Calc. 412**

4 ——— *Marriage—Hus... property A ... ng a wife ... entitled ... operty to ... and 44 of ... of succes- ... arriage ... of the ... ante ...* RATOR GENERAL OF BENGAL . **I. L R. 26 Calc 606**

——— **s. 5**

See FOREIGN STATE. **I. L. R. Calc. 17**

SUCCESSION ACT (X OF 1865)—*contd*

——— and s. 10—

See DOMICILE . I. L. R. 4 Calc. 106

——— ss. 20, 22, 105—*Relationships contemplated by the Act are legitimate relationships only—Gift by will of the residue to such charities as the trustees may think deserving, is good* The Succession Act (X of 1865) contemplates only those relationships, which the law recognizes, that is, those [illegible]

[illegible]

——— s. 35—

See CONVERTS . I. L. R. 9 Mad. 466

——— s. 42—

See PARSIS . . I. L. R. 2 Bom. 75

——— s. 47—

See CIVIL PROCEDURE CODE, 1882, s. 440. I. L. R. 31 Bom. 413

——— s. 48—

See PARDANASHIN WOMEN. 5 C. W. N. 505

——— s. 48, Illus. (g), (h)—

See WILL, EXECUTION OF. 11 C. W. N. 324

——— ss. 48, 54—

See WILL—VALIDITY OF WILL. I. L. R. 7 Mad. 515

——— s. 50—

See WILL—ATTESTATION.

See WILL—SIGNATURE.

——— s. 51—

See WILL . I. L. R. 29 Bom. 530

——— s. 54—

See WILL—CONSTRUCTION. I. L. R. 4 Mad. 244

——— s. 56—**Will of a Jew.**—*Revocation of will—Lawful polygamous marriage.* The will of a Jew, made subsequently to his first marriage, but previously to a second marriage in the lifetime of his first wife, *held* to be revoked by such second marriage under s 56 of the Succession Act. GABRIEL *v* MORDAKAI . I. L. R. 1 Calc. 148

——— ss. 56, 57—

See HINDU LAW, WILL. I. L. R. 30 Mad. 369

——— s. 58—

See PROBATE—OF WHAT DOCUMENTS GRANTED . I. L. R. 29 Calc. 31

See WILL—ATTESTATION 1 C. W. N. 428

SUCCESSION ACT (X OF 1865)—*contd*

——— s. 68—

See WILL—CONSTRUCTION I. L. R. 15 Mad. 448

——— s. 75—

See WILL—CONSTRUCTION. I. L. R. 6 All. 583

——— s. 78—**Will—Appointment by general bequest**—*Power created subsequently to the will—Civil Procedure Code (Act XIV of 1882), s. 527, case stated under* A general power of appointment may be well exercised by a will executed previously to the creation of the power and that too by a mere residuary gift. DINSHAW SORABJI *v.* DINSHAW SORABJI (1907) I. L. R. 31 Bom. 472

——— s. 82—

See COMPROMISE . I. L. R. 31 Mad. 474

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION . . 5 C. W. N. 300

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—ESTATES ABSOLUTE OR LIMITED . I. L. R. 24 Calc. 646
I. L. R. 22 Bom 833

——— ss 82, 111—

See HINDU LAW . I. L. R. 35 Calc. 896

——— ss. 82, 111, 116, 117—

See HINDU LAW. I. L. R. 33 Calc. 947; 1306

[illegible]

tions, it was provided that — my private zamindari, presented to me by Government as a reward for services rendered during the rebellion of 1857, as well as all villages, houses and other property added by me from time to time to the [illegible]

above-mentioned private zamindari, *et cetera*, shall [illegible]

[illegible]

retrospective; but the will was to be construed, as

SUCCESSION ACT (X OF 1865)—*contd.*

——— s. 84—*concld.*

was laid down by the Privy Council in the case of *Barlow* v *Orde, 13 Moo. I A. 277,* according to principles of justice, equity and good conscience. So construing the will and having regard to the circumstances of the family, at the time of its execution, the testator must not be taken to have intended to confer an absolute estate on his eldest son, but that his sons who should acquire the property should have a life estate only, and that the absolute estate should devolve upon the eldest son of the testator who should be entitled to the property for life and should leave a son surviving him. *Secretary of State* v *The Administrator-General of Bengal, 1 B L R 87 O C, Abraham* v *Abraham, 9 Moo I A 193, 199, Broughton* v *Pogose, 12 B L, R 74,* referred to *Semble* That a marriage ceremony performed according to Mahomedan rites between a Christian man and a Mahomedan woman can create no valid marriage between the parties RICHARD ROSS SKINNER *v* DURGA PRASAD (1904) . . . I. L. R 31 All 239

——— s 90—

See WILL—CONSTRUCTION

I. L. R. 26 Mad. 433
6 C. W. N. 321

——— s. 91—

See WILL—CONSTRUCTION.

I. L. R. 6 All. 583

——— s. 93—

See NATIVE CHRISTIANS

I. L. R. 31 Bom. 25

——— ——— *Intestate and testamentary succession—Native Christians—Converts from Hindu religion—Joint family—Co-parcenership—Inheritance* The Indian Succession Act (X of 1865) does not affect rights of co-parcenership as between those to whom it applies The purpose of that Act was to amend and define the rules of law applicable to intestate and testamentary succession It is with the *devolution* of rights on intestacy that

[illegible]

bai, I. L R. 23 Bom 80, referred to FRANCIS GHOSAL *v* GABRI GHOSAL (1906)

I L. R 31 Bom. 25

——— s. 94—

See WILL—CONSTRUCTION

I. L. R 26 Mad. 433

1. ——— s. 96—Hindu law—*Bequest to*

[illegible]

SUCCESSION ACT (X OF 1865)—*contd.*

——— s. 96—*concld.*

[illegible]

that the provision contained in s. 96 of the Indian Succession Act could not be extended to such a case. RAMAMIRTHAM *v.* RANGANATHAN (1900)

I. L. R. 24 Mad. 299

2 ——— *Hindu Wills Act (XXI of 1870), ss 2, 3—Lapsed legacy—Lapse of gift to testator's lineal descendant—Probate and Administration Act (V of 1881), s 131.* A testator, by his will, dated the 22nd April 1878, gave a legacy

[illegible]

——— s. 98—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS

I. L R 8 Calc. 157; 637
I. L. R. 15 Bom. 326; 652
I. L. R. 16 Bom. 492

See WILL—CONSTRUCTION.

I. L. R 4 Calc 670

——— *Application of section—Vested interests Semble* - S 98 of the Succession Act applies only to vested interests. MASEYK *v.* FERGUSSON . . I. L. R 4 Calc 304

——— ss. 98—103—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS.

——— s 101—

See PERPETUITIES, RULE AGAINST.

I L. R. 20 Bom. 511

See WILL . I. L. R. 30 Bom. 477

——— ss. 101, 102—

See WILL—CONSTRUCTION.

I. L. R. 4 Calc. 304
I. L. R. 31 Mad. 517

SUCCESSION ACT (X OF 1865)—*contd.*

——— s. 105—

See WILL—CONSTRUCTION
I. L. R. 15 Mad. 448
6 C. W. N. 321
I. L. R. 26 Mad 532

——— s. 106—

See WILL—CONSTRUCTION
I. L. R 6 All. 583

——— s 107—

See REGISTRATION ACT
I. L. R. 30 Bom. 304

——— s. 111—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—ESTATES ABSOLUTE OR LIMITED.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—SURVIVORSHIP
I. L. R. 23 Calc. 563
L. R. 3 I. A. 18

See WILL—CONSTRUCTION.
3 C. W. N. 478

——— ss. 111, 116—*Hindu Law—Will—Construction—Authority to adopt—Bequest to adopted son—Authority to adopt declared invalid—Gift over*

sons" in the above clause were words of limitation and not words of purchase Though under the

SUCCESSION ACT (X OF 1865)—*contd.*

——— s. 111—*concld.*

24 W. R. 395, Bhobatarini Debya, v. *Peary Lal Sanyal, I L R. 24 Calc 646, Atul Krishna Sarcar* v *Sanyasi Charan Sircar, 9 C. W. N. 784.* The Court, following the practice laid down in *Lalit* v. *Chukkun, L. R. 21 I. A 76,* left the question, whether the gift is defeasible on either daughter dying without male issue, open. Under the Hindu Law an adopted son holds the same position as a son born as regards inheritance from the adoptive mother's relations RADHA PROSAD MULLICK *v.* RANI MONI DASSI (1906) . 10 C. W. N. 695

——— s. 114—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—BEQUEST FOR IMMORAL CONSIDERATION
I. L R. 23 Mad. 613

——— s. 125—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—ESTATES ABSOLUTE OR LIMITED . I. L. R. 24 Calc 406

See WILL—CONSTRUCTION.
I. L. R. 22 Bom. 774

——— s 128—*Legacy to person appointed executor—Rebuttal of presumption—Parol evidence—Hindu Wills Act (XXI of 1870), s 2.* The language of s 128 of the Succession Act is peremptory and

GENERAL OF BENGAL . I. L. R. 15 Calc. 83

——— s. 159—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS . . I. L. R. 20 Bom. 450

See WILL—CONSTRUCTION.
I. L. R. 15 Mad. 448

——— s. 179—

See ADMINISTRATOR.
I L. R. 27 Bom. 103

See EXECUTOR . I. L. R. 27 Bom. 281

See PARTIES—PARTIES TO SUITS—EXECUTORS . I. L. R. 12 Bom. 621

See PROBATE—POWER OF HIGH COURT TO GRANT, AND FORM OF.
I. L R. 6 Bom. 460

——— ss. 179—187—

See PROBATE—EFFECT OF PROBATE.

——— s. 181—

See ADMINISTRATION.
I. L. R. 28 Bom. 267

SUCCESSION ACT (X OF 1865)—*contd.*

——— s. 182—

See PROBATE—TO WHOM GRANTED.
7 B. L. R. 563
I. L. R. 15 Mad. 360

——— s. 187—

See ADMINISTRATION.
I. L. R. 26 Bom. 267

See CERTIFICATE OF ADMINISTRATION—EFFECT OF CERTIFICATE.
23 W. R. 252

See PROBATE—JURISDICTION IN PROBATE CASES . . I. L. R. 14 Calc. 37

See REPRESENTATIVE OF DECEASED PERSON . . I. L. R. 14 Mad. 454

See VENDOR AND PURCHASER—TITLE.
I. L. R. 15 Bom. 657

——— *Will—Application by legatee for letters of administration—Grant limited to recovery of legacy only—Suit by another legatee to recover legacy—Maintainability—Proof of Will only essential* Letters of administration with a copy of the will annexed in respect of the entire estate left by the testator was granted by the District Judge to a legatee to whom the testator had bequeathed an allowance for maintenance. On appeal, the High Court directed that the letters *should be limited to the realisation by the grantee* of that allowance only. But before fresh letters in terms of the High Court's order could be issued by the District Judge the legatee died Subsequently another legatee to whom also the testator had bequeathed an allowance for maintenance brought a suit for recovery of the same. *Held*, that s. 187 of the Succession Act was no bar to the recovery *of the plaintiff's claim If a will is once* proved and probate or letters of administration granted, that would entitle any one of the legatees or any one claiming under the will to obtain relief from Court. S 187 of the Succession Act does not *contemplate that every* legatee claiming under a will should have to obtain separate probate or letters of administration in respect of the estate or a portion of the estate in order to be entitled to maintain a claim for the legacy. CHANDRA KISHORE ROY *v.* PROSANNA KUMAR DASS (1906)
10 C. W N. 864

——— ss. 187, 188—

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT
I. L. R. 4 Calc 360
I. L. R. 17 Calc. 272

——— s. 190—

See REPRESENTATIVE OF DECEASED PERSON . . I. L. R. 30 Calc. 1044

See RIGHT OF SUIT—INTESTACY.
I. L. R. 18 Bom. 337

——— ss. 190, 191—*Intestate—Sale of property of intestate in execution of decree against some of his heirs—Title to sale-proceeds—Letters of administration.* *S* sued some of the heirs to a person governed by the Succession Act, 1865, who died

sale-proceeds were paid to *S*, *R*, an heir to the *deceased, obtained in the District Court letters of* administration to the estate of the deceased, and an order for payment to her of such sale-proceeds. Thereupon *S* sued *R* for such sale-proceeds and to have the District Court's order directing payment thereof to her set aside. *Held*, that, with reference to ss. 190 and 191 of the Succession Act, 1865, the

proceeds which formed part of the estate of the deceased, and the suit was therefore not maintainable. SUKH NANDAN *v.* RENNICK
I. L. R. 4 All. 193

——— ss. 190—213—

See LETTERS OF ADMINISTRATION.

——— s. 224—

See ILLEGITIMACY . 11 B. L. R. Ap. 6

——— s. 232—

See PROBATE—AMENDMENT OF ERROR IN PROBATE . I. L. R. 4 Calc. 582

——— ss. 234—261—

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.

——— s. 235—

See JUDICIAL COMMISSIONER, ASSAM.
12 W. R. 424

——— s. 237—*Exemplification of will—Probate—Order to produce testamentary paper.* The testator died in Calcutta, leaving a will, whereof he appointed *A*, *B*, *C*, and *D* executors. *D*, the

8 B. L. R.

SUCCESSION ACT (X OF 1865)—*contd.*

——— s 239—

See RECEIVER I. L. R. 17 Bom. 388

——— s. 240—

See LETTERS OF ADMINISTRATION
I. L. R. 17 Bom 689
I L. R. 24 Mad 120

See PROBATE—POWER OF HIGH COURT TO GRANT . I. L. R. 24 Mad. 120

——— s. 242—

See ADMINISTRATOR.
I. L R. 35 Calc. 955
12 C. W. N 802

See PROBATE—EFFECT OF PROBATE.
8 B. L. R 208

——— ss. 242, 257, 269—

See ADMINISTRATION BOND.
I. L R. 33 Calc. 713
10 C W. N. 673

——— s. 244—

See PROBATE—JURISDICTION IN PROBATE CASES . . . 4 C. L. R. 498

——— s. 246—

See LETTERS OF ADMINISTRATION.
I. L. R. 25 All. 355

——— s. 255—

See EXECUTOR . I. L. R. 21 Bom. 400

——— s. 256—

See PROBATE—ADMINISTRATION BONDS
I. L. R 7 Calc. 84
3 Mad. Ap. 10
4 C L R. 498
I. L. R. 26 Calc. 407

——— ss. 256, 257—

See ADMINISTRATION BOND.
6 N. W. 62
I. L. R. 10 All. 29

——— s. 257—

See ACT XL OF 1858, s 21.
I. L. R. 5 All. 248

See GUARDIAN—LIABILITY OF GUARDIANS
I. L R. 5 All. 248

——— s 258—*Grant of letters of administration with will annexed—Practice.* Letters of administration with the will annexed may, under s. 258 of the Succession Act, be granted after the expiration of seven clear days from the death of the testator *In the goods of* WILLSON
I. L R. 1 Calc. 149

——— s. 261—

See PROBATE—APPLICATION FOR PROBATE, ETC. . I. L. R. 19 Mad. 458

SUCCESSION ACT (X OF 1865)—*contd*

——— s. 263—

See APPEAL—CERTIFICATE OF ADMINISTRATION . I. L. R. 20 Calc. 245

See APPEAL—PROBATE.
I L. R. 27 Calc. 5

——— s. 264—

See REFERENCE TO HIGH COURT—CIVIL CASES . . I L R. 5 Calc. 756

——— s 265—

See APPEAL—PROBATE 2 C. L. R. 589

——— s. 266—

See RIGHT OF SUIT—INTESTACY.
I. L. R. 18 Bom. 337

——— s. 269—

See ADMINISTRATOR
I. L. R. 27 Bom. 103

See EXECUTOR . I. L. R. 1 All. 710

See LETTERS OF ADMINISTRATION.
I. L. R. 23 Calc. 579

——— s. 280—

See ADMINISTRATOR.
I. L. R 17 Bom. 637

——— s 282—

See ADMINISTRATOR . 8 Bom. O. C. 20

See ADMINISTRATOR-GENERAL'S ACT.
I. L. R. 25 Calc. 54

See CIVIL PROCEDURE CODE, 1882, s. 244
I. L R. 29 Bom. 96

1 ——— *Decree, satisfac-* [illegible]

12 B. L. R. 287: 17 W. R 513

2. ——— *Debt—Liability to pay calls on shares in company.* A liability to pay calls is a debt within the meaning of s 282 of the Succession Act ASIATIC BANKING COMPANY *v.* VIEGAS . . . . 8 Bom. O. C. 20

3 ——— *Judgment-creditor —Execution of decree—Right to assets in hands of Administrator-General —Administrator-General's Act (II of 1874), s 35.* A decree for money was obtained against a person who afterwards died intestate. Letters of administration to his estate [illegible]

[illegible] cient to pay in full all the claims made against the estate REMFRY *v.* DEPENNING
I. L. R. 10 Calc. 929

SUCCESSION ACT (X OF 1865)—*concld.*

——— s. 328—

See ADMINISTRATOR . 8 Bom O. C 20

——— s. 331:

——— "Hindu" includes Sikh—

See PROBATE AND ADMINISTRATION ACT (V OF 1881) . 7 C. W. N. 895

See PROBATE—POWER OF HIGH COURT TO GRANT, AND FORM OF
I. L. R. 6 Bom. 452

See WILL—FORM OF WILL.
2 B. L. R. A. C. 79

1 ——— *Jains—"Hindu."* The term "Hindu" in s 331 of Act X of 1865 means and includes a "Jain," and consequently in matters of succession, Jains are not governed by that Act. BACHEBBI *v* MAKHAN LAL
I. L. R 3 All 55

2. ——— *Native Christians —Hindu law—Inheritance* The Succession Act

observe the Hindu law of succession until the Succession Act altered their rule of succession, the members of the family who were born before the latter Act came into operation could not be deprived of the rights acquired by them under the Hindu law. PONNUSAMI NADAN *v* DORASAMI AYYAN . . . . I L. R. 2 Mad. 209

3 ——— *Native Christian —Application under Act XXVII of 1860 for certi-*

within the meaning of the term as used in s 331 of the Succession Act (X of 1865), and therefore that they are affected by the provisions of that Act, and cannot proceed under Act XXVII of 1860 *Held*, upon appeal, that the order of the Civil Judge was right. *In the matter of the petition of* VATHIAR
7 Mad. 121

4. ———and s. 2—*Converts to Christianity from Hinduism—Inheritance— Evidence of custom of inheritance—Koli caste of fishermen.* The Indian Succession Act (X of 1865), and the rules of inheritance prescribed by it, apply to Hindus who have become Christians; and evidence to show that they and the community to which they belong have retained the Hindu custom of inheritance, is inadmissible. DAGREE *v.* PACOTTI SAN JAO
I. L. R. 19 Bom. 783

——— ss. 331, 332—

See PROBATE . I. L. R. 31 Calc. 11

SUCCESSION CERTIFICATE.

See DEBT . I. L. R. 36 Calc. 936

See HINDU LAW. I. L. R. 35 Calc 631

See RIGHT OF SUIT . 13 C. W. N. 509

See SUCCESSION CERTIFICATE ACT.

——— costs of—

See HINDU LAW—LEGAL NECESSITY.
I. L. R. 36 Calc. 753

SUCCESSION CERTIFICATE ACT (VII OF 1889).

See APPEAL—CERTIFICATE OF ADMINISTRATION (ACT VII OF 1889).

See BOMBAY CIVIL COURTS ACT, s. 16.
I. L R. 18 Bom. 277

See CERTIFICATE OF ADMINISTRATION—ACT VII OF 1889

See IMPARTIBLE ESTATE
I. L. R. 30 Mad. 454

See RIGHT OF SUIT . 13 C. W. N. 509

1. ——— **Succession Certificate Act (VII of 1889), object of.**—*Succession certificate* —The object of the Succession Certificate Act

parties to the estate of the deceased decided on an application under it. GUNINDRA PROSAD *v.* JUGMALA BIBI (1903) . I. L. R. 30 Calc. 581

2. ——— *Enquiry under the Act—Debts, existence of—Payment of money due into Court—Certificate in respect of the money so paid —Practice* The Succession Certificate Act (VII of 1889) is intended for the protection of debtors, but this only means that where a debtor of a deceased person either voluntarily pays his debt to a person holding a certificate under the Act or is compelled by the decree of a Court to pay it to that person, he is lawfully discharged. There is nothing in the Act which either expressly or by necessary implication requires the Court granting a certificate to hold an enquiry into the existence of any debt alleged by the person applying to be due as a preliminary condition of the grant The Court has merely to ascertain the representative title of the applicant for the certificate and not the existence or non-existence of the debt. The fact that the amount of the debt to recover which a certificate is applied for is paid into Court does ... the necessity of ... sion PAR- 119

3. ———Village Courts Act (Mad. Act I of 1889) The provisions of the Succession Certificate Act apply to suits in a Village Munsif Court. RASIBI AMMAL *v.* OLAGA PADAYACHI
I. L. R. 21 Mad. 115

SUCCESSION CERTIFICATE ACT (VII OF 1889)—*contd*

——— ss 1 (4), 7 (3)—*Certificate of succession—Grant of certificate opposed by party setting up a will—Procedure—Hindu law* The widow of a deceased Hindu applied for a certificate of succession under Act No VII of 1889 In opposition to this application an alleged will of the deceased was set up, and it was proved that the deceased, being of sufficient testamentary capacity, had, *shortly before his death caused a draft will to be* prepared, that he had had the draft read to him twice and explained to him, that he made it over to a person appointed a trustee under the will telling him to have it faired out and brought to him for signature, but that he died before this was done without having expressed any intention, except in one small particular, of wishing to alter the draft so made The Court below found in favour of the

I. L. R. 31 All. 236

——— ss. 3 (2), 8 and 9—*Grant of certificate—Order to file security—Practice.* Where

——— s. 4—

See DEBT . I. L. R. 36 Calc. 936

See DECREE EX PARTE
I. L. R. 35 Calc. 767

See LIMITATION ACT, 1877, SCH II, ART 179—NATURE OF APPLICATION—GENERALLY I. L. R. 20 Calc. 755
I. L. R. 20 Bom. 78

See PARTIES—PARTIES TO SUITS—PARTNERSHIP, SUITS CONCERNING
I. L. R. 18 Calc. 88

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, 1882, s 622
I. L. R. 16 Mad. 454

1. ——— *Certificate not necessary in so far as the decree is made enforceable against mortgaged property, but necessary so far as the decree imposes personal liability* A decree for the enforcement of a mortgagee's rights as against the mortgaged property is not a decree for a "debt" within the meaning of s. 4 of Act VII of 1889; but it would be otherwise with reference to

SUCCESSION CERTIFICATE ACT (VII OF 1889)—*contd.*

——— s. 4—*concld.*

personal decree for the debt, and a certificate will be a condition precedent to such a personal decree *Fateh Chand* v. *Muhammad Bakhsh, I. L. R 16 All 259*, not followed. PALANIYANDI PILLAI v VEERAMMAL (1905) . I. L. R. 29 Mad. 77

2 ——— *Certificate—Personal decree—Suit for sale on a mortgage.* S 4 of the Succession Certificate Act (VII of 1889) limits

derao v. *Raoji, I L R 15 Bom 105*, distinguished. NANCHAND v. YENAWA (1904)
I. L. R. 28 Bom. 630

3. ——— *Application by*

lute was made in their favour, but the proceeds of the sale of the mortgaged property proving insufficient, they applied for a personal decree for the balance under s 90 of the Transfer of Property Act: *Held* (on a review of the authorities), that until the applicants obtained a certificate under the Succession Certificate Act no such decree could be made in their favour. SAHADEV SUKUL v SAKHAWAT HOSSEIN (1907) . 12 C. W. N. 145

——— s. 4 (1) (a)—

See LIMITATION . I. L. R. 32 Calc. 126

See SUCCESSION CERTIFICATE.
I. L. R. 32 Calc. 418

——— s. 4 (1) (a)—*Suit for account—Debt, recovery of* A suit for account is not a suit for the recovery of a debt within the meaning of s. 4 of the Succession Certificate Act The plaintiff, as heir of a deceased person, sued the defendant, who

——— s. 5—*Succession certificate not to be*

SUCCESSION CERTIFICATE ACT (VII OF 1889)—*contd.*

——— s. 5—*concld.*

which granted the certificate DURGA DAS v. GULLU (1905) . . . . I. L. R. 27 All. 87

——— s. 6—

See HINDU LAW . I L. R. 35 Calc. 631

——— s. 6, cl. (d)—*Guardian and Wards Act (VIII of 1890), s. 27—Minor—Guardian—Succession certificate* A certificate under the Succession Certificate Act (VII of 1889) can be granted to the

I. L. R. 28 Bom. 344

——— ss. 6, 7 and 9—*Summary proceedings—Questions of disputed adoption not to be determined in such proceeding—Security—Guardians right to certificate on behalf of the minor—Guardian and ward—Minor—Practice—Procedure* Questions arising under the Succession Certificate Act (VII of 1889) are to be determined by a summary proceeding, *i.e*, by a short inquiry leading up to and resulting in a rapid decision, in contrast with the lengthy investigation which may be required for the more tardy determination of a regular suit The nature of the inquiry must depend on the circumstances of each case. An application by a guardian of a minor is not contemplated by s. 6, cl. (*d*), of Act VII of 1889, which only permits the petitioner, who claims the right for himself, to apply. Where on an application for a certificate under the Succession Certificate Act (VII of 1889), s 6, questions of adoption affecting the right to the certificate were raised, which could not be summarily disposed of: *Held*, that the Judge ought to have decided the *primâ facie* right of the applicant under cl 3 or cl. 4 of s 7 of the Act, without waiting to decide the issue raised as to the adoption GULABCHAND GAMNAJI v MOTI CHATRAJI (1900) . . I. L. R. 25 Bom. 523

——— s. 7—

1. ——— *Nature of inquiry—Summary inquiry—Civil Procedure Code (Act XIV of 1882), s 141.* There must be an inquiry before a certificate is granted under the Succession Certificate Act; but the inquiry is to be a summary one; and, when a Judge has legal evidence before him on which he comes to a proper conclusion, his proceedings cannot be set aside because they seem not to have been of a very protracted nature Such a decision does not in any way bar the rights of the parties, nor does it establish the right of the party to the debt to collect which the certificate is granted *Hurri Krishna Panda* v. *Balabhadra Panda, I L R 23 Calc. 431; Radha Rani Dassi* v. *Brindabun Chundra Bosack, I. L. R 25 Calc. 320; Sivamma* v. *Subbamma, I. L R 17 Mad. 477, Dharmaya Sangappa* v. *Sayana Malapa, I. L. R. 21 Bom 53,* referred to. JIGRI BEGUM v. SYED ALI NAWAB (1901) . . 5 C. W. N. 494

SUCCESSION CERTIFICATE ACT (VII OF 1889)—*contd.*

——— s. 7—*concld.*

2. ——— *Succession certificate—Certificate, right to—Title.* In a proceeding under s. 7 of the Succession Certificate Act (VII of 1889) the Court is bound to decide, though in a summary manner, the question as to the right to the certificate, especially when there is a conflict between two parties *Raghu Nath Misser* v. *Pate Koer, 6 C. W N. 345,* distinguished. *Hurri Krishna Panda* v *Balabhadra Panda, I. L. R. 23 Calc. 431,* approved of. BASANTA LAL v. PARBATI KOER (1904) . . . . I. L. R. 31 Calc. 133 s c. 8 C. W. N. 51

...for certificate ... family of ... an appli... due to a deceased person made by the widow, an objection was filed by a nephew of the deceased that he and the deceased were members of a joint Hindu family and therefore no certificate could be granted to the widow; it was *held* that the Court was bound to make some inquiry, not necessarily an exhaustive one, into the facts set up by the objector, and was not warranted in passing an order granting a certificate without making any inquiry at all BALMAKUND v KUNDAN KUNWAR (1905) I. L. R. 27 All. 452

——— s. 9—

See ante, ss 6, 7 AND 9

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, 1882, s 622. I. L. R. 19 Bom. 790

1. ——— ss. 9 and 19—*Order granting certificate conditionally on the giving of security by the applicant—Appeal* When on an application for ... 7 of ... con- ...h an ...vok- ...f the ...*wani* ...*More* ...llow- ...*Talk*, ...*imal*, ...*si* v. ... *320*, *Brindabun Chundra Basak, I. L. R 25 Calc.* referred to NANNHU MAL v GULABO (1904) I L R. 26 All. 173

2. ——— *S. 3 of Act XXIV of 1839 and rule X of rules framed thereunder—General Clauses Act of 1868, s 2 (12)—Agent to the Governor, Vizagapatam, is a District Judge within s. 19 of the Succession Certificate Act and an appeal lies to the High Court against his order—Scope of inquiry in proceedings under Succession Certificate Act* S 2 (12) of the General Clauses Act of 1868 defines a District Judge as the Judge of a Principal Civil Court of Original Jurisdiction.

SUCCESSION CERTIFICATE ACT (VII OF 1889)—*concld.*

———— s. 9—*concld*

Under s. 3 of Act XXIV of 1839 and rule X of the rules framed thereunder, the Agent is the Judge of the Principal Court of Civil Jurisdiction within the Agency The Agent is therefore a District Judge within the definition in s. 2 (*12*) of the General Clauses Act of 1868 The General Clauses Act of 1868 was in force in 1889, when the Succession Certificate Act was passed and the Agent to [illegible]

Act. An appeal therefore lies to the High Court under s. 19 of the Succession Certificate Act from the order of the agent as from an order of the District Court. *Chakrapani* v *Varahalamma, I L. R 18 Mad 227, not followed.* *In inquiries* [illegible]

I. L. R. 31 Mad. 302

———— ss. 10, 19—

See Appeal—Certificate of Administration . I. L R. 25 Mad. 634

———— s. 17—

See Court Fees Act, 1870, s 26
I. L R. 19 Bom. 145

———— s. 19—

See Special or Second Appeal—Orders subject or not to Appeal.
I L. R. 17 Mad. 167

———— s 26—

See Special or Second Appeal—Orders subject or not to Appeal.
I L. R. 17 Mad. 167

See Subordinate Judge, Jurisdiction of . . I. L. R. 17 Bom. 230

SUCCESSION (PROPERTY PROTECTION) ACT, 1841.

See Act—1841—XIX.

See Hindu Law—Inheritance.
I. L. R. 34 Calc. 929

SUDDER COURT.

———— **Meaning of term**—*Act VIII of 1842—Criminal Procedure Code, 1861, s 19* Meaning of the term "Sudder Court" as defined by Act VIII of 1842 and by s 19 of the Criminal Procedure Code. Reg *v.* Vyankatasvami
2 Bom. 2nd Ed. 106

"SUDDER KHAJANA."

[illegible]

SUDRAS

See Hindu Law—Adoption—Requisites for Adoption—Ceremonies.

See Hindu Law—Adoption—Who may or may not be adopted
W. R. 1864, 133
I L. R. 1 Mad. 62
I L. R. 3 Calc. 443
I. L. R. 6 Mad. 43
I. L. R. 6 Bom 524
7 Bom Ap 26
8 Bom. A. C. 67
12 Bom. 364
I. L R. 10 Calc. 688

See Hindu Law—
Inheritance—Illegitimate Children

See Hindu Law—Inheritance—Joint Property and Survivorship.
I. L R 4 Bom 37
I. L. R. 18 Calc. 151
L. R. 17 I. A. 128

See Hindu Law—Maintenance—Right to Maintenance—Illegitimate Children . . 3 B L. R. P. C. 1
13 Moo. I A. 141
2 B. L. R. P. C. 15
5 Mad. 405
I. L. R. 8 Mad. 325; 557
I. L. R. 1 Mad. 306

See Hindu Law—Marriage—Validity or otherwise of Marriage—Intermarriage . 3 B. L R. P. C 1
13 Moo I. A. 141
I. L. R. 1 Calc. 1
I. L. R 15 Calc 708
I. L. R. 33 Bom. 693

See Hindu Law—Partition—Right to Partition—Illegitimate Children.
I L. R. 12 Mad. 401
I. L R. 25 Mad. 429

SUFFICIENT CAUSE.

See Dismissal for Default
11 C. W. N. 430

SUICIDE.

See Abatement . . 1 Agra Cr. 21
3 N. W. 316

See English Law—Suicide.
1 W. R. P C. 14: 9 Moo. I. A. 387

———— **Attempt to commit suicide**—*Penal Code, s 309—Intention—Locus pœnitentiæ.* R, with the intention of committing suicide by [illegible]

Queen-Empress *v.* Ramakka
I. L. R. 8 Mad. 5

SUIT.

See ABATEMENT OF SUIT.

See ADMINISTRATION BOND. I. L. R. 33 Calc. 713

See ATTACHMENT. I. L. R. 33 Calc. 639

See BENAMIDAR . I. L. R. 35 Calc. 551

See BENGAL RENT ACT, 1869, s. 101. 6 B. L. R. 569

See BENGAL RENT ACT, 1869, s. 102 19 W. R. 307 23 W. R. 207

See BENGAL TENANCY ACT (VIII OF 1885), ss. 91, 106, 153, 167.

See BROACH ENCUMBERED ESTATES ACT, s 19 . . I. L. R. 5 Bom 448

See CIVIL PROCEDURE CODE, 1882, ss. 11, 13, 30, 43, 373, 622.

See CIVIL PROCEDURE CODE, 1882, ss 373, 374 . I. L R. 29 Bom. 219

See CIVIL PROCEDURE CODE, 1882, s. 424. I. L R 26 All. 220

See CONTRIBUTION, SUIT FOR.

See COURT FEES ACT, 1870, s 11 I L. R. 24 Calc 173

See COURT OF WARDS ACT, 1879, s 20 I L. R. 18 Calc. 500

See DEKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), s. 44. I. L. R. 30 Bom. 101

See DISMISSAL OF SUIT.

See EJECTMENT, SUIT FOR.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT . . I. L R 18 Calc. 635 I. L R. 12 All. 392

See EXECUTRIX . I. L. R. 35 Calc. 1100

See GRANT . I. L. R. 35 Calc. 478

See JURISDICTION . I. L. R. 31 Mad. 86

See JURISDICTION—SUITS FOR LAND.

See LIMITATION ACT (XV OF 1877), s 14. I. L. R. 35 Calc 924

See LIMITATION ACT, 1877, s 14 (1871, s. 15) . . . . 3 Agra 39 I. L. R. 1 All. 97

See LIMITATION ACT, 1877, s. 22. I. L R. 35 Calc. 1065

See LIMITATION ACT, 1877, SCH. II, ART. 84 (1871, ART. 85). I. L. R. 1 Bom. 253 I. L. R. 22 Calc. 943

See LIMITATION ACT, 1877, SCH. II, ART. 179 (1871, ART 167)—PERIOD FROM WHICH LIMITATION RUNS—WHERE PREVIOUS APPLICATION HAS BEEN MADE. I. L. R. 2 Calc. 336

SUIT—*contd.*

See MINOR—REPRESENTATION OF MINOR IN SUITS.

See PARTIES. I. L. R. 35 Calc. 182; 519

See PAUPER SUIT.

See PENSIONS ACT, s. 4. I. L. R. 16 Bom. 731

See PRACTICE—CIVIL CASES—OPENING CASE FOR DEFENDANT. I. L R. 29 Calc. 32

See RAILWAYS ACT, ss 77 AND 80 I. L. R. 26 All. 207

See RES JUDICATA—ADJUDICATIONS. I. L. R. 3 Calc 340

See RIGHT OF SUIT.

See TRESPASS . I. L. R. 36 Calc. 28

See VALUATION OF SUIT.

——— abatement of—

See ABATEMENT OF SUIT.

——— adjustment of—

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION 7 C. W. N. 180

——— against public officer—

See CIVIL PROCEDURE CODE, 1882, s. 424 I. L. R 29 All. 567

——— by or against Receiver—

See RECEIVER. I. L. R. 30 Calc. 593

——— by mortgagee for possession—

See TRANSFER OF PROPERTY ACT, ss. 67, 111, 116. . I. L. R. 31 All. 318

——— change in form of—

See PLAINT—AMENDMENT OF PLAINT.

See VARIANCE BETWEEN PLEADING AND PROOF

——— civil and political—

See PRIVY COUNCIL. I. L R. 33 Calc. 219

——— for adjustment of accounts—

See APPEAL . I. L. R. 29 All. 730

——— for administration—

See HINDU LAW—REVERSIONERS, ADMINISTRATION SUIT BY. I. L. R. 29 Calc. 260

See LETTERS PATENT, HIGH COURTS, 1865, CL. 12 . I. L. R. 29 Calc. 315

——— for administration of trust—

See CIVIL PROCEDURE CODE, s. 539. I. L. R. 33 Calc. 789

SUIT—*con'd.*

——— for arrears of maintenance—

See MAINTENANCE I. L. R. 33 Bom. 50

——— for compensation—

See ATTACHMENT BEFORE JUDGMENT. I. L. R. 29 All. 615

——— for declaration of title—

See LIMITATION ACT, 1877, SCH II, ART. 120 . . . I. L. R. 31 All. 9

——— for declaration of right to officiate in hereditary office—

See JURISDICTION OF CIVIL COURT—OFFICES, RIGHT TO

See RIGHT OF SUIT—OFFICE OR EMOLUMENT.

——— for a declaratory decree—

See SPECIFIC RELIEF ACT, s. 42; PROVINCIAL SMALL CAUSE COURTS ACT, SCH II, ARTS 13 AND 31, LIMITATION ACT, 1877, s 20, SCH II, ART. 148, ARTS 110 AND 116
I. L. R. 26 All. 138; 167, 215, 358; 382; 606

——— for false imprisonment—

See FALSE IMPRISONMENT. I. L. R. 30 Calc. 872

——— for land—

See JURISDICTION—SUITS FOR LAND

——— for money charged on immoveable property—

See LIMITATION ACT, 1877, SCH. II, ART. 132.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—MONEY-DECREES ON MORTGAGES.

——— for money deposited on current account—

See LIMITATION ACT (XV OF 1877), ss. 19, 20; SCH. II, ARTS. 59 AND 60. I L R 29 All. 773

——— for partition of immoveable property—

See CIVIL PROCEDURE CODE, 1882, s. 396 I. L. R. 28 All. 75

See CONTENTIOUS SUIT. I. L. R. 33 Calc. 658

——— for possession—

See LIMITATION ACT, 1877, SCH II, ART. 14 . . . I. L. R. 29 Calc. 367

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES. I. L. R. 29 Calc. 682

SUIT—*contd.*

——— for possession by judgment-debtor—

See CIVIL PROCEDURE CODE, 1882, ss. 244, 583 . I. L. R. 31 All. 364

——— for possession of immoveable property—

See LIMITATION . I. L. R. 30 Mad. 308

See SPECIFIC RELIEF ACT, 1877, s. 42 I. L. R. 31 All. 241

——— for profits—

See LAMBARDAR AND CO-SHARER. I. L R. 29 All. 287

See AGRA TENANCY ACT, II OF 1901, s 201 (3). I. L. R. 31 All. 253; 257

——— for recovery of joint possession—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s 539

See COURT-FEES ACT, 1870, SCH. II, ART. 17 . . I. L. R. 31 Calc. 511

See JOINT PROPERTY, CIVIL PROCEDURE CODE, 1882, s. 539 I. L. R 26 All. 162; 588

See MALICIOUS PROSECUTION. I L. R. 31 Calc. 406

See SPECIFIC PERFORMANCE, VALUATION OF SUIT, APPEAL, HINDU LAW. I. L. R. 31 Calc. 262; 355; 487; 584

——— for redemption—

See MORTGAGE, BY CONDITIONAL SALE. I L. R. 31 All. 300

——— for rent in deposit—

See BENGAL TENANCY ACT, s 149. 11 C. W. N. 380

——— for restitution of conjugal rights—

See ACT XII OF 1887, ss 15, 18 AND 19. I. L. R. 33 Calc. 545

See RESTITUTION OF CONJUGAL RIGHTS.

——— for share of fees—

See JURISDICTION OF CIVIL COURT—FEES AND COLLECTIONS AT SHRINES.

See RIGHT OF SUIT—OFFICE OR EMOLUMENT.

——— for turn of worship of idol—

See LIMITATION ACT, 1877, SCH II, ART. 131 . 6 B. L. R. 352: 15 W. R. 29 I. L. R. 4 Calc. 683 I. L R 8 Calc. 807: 10 C. L. R. 439

——— for wrongful removal of attached property—

See ATTACHMENT, EFFECT OF. I. L. R. 30 Mad. 207

SUIT—*contd*

———— in formâ pauperis—

See PAUPER SUIT.

———— institution of—

See LIMITATION ACT, 1877, s 4.

———— liability of sons in suit by father—

See HINDU LAW . I. L. R. 31 All. 178

———— maintainability of, in Civil Court—

See U. P. LAND REVENUE ACT, III OF 1901, s. 233 (*k*) . I. L. R. 31 All. 541

———— on bond—

See CONTRACT ACT, s. 16
I. L. R. 31 All. 386

———— restoration of—

See CIVIL PROCEDURE CODE, 1882, ss 98, 99, AND 100

———— revival of—

See ABATEMENT OF SUIT—SUITS.
I. L. R. 5 Calc. 139

See LIMITATION ACT, 1877, SCH II, ARTS. 171, 171A, 171B

See LIMITATION ACT, 1877, SCH. II, ART 178 . . . I. L. R 6 Calc 60
I. L. R. 8 Calc. 420
I. L R. 5 Calc. 139
I. L. R. 5 Bom. 29

See PARTIES—SUBSTITUTION OF PARTIES.

———— title of—

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL
2 Ind. Jur. N. S. 245

See PRACTICE—CIVIL CASES—PARTIES.
I. L R. 22 Calc. 270

———— to enforce registration—

See REGISTRATION ACT (III OF 1877), s 21 . . . I. L. R. 31 All. 52

See REGISTRATION ACT (III OF 1877), s. 77 . . I. L. R. 30 Calc. 532

———— to recover possession of immovable property—

See DOCUMENT . I. L. R. 30 Calc. 433

———— to recover surplus sale proceeds—

See LIMITATION ACT, 1877, SCH. II, ART. 29 . I. L. R 30 Calc. 440

———— to set aside compromise—

See MINOR . . I. L. R [34 Calc. 83

———— to set aside sale—

See NOTICE . . I. L. R. 34 Calc. 787

SUIT—*contd.*

———— valuation of—

See SUITS VALUATION ACT (VII OF 1887) s. 8 . . . I. L. R. 31 All. 44

———— withdrawal of—

See WITHDRAWAL OF SUIT.

1. ———— **Notice of revival.** Before a suit can be revived, notice should be served upon the opposite party to appear in support of the decree as originally made. HURO MOHUN MOOKERJEE *v.* MOHENDRO NATH GHOSE 16 W. R. 135

2. ———— **Right to revive suit**—*Act LIII of 1860, s. 2—Civil Procedure Code, 1859, s 378*, S. 2, Act LIII of 1860, referred to appeals and also to suits, and as the suit of the special appellant, [illegible] in the Court of first instan[illegible] Court, the [illegible] revival of [illegible] refers to applications for review of judgment, but this was an application for revival of the suit under s 2, Act LIII of 1860. BUNGSHEEDUR MUNDUL *v.* PUDDO LOCHUN ROY . . W. R. F. B. 11
1 Ind. Jur. O. S 5: Marsh. 38: 1 Hay 80

3. ———— **Revival of suit by successor of Judge**—*Ex parte decree—Act X of 1859, s. 58.* Where defendants against whom an *ex parte* decree has been passed by a Collector applied to his successor under s. 58, Act X of 1859, for a revival of the suit, showing good and sufficient cause for that their non-appearance, and there had been a failure of justice, the successor was competent to alter or rescind his predecessor's decree according to the justice of the case. RUGHOO [illegible] [illegible]E [illegible]6

4. ———— **Effect of revival**—*Act X of 1859, s. 58.* The revival of a suit under s 58, Act X of 1859, did not reopen the case as regards all the defendants, but only as regards the party who had applied to have his particular case revived and heard on the merits. BROJONATH SURMAH CHUCKERBUTTY *v.* ANUND MOYEE DEBIA CHOWDHRAIN . . . . 7 W. R. 237

5. ———— **Form of order for revival**—*Abatement—Civil Procedure Code (Act XIV of 1882), ss 365, 366, 371.* The plaintiff died on the 28th August 1883, and in December 1884 letters of administration to his estate was granted to the Administrator-General. The defendant died in June 1884, leaving a widow and one son him surviving. By his will he appointed two executors [illegible] 1885 the Admin[illegible] to revive [illegible] provisions [illegible] [V of 1882) [illegible] was com[illegible] revive the [illegible] ent under [illegible] der under s. 366 of the Code, coupled with [illegible]

SUIT—*contd.*

s. 371 setting aside the order for abatement. FULVAHU v GOCULDAS VALLABHDAS I. L. R. 9 Bom. 275

6. ———— Mode of revival—*Revival by Bill—Civil Procedure Code, 1877* There is nothing in the Civil Procedure Code to prevent a suit being revived as before it was passed by Bill, if the simpler mode of proceeding is for any reason not available ATTERMONEY DOSSEE v HURRY DOSS DUTT I L R. 7 Calc 74: 9 C L. R. 357

7 ———— Suit for possession—Limitation—*Non-occupancy raiyat—Specific Relief Act (I of 1877), s 9—Limitation Act (XV of 1877), Art 120 and Art 142. Held*, by the Full Bench (Prinsep J, dissenting), that the period of limitation applicable to the case of a non-occupancy raiyat, who has been dispossessed from his holding, otherwise than in execution of a decree, is either six or twelve years as provided for in Art. 120 or 142 of the Limitation Act (XV of 1877). The remedy indicated in s 9 of the Specific Relief Act (I of 1877) is not the only remedy which the Legislature has provided for a non-occupancy raiyat, who has been dispossessed otherwise than in due course of law *Bhagabati Charan Roy v Luton Mondal, 7 C. W N 218*, overruled. TAMIZUDDIN v ASHRUB ALI (1904) I. L. R. 31 Calc. 647

8.* ———— Restoration of suit—Limitation—*Dismissal of suit—Adjournment—Civil Procedure Code (Act XIV of 1882), ss 120, 103, 155—Limitation Act (XV of 1877), Sch II, Art 163—Notice of motion—"Sufficient cause"—Practice.* Where a suit is dismissed for want of prosecution an application for its restoration must be made within 30 days of such dismissal, and a notice that the application would be made on a future date does not prevent limitation from running *Khetter Mohan Sing v. Kassy Nath Sett, I L. R. 20 Calc 899* Where the long vacation intervenes to save limitation, the matter must be mentioned on the first day after the re-opening of the Court—that is, the first day on which the Court sits *Semble*. An appearance by counsel on the calling on of a case merely to ask for an adjournment is not such an appearance in the suit as will necessarily render ss. 102 and 103 of the Civil Procedure Code inapplicable HINGA BIBEE v. MUNNA BIBEE (1904) I. L. R. 31 Calc. 150 s c. 8 C. W. N. 97

9. ———— Public road—Right of owner of soil—*Right of suit—Parties—Civil Procedure Code (Act XIV of 1882), s. 30—Right of way—Tort—Damages—Injunction—Minor—Cause of action* Where a road has been dedicated for the use of the public, the owner of the soil, over which the road runs, is entitled to exercise all rights of ownership so as not to interfere with the right of way, which exists in the public. *Vestry of St Mary Newington v. Jacobs, L R Q B. 47*, referred to When the owner of such soil is responsible for keeping the road in order and in good repair, he is entitled to institute a suit for damages and injunction against the destroyer of any work of improvement done to the road without proving special damage A minor is not responsible for a tort committed by the manager of his estate, provided the tortious act was not in connection with the management of the estate. MAHARAJ BAHADUR SINGH v PARESH NATH SINGH (1904) . . I. L. R. 31 Calc. 839

10 ———— Set-off—*Maintainability of suit—Civil Procedure Code (Act XIV of 1882), ss. 43, 111—Previous suit—Omission to claim set-off in the previous suit in respect of the sum due—Effect of such omission—Cross suit.* In a previous suit brought by *A*, against *B*, the latter had claimed a set-off in respect of a portion of the sum due to him upon adjustment of accounts between the parties, and had omitted to claim a set-off in respect of the remainder. In a subsequent suit brought by *B* against *A* for the remainder, the defence was that the suit was not maintainable. *Held*, that *B* having claimed a set-off in respect of part of the cause of action in the previous suit brought against him, was debarred under s 43 of the Civil Procedure Code from bringing this suit NAWBUT PATTAK v MAHESH NARAYUN LAL (1905) I. L. R. 32 Calc. 654

11. ———— Suit for costs incurred in Criminal Court—*Damages* A suit will not lie to recover the expenses incurred by the plaintiff in prosecuting the defendant in a Criminal Court *Fazal Imam v Fazal Rasul, I. L R 12 All 166*, approved CHURAMONI DASI v BAIDYA NATH NAIK (1905) I. L. R. 32 Calc. 429

12. ———— Partition suit—*Decree based on an agreement—Appeal by plaintiff—Application for withdrawal of suit—Application—Appeal—Civil Procedure Code (Act XIV of 1882), ss. 373 and 582 Held*, that when in a partition suit defendants have by concession of the plaintiff acquired rights, which otherwise could not have existed, it is not open to the plaintiff, who has made that concession, afterwards to annul its effect by withdrawing from the suit in the Appellate Court. SATYABHAMABAI v. GANESH BALKRISHNA (1905) I. L. R. 29 Bom. 13

13. ———— Withdrawal from suit—*Suit—Omission of part of claim—Fresh suit for claim omitted, if barred—Leave to withdraw on condition—Non-fulfilment of condition—Effect* If a plaintiff withdraws from a suit without the leave of the Court, s. 43 of the Civil Procedure Code is a bar to his instituting a fresh suit in respect of any portion of the claim, which he may have omitted to include in his previous suit. The same consequences follow when a plaintiff is allowed to withdraw with liberty to bring a fresh suit on condition of paying the defendant's costs within a certain time and fails to pay such costs within that time. HARE NATH DAS v. HOSSAIN ALI (1905) . . . 10 C. W. N. 8

SUIT—*concld.*

14. ——— **Right of suit**—*Parties.* S. 315 of the Civil Procedure Code is only an enabling section and not prohibitive of an independent action in a Civil Court. A suit was brought by an auction purchaser for the recovery of purchase-money from the decree-holder, who had received it, on the ground that the judgment-debtor had no title to the property sold. *Held,* that the suit was not barred by the provisions of s 315 of the Civil Procedure Code. That the judgment-debtor was not a necessary party. SURENDRA NATH GHOSE *v* BENI MADHAB MISRA (1905)

10 C. W. N. 274

15. ——— **Suit against two defendants**—**Decree against one**—*Appeal by defendant made liable—No appeal against the other defendant—Appellate Court's finding against the defendant against whom the suit was dismissed* A suit for money was instituted against *A* and *K*. The Court of first instance held that *A* was liable and dismissed the suit against *K*. *A* appealed, but did not make *K* a party to it The lower Appellate Court found that *K* was liable and not *A*, and decreed *A's* appeal. *Held,* that no decree could be passed against *K*, as the plaintiff had allowed the decree of the Court of first instance dismissing his suit against *K* to become final. NIZAM-UD-DIN *v* ABDUL AZIZ (1909)

I. L. R. 31 All. 521

16. ——— **Suit for damages against joint tort-feasors**—*Compromise between plaintiff and one of the defendants—Such compromise no bar to a decree against the other defendants* The plaintiff sued several defendants jointly to recover damages in respect of an alleged assault committed on him by the defendants, but entered into a compromise with one of the defendants. *Held,* that the existence of this compromise did not preclude the plaintiff from recovering damages against the remaining defendants. *Brinsmed* v. *Harrison, 7 Sc & L 547,* and *Thurman* v. *Wild, 11 A & E 453,* referred to. RAM KUMAR SINGH *v.* ALI HUSSAIN (1909) . . **I. L. R 31 All 173**

SUIT IN FORMA PAUPERIS.

See PAUPER SUIT

SUITS VALUATION ACT (VII OF 1887)

See VALUATION OF SUIT

See BENGAL, NORTH-WESTERN PROVINCES AND ASSAM CIVIL COURTS ACT (XII OF 1887), s. 21.

I. L. R. 31 Calc. 365 ; 849

See COURT FEES ACT, 1870, s. 7, cl. (iv) (*b*), cl. (*v*) . **I. L. R. 33 Bom. 658**

See RESTITUTION OF CONJUGAL RIGHTS

I. L. R. 31 Calc. 849

——— **ss. 2, 11**—*Restitution of conjugal rights—Jurisdiction of Munsif—Valuations of suit—Mahomedan marriage, requirement of.* A suit for restitution of conjugal rights is not triable by a Munsif under s. 19, sub-s. (1), of Act (II

SUITS VALUATION ACT (VII OF 1887)—*contd.*

——— **s. 2**—*concld.*

of 1887, but is triable by a District Judge or a Subordinate Judge under s. 18 of that Act. *Matra Mondul* v. *Hari Mohun Mullick, I. L. R. 17 Calc. 155 ; Golam Rahman* v. *Fatima Bibi, I. L. R. 13 Calc. 239 ; Mowla Neway* v. *Sajidunnessa Bibi, I. L. R. 18 Calc. 378 ;* and *Shiri* v. *Shiri, 5 Moo P. C. 81,* referred to Where a Court of first instance exercised jurisdiction with respect to a suit by reason of an arbitrary valuation and no [illegible] taken in that Court [illegible]

convert it into a proper judicial process *Leugns* v. *Bull, I L. R. 9 All 191 ; L. R. 13 I. A. 134 ;* [illegible] I L R 11 [illegible]

formal requirements of a valid Mahomedan marriage discussed. *Badal Aurat* v. *Queen-Empress, I. L R 19 Calc. 79,* referred to. AKLEMANESSA BIBI *v* MAHOMED HERUN (1904)

I. L. R. 31 Calc. 849

——— **s. 8.**

See COURT-FEES ACT, 1870, s 7, cl (4) *b* and cl. *v* **I. L. R. 33 Bom. 325**

See COURT-FEES ACT (VII of 1870), s 7(4)c . **I. L. R. 31 Mad. 89**

See JURISDICTION **I. L. R. 32 Calc. 734**

13 C. W. N. 493

See LIMITATION **I. L. R. 32 Calc. 716**

See MUNSIF, JURISDICTION OF. **I. L. R. 19 Mad. 56**

See PRINCIPAL AND AGENT. **I. L. R. 33 Calc. 719**

1. ——— **Suit for redemption of mortgage.**—*Court Fees Act, cl (ix)—Valuation of suit. Held,* that the value for purposes of jurisdiction of a suit for redemption of mortgage is the [illegible] principal mortgage money and [illegible]

(1908) . . . . **I. L** [illegible]

2. ——— **Suit for declaration and consequential relief**—*Valuation—Court fees—Jurisdiction—Value of the relief stated in the plaint.* In a suit for declaration and consequential relief (injunction) with respect to land the Court must accept the value of the relief stated in the plaint for the purpose both of the Court fees and jurisdiction. *Hari Sanker Dutt* v. *Kali Kumar Patra,*

SUITS VALUATION ACT (VII OF 1887)
—*contd*

———— s. 8—*concld*

I L. R 32 Calc 734, followed *Dayaram* v. *Gordhandas, I L R. 31 Bom 73,* distinguished. VACHHANI v VACHHANI (1908).
I. L. R. 33 Bom. 307

3. ———— ss. 8, 11—*Court Fees Act (VII of 1870), s 7, paras* ii, *v,* vi, *ix and x, cl (d)—Suit for a declaration with consequential relief—Valuation for the purpose of jurisdiction and for the fiscal purpose of Court fees* Though the valuation of suits for the purpose of jurisdiction is distinct from their valuation for the fiscal purpose of Court fees, still s. 8 of the Suits Valuation Act (VII of 1887) provides that when in suits other than those referred to in the Court Fees Act (VII of 1870), s. 7, paras. v, vi, ix and x, clause (*d*), *ad valorem* Court fees are payable, the value as determinable for the computation of Court fees and the value for the purposes of jurisdiction shall be the same. *Per* RUSSELL, *Ag C J*—The words "as determinable" in s 6 of the Suits Valuation Act (VII of 1887) mean, as determinable by the Court which has to try the case *Per* ASTON, *J.*—S. 4 of the Suits Valuation Act (VII of 1887) seems to indicate that the principle adopted by the Legislature for valuing a suit, mentioned in Sch II, Art 17, of the Court Fees Act (VII of 1870), which relates to land or an interest in land is that the value of such a suit for purposes of jurisdiction shall be governed by the value of the land or interest in land It being nowhere enacted in the Act that where such value is not determined by rules made under s. 3, the value shall be such as the plaintiff chooses to adopt, I am of opinion that the value must be (where disputed) determined by judicial decision in the suit, such determination being subject to the provisions of s 11 of the Suits Valuation Act (VI of 1887). DAYARAM v. GORDHANDAS (1906) . I. L. R. 31 Bom. 73

———— s. 9, Rule 2—

See VALUATION OF SUIT.
I. L. R. 30 Mad. 18

———— ss. 9, 11.

See APPEAL, RESTITUTION OF CONJUGAL RIGHTS I. L. R. 31 Calc. 344; 849

———— ss. 9 and 21.

See ACT XII OF 1887, ss 15, 18 AND 19
I. L. R. 28 All. 545

See CIVIL COURTS ACT (XII of 1887).
I. L. R. 28 All. 545

See SUIT FOR RESTITUTION OF CONJUGAL RIGHTS . . I. L. R. 28 All. 545

———— s. 11.

See APPELLATE COURT—GENERAL DUTY OF APPELLATE COURT
I. L. R. 25 All. 174

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL.
I. L. R. 18 Mad. 418

SUITS VALUATION ACT (VII OF 1887)
—*concld.*

———— s. 11——*Refusal to hear application of appeal—Civil Procedure Code (Act XIV of 1882), ss 557, 582, 588 cl (6), 622—Valuation of suit—Bengal, N.-W. P and Assam Civil Courts Act (XII of 1887), s 21, sub-s. 2—Jurisdiction.* No appeal lies against the order of an Appellate Court returning a memorandum of appeal for presentation to the proper Court *Kunhikutti* v *Achotti, I L R 14 Mad 462,* dissented from. *A* [illegible]

this order *Held*, that the District Judge was bound to hear and dispose of the appeal, having regard to the provisions of s 11 of the Suits Valuation Act (VII of 1887), and to determine, amongst other questions, whether the under valuation of the suit had prejudicially affected the disposal of it on its merits RAGHUNATH CHARAN SINGH v SHAMO KOERI (1904) . . I. L. R. 31 Calc. 344

———— ss. 11, 21—

See RESTITUTION OF CONJUGAL RIGHTS
I. L. R. 34 Calc. 352

SUMMARY DECISION.

See LIMITATION ACT, 1877, SCH II, ART. 178 (1859, s 22)

SUMMARY JURISDICTION.

See RECEIVER . I. L. R. 36 Calc. 52

SUMMARY ORDER.

———— suit to set aside—

See LIMITATION ACT, 1877, SCH. II, ART. 13 (1871, ART 15).

SUMMARY PROCEDURE.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.
I. L. R. 15 Mad. 83

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO . I. L. R. 20 Calc. 351

See NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON.

See PRACTICE—CIVIL CASES—LEAVE TO SUE OR DEFEND.
I. L. R. 3 Calc. 539

See SUCCESSION CERTIFICATE ACT, ss. 6, 7 AND 9 . I. L. R. 25 Bom. 523

SUMMARY PROCEEDING.

See INSOLVENCY . I. L. R. 36 Calc. 489

SUIT—*concld.*

14. ——— **Right of suit**—*Parties.* S 315 of the Civil Procedure Code is only an enabling section and not prohibitive of an independent action in a Civil Court A suit was brought by an auction purchaser for the recovery of purchase-money from the decree-holder, who had received it, on the ground that the judgment-debtor had no title to the property sold. *Held,* that the suit was not barred by the provisions of s. 315 of the Civil Procedure Code. That the judgment-debtor was not a necessary party. SURENDRA NATH GHOSE *v.* BENI MADHAB MISRA (1905)
10 C. W. N. 274

15. ——— **Suit against two defendants—Decree against one**—*Appeal by defendant made liable—No appeal against the other defendant—Appellate Court's finding against the defendant against whom the suit was dismissed* A suit for money was instituted against *A* and *K.* The Court of first instance held that *A* was liable and dismissed the suit against *K* *A* appealed, but did not make *K* a party to it The lower Appellate Court found that *K* was liable and not *A*, and decreed *A's* appeal *Held,* that no decree could be passed against *K*, as the plaintiff had allowed the decree of the Court of first instance dismissing his suit against *K* to become final. NIZAM-UD-DIN *v.* ABDUL AZIZ (1909)
I. L. R. 31 All. 521

16. ——— **Suit for damages against joint tort-feasors**—*Compromise between plaintiff and one of the defendants—Such compromise no bar to a decree against the other defendants* The plaintiff sued several defendants jointly to recover damages in respect of an alleged assault committed on him by the defendants, but entered into a compromise with one of the defendants. *Held,* that the existence of this compromise did not preclude the plaintiff from recovering damages against the remaining defendants *Brinsmed* v. *Harrison, 7 Sc & L 547,* and *Thurman* v. *Wild, 11 A. & E 453,* referred to RAM KUMAR SINGH *v.* ALI HUSSAIN (1909) . . **I. L. R 31 All 173**

SUIT IN FORMA PAUPERIS.

See PAUPER SUIT

SUITS VALUATION ACT (VII OF 1887)

See VALUATION OF SUIT.

See BENGAL, NORTH-WESTERN PROVINCES AND ASSAM CIVIL COURTS ACT (XII OF 1887), s. 21.
I. L. R. 31 Calc. 365 ; 849

See COURT FEES ACT, 1870, s 7, cl. (iv) (*b*), cl. (*v*) . **I. L. R. 33 Bom. 658**

See RESTITUTION OF CONJUGAL RIGHTS
I. L. R. 31 Calc. 849

——— **ss. 2, 11**—*Restitution of conjugal rights—Jurisdiction of Munsiff—Valuations of suit—Mahomedan marriage, requirement of.* A suit for restitution of conjugal rights is not triable by a Munsif under s. 19, sub-s. (1), of Act (II

SUITS VALUATION ACT (VII OF 1887) —*contd.*

——— **s. 2**—*concld.*

of 1887, but is triable by a District Judge or a Subordinate Judge under s. 18 of that Act. *Matra Mondul* v. *Hari Mohun Mullick, I. L R 17 Calc. 155 ; Golam Rahman* v. *Fatima Bibi, I. L. R. 13 Calc. 239 ; Mowla Newaj* v. *Sajdun-*

—*Held,* that the suit ought not to be dismissed by an Appellate Court on the ground of want of jurisdiction, regard being had to s. 11 of the Suits Valuation Act. *Semble:* When a Judge has no inherent jurisdiction over the subject-matter of a suit the parties cannot by their mutual consent

formal requirements of a valid Mahomedan marriage discussed *Badal Aurat* v. *Queen Empress, I. L R 19 Calc. 79,* referred to AKLEMANESSA BIBI *v* MAHOMED HERUN (1904)
I. L. R. 31 Calc. 849

——— **s. 8.**

See COURT-FEES ACT, 1870, s. 7, cl. (4) *b* and cl *v.* **I. L. R. 33 Bom. 325**

See COURT-FEES ACT (VII of 1870), s 7(4)*c* . **I. L. R. 31 Mad. 89**

See JURISDICTION. **I. L. R. 32 Calc. 734**
13 C. W. N. 493

See LIMITATION **I. L. R. 32 Calc. 716**

See MUNSIF, JURISDICTION OF. **I. L. R. 19 Mad. 56**

See PRINCIPAL AND AGENT. **I. L. R. 32 Calc. 719**

1. ——— **Suit for redemption of mortgage.**—*Court Fees Act, cl.* (ix)—*Valuation of suit.* *Held,* that the value for purposes of jurisdiction of a suit for redemption of mortgage is ... mortgage money and ... ged. *Kubair* ... 332, and ... *8 All 438,* ... ese cases has not been affected by the passing of Act No. VII of 1887, s. 8. KEDAR SINGH *v* MATABADAL SINGH (1908) . . . . **I. L R. 31 All 44**

2. ——— **Suit for declaration and consequential relief**—*Valuation—Court-fees—Jurisdiction—Value of the relief stated in the plaint.* In a suit for declaration and consequential relief (injunction) with respect to land the Court must accept the value of the relief stated in the plaint for the purpose both of the Court fees and jurisdiction. *Hari Sanker Dutt* v. *Kali Kumar Patra,*

SUITS VALUATION ACT (VII OF 1887)
—contd.

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I. L. R 32 Calc. 734, followed. *Dayaram v. Gordhandas, I L. R. 31 Bom. 73,* distinguished. Vachhani v. Vachhani (1908)
I. L. R. 33 Bom. 307

3. ———— ss. 8, 11—*Court Fees Act (VII of 1870), s 7, paras. ii, v, vi, ix and x, cl (d)—Suit for a declaration with consequential relief—Valuation for the purpose of jurisdiction and for the fiscal purpose of Court-fees* Though the valuation of suits for the purpose of jurisdiction is distinct from their valuation for the fiscal purpose of Court fees, still s. 8 of the Suits Valuation Act (VII of 1887) provides that when in suits other than those referred to in the Court Fees Act (VII of 1870), s 7, paras. v, vi, ix and x, clause (*d*), *ad valorem* Court fees are payable, the value as determinable for the computation of Court fees and the value for the purposes of jurisdiction shall be the same *Per* Russell, *Ag C J*—The words "as determinable" in s 6 of the Suits Valuation Act (VII of 1887) mean, as determinable by the Court which has to try the case. *Per* Aston, J.—S. 4 of the Suits Valuation Act (VII of 1887) seems to indicate that the principle adopted by the Legislature for valuing a suit, mentioned in Sch. II, Art 17, of the Court Fees Act (VII of 1870), which relates to land or an interest in land is that the value of such a suit for purposes of jurisdiction shall be governed by the value of the land or interest in land It being nowhere enacted in the Act that where such value is not determined by rules made under s 3, the value shall be such as the plaintiff chooses to adopt, I am of opinion that the value must be (where disputed) determined [illegible]

[illegible] . . . I. L. R. 31 Bom. 75

———— s. 9, Rule 2—

See Valuation of Suit
I. L. R. 30 Mad. 18

———— ss. 9, 11.

See Appeal, Restitution of Conjugal Rights I. L. R. 31 Calc. 344; 849

———— ss. 9 and 21.

See Act XII of 1887, ss 16, 18 and 19.
I. L. R. 28 All. 545

See Civil Courts Act (XII of 1887).
I. L. R. 28 All. 545

See Suit for Restitution of Conjugal Rights . . I. L. R. 28 All. 545

———— s. 11.

See Appellate Court—General Duty of Appellate Court
I. L. R. 25 All 174

See Appellate Court—Objections taken for first time on Appeal.
I. L. R. 18 Mad. 418

SUITS VALUATION ACT (VII OF 1887)
—concld.

———— s. 11—*Refusal to hear application of appeal—Civil Procedure Code (Act XIV of 1882), ss 557, 582, 588 cl (6), 622—Valuation of suit—Bengal, N.-W. P and Assam Civil Courts Act (XII of 1887), s 21, sub-s 2—Jurisdiction.* No appeal lies against the order of an Appellate Court returning a memorandum of appeal for presentation to the proper Court. *Kunhikutti v Achotti, I L R 14 Mad. 462,* dissented from *A* brought a suit against *B* in the Court of a Munsif. *B* objected to it on the ground that the suit had been undervalued, and, if properly valued, it would not lie in that Court. The Munsif overruled the objection, and gave judgment for the plaintiff on the merits *B* appealed to the District Judge who held that, the proper value of the suit being over rupees five thousand, he had no jurisdiction to entertain the appeal, and he accordingly returned the memorandum of appeal to the appel- [illegible]

merits. Raghunath Charan Singh v. Shamo Koeri (1904) . . I. L. R. 31 Calc. 344

———— ss. 11, 21—

See Restitution of Conjugal Rights
I. L. R. 34 Calc. 352

SUMMARY DECISION.

See Limitation Act, 1877, Sch II, Art 178 (1859, s. 22).

SUMMARY JURISDICTION.

See Receiver . I. L. R. 36 Calc. 52

SUMMARY ORDER.

———— suit to set aside—

See Limitation Act, 1877, Sch. II, Art. 13 (1871, Art. 15)

SUMMARY PROCEDURE.

See Magistrate, Jurisdiction of—General Jurisdiction.
I. L. R. 15 Mad. 83

See Maintenance, Order of Criminal Court as to . I. L. R. 20 Calc. 351

See Negotiable Instruments, Summary Procedure on.

See Practice—Civil Cases—Leave to Sue or Defend
I. L. R. 3 Calc. 539

See Succession Certificate Act, ss. 6, 7 and 9 . I. L. R. 25 Bom. 523

SUMMARY PROCEEDING.

See Insolvency . I. L. R. 36 Calc. 480

SUMMARY SUIT.

———— **cross claim in—**

See COMPENSATION—CIVIL CASES.
I. L. R. 18 Bom. 717

SUMMARY TRIAL.

See CATTLE TRESPASS ACT, s. 20.
I. L. R. 23 Calc. 248

See CRIMINAL PROCEEDINGS
5 C. W. N. 252

See FALSE CHARGE
I. L. R. 28 Calc. 251

See PRACTICE—CRIMINAL CASES—SIGNATURE OF MAGISTRATE.
I. L. R. 6 Mad. 396

See WORKMEN'S BREACH OF CONTRACT ACT, ss. 1, 2 . **I. L. R. 33 Bom. 22**

1. ———— **Requisites for legal conviction**—*Criminal Procedure Code, 1872, ss. 222-230——Procedure.* In summary cases under Ch. XVIII, ss. 222-230, of the Code of Criminal Procedure, 1872, the formalities provided by that chapter should be most strictly observed If they are not a conviction will be set aside QUEEN *v* JOHRIE SINGH . . . . . **22 W. R. Cr. 28**

2. ———————— *Criminal Procedure Code, 1872, s, 222—Procedure* In a case tried under the summary procedure authorized by s 222 of the Criminal Procedure Code, 1872, it must appear clearly on the face of the conviction that the case was dealt with as one of those which come under the purview of that section If the case be one of theft, it should appear what the value of the property alleged to have been stolen really was. QUEEN *v.* ABHEEN PARRIDA
20 W. R. Cr. 17

3. ———— **Test of summary trial**—*Criminal Procedure Code, 1872, s. 222—Care in recording proceedings and in decision* Where the procedure is of a summary nature, the trial is summary, notwithstanding the length and carefulness of the record and decision. QUEEN *v* DOMA RAM
24 W. R. Cr. 66

4. ———————— *Test of summary case—Criminal Procedure Code, 1872, s 222—Jurisdiction to try summarily.* It is the nature of the complaint which should determine whether a case should be tried summarily under s 222 of the Code of Criminal Procedure. Where the acts complained of amount to an offence which a Magistrate cannot try summarily, he is not competent to hold a summary trial. *Dwarkanath Mazoomdar* v *Nabe Das, 21 W. R. 829,* and *Chundar Shekur Thakoor* v *Nitaloo, 2 W. R. 29,* followed. *In the matter of* BEPUTOOLLA *v.* NAJIM SHEIKH
2 C. L. R. 374

5 ———————— *Criminal Procedure Code, 1872, s. 222—Criterion for testing.* Whether a case is triable summarily or not, must be determined by the complaint, not by an estimate formed by the Magistrate (*e g*, of the worth of the property which the accused is charged with having

SUMMARY TRIAL—*contd.*

stolen) after evidence has been recorded: and such estimate cannot retrospectively warrant a mode of trial which was originally illegal. RAM CHUNDER CHATTERJEE *v.* KANYE LAHA
25 W. R. Cr. 19

6. ———————— *Criminal Procedure Code, s. 260—Complaint including charge not summarily triable—Summary jurisdiction not necessarily ousted thereby.* The mere circumstance of a complaint charging an accused person with offences not summarily triable along with other offences so triable would not necessarily oust the summary jurisdiction of a Magistrate under s 26 of the Criminal Procedure Code. Whether a complaint affords sufficient grounds for a summary trial or requires a trial according to the ordinary procedure, must be left in a great measure to the discretion of the Magistrate, exercised with due the care according to judicial methods with reference to the circumstances of each case *Ram Chunder Chatterjee* v *Kanye Laha, 25 W. R Cr. 19;* [illegible] *Nath Tewaree,*
[illegible]
JAGJIWAN . . **I. L. R. 10 All. [illegible]**

7. ———————— *Value stolen in case of theft as determining jurisdiction to try summarily—Evidence, mode of taking* In a case in which the accused was charged with theft of a [illegible] of the box worth

[illegible]

throw the box entirely out of consideration, [illegible] upon that depended his jurisdiction to dispose of the case summarily. Such evidence should have been taken 'precisely in the same way as evidence upon the merits of the case, and as it was not taken, the Court *held* that the Magistrate had no jurisdiction in this case. QUEEN *v* BUZLEH ALI . . . . . **22 W. R. Cr. 65**

8. ———— **Matters necessary to be stated in the record of a summary trial**—*Criminal Procedure Code, 1882, ss 260, 263—Offence under Gambling Act (III of 1867), ss. 3* [illegible] with powers

[illegible]

has considered each of the ingredients [illegible] in law for the conviction to which the Magistrate has proceeded, and that, while this should be recorded with brevity, the brevity should not be such as to tend to obscurity. The record of a summary trial contained in the column corresponding tocl. (*h*) of s. 263 of the Code of Criminal Procedure the following entry: " The police made

SUMMARY TRIAL—*contd*

a warrant to raid a house in which they could have no reason to suppose they would find any one I convict Mukundi of keeping a common gaming-house—s 4, Gambling Act I convict the other six defendants of gaming in a common gaming-house—s 3, Gambling Act" *Held*, that this entry, though it should have been more explicit, was a sufficient compliance with the requirements of the law. QUEEN EMPRESS *v* MUKUNDI LAL

I L R 21 All. 189

9. ———— Case instituted by Magis- ... *Procedure* ... person has, ... had come ... rning, encroaching on an embankment, been placed on his defence for mischief, and summarily tried and sentenced to two months' rigorous imprisonment —*Held*, that, in a case of this kind, where Government had been made prosecutor, but no complaint had been offered to the Magistrate, who had acted on his own impulse, the Magistrate had erred seriously in dealing with the case summarily and sentencing of the accused to imprisonment. *In the matter of the petition of* PRAN NATH SHAHA. *In the matter of the petition of* ROMA NATH BANERJEE . . . . . 25 W. R. Cr. 69

10. ———— Criminal trespass and mischief—*Magistrate, jurisdiction of—Code of Cri-* ...

Mahomed v. *Chunder Mohan Sha*, 21. W. R Cr. 38, disapproved. *Issur Chunder Mundle* v *Rohim Sheikh*, 25 W R Cr. 65, distinguished GAMIRULLAH SARKAR *v*. ABDUL SHEIKH

I. L. R. 10 Calc. 408

11. ———— Mischief combined with theft—*Criminal Procedure Code, 1872, s. 222.* A charge of mischief, even if combined with one of theft, is triable summarily under Act X of 1872, s. 222. QUEEN *v* RAMAOTAR PANRE

25 W. R. Cr. 5

12. ———— Offence under Act XXI of 1856—*Criminal Procedure Code, 1872, s 222 and* ...

not coming under s 148, Code of Criminal Procedure. QUEEN *v* JODOO NATH SHAHA

23 W. R. Cr. 33

See *In the matter of the petition of* KHETTER MOHUN CHOWRANGHEE . 22 W. R. Cr. 43

SUMMARY TRIAL—*contd.*

13. ———— *Illegal possession of opium—Offence punishable by fine and confiscation.* An offence under s 49 of Act XXI of 1856 can be tried summarily under s 222 of the Criminal Procedure Code, the confiscation provided by s 49 being merely a consequence of the conviction and not forming part of the punishment for the offence EMPRESS *v*. BAIDANATH DASS

I L. R. 3 Calc. 366 : 1 C. L. R. 442

14. ———— *Criminal Procedure Code, s 260—Act XIII of 1859, s. 2.* Offences under s 2 of Act XIII of 1859 are triable summarily under s. 260 of the Criminal Procedure Code QUEEN-EMPRESS *v*. INDARJIT

I. L. R. 11 All. 262

15. ———— Criminal intimidation—*Criminal Procedure Code, 1872, s 222.* Where a head constable of police of many years' service was ...

I. L. R. 6 Mad. 396

16. ———— Offences one triable summarily and the other not—*Criminal Procedure Code, 1882, s. 260—Omission of charge so as to give summary jurisdiction.* Where an accused is charged with offences one of which is triable summarily and the other not so triable, it is not open to a Magistrate to discard the latter charge and to proceed to try the case summarily. RAMANUND MAHTON *v*. KOYLASH MAHTON

I. L. R. 11 Calc. 236

17. ———— Alteration of charge to ...

of altering a charge brought against an accused per- ...

... and either to convict or acquit, or commit for trial, the person *implicated*. The procedure under Ch. XVIII is to be followed when a charge is plainly and directly one of those specified in s. 222. CHUNDER SHEKHUR THAKOOR *v*. NITALOO . . . 22 W. R. Cr. 29

HARAN SHEIKH *v*. RAMDHAN BISWAS.

24 W. R. Cr. 21

EMARAL SHEIKH *v*. MOHAMMADI SHEIKH.

24 W. R. Cr. 48

See EMPRESS *v*. ABDUL KARIM.

I. L. R. 4 Calc. 16

18. ———— *Alteration of charge for purpose of trying case summarily*—

SUMMARY TRIAL—contd

Practice condemned The action of Magistrates in not trying accused persons for offences which the acts attributed to them constitute, but in trying the case as one under s 143, Penal Code, for the purposes of holding the trial under summary procedure is highly improper SHEO BHANJUN SINGH v MOSAWI . . . 4 C. W. N. 795

19. ———— *Alteration of charge of dacoi*

a case where

dacoity, but in

charge was ign

defence on a charge of being members of an unlawful assembly, and the proceedings continued in a summary way —*Held*, that, the original charge being one of dacoity, the Magistrate had no jurisdiction to alter it and try the case summarily. DWARKANATH MAZOOMDAR v LALU DASS

21 W. R. Cr. 89

20 ———— *Rioting altered to charge of mischief* Where a charge of rioting was tried summarily by the Magistrate as one of

25 W. R. Cr. 18

21. ———— **Alteration of assault on public servant to one of assault**—*Criminal Procedure Code, 1872, s 222—Penal Code, ss. 352, 353* The accused in this case were convicted by the [illegible]

and

on

bee

the accused ought to have been tried under s 353: the Magistrate's summary proceedings were accordingly set aside and a fresh trial directed. QUEEN v BANEE MAHDUB DOSS 23 W. R. Cr. 3

22. ———— **Alteration of charge from lurking house-trespass or house-breaking at night to receiving stolen property**—*Magistrate, jurisdiction of—Penal Code, ss. 411, 457—Criminal Procedure Code, 1872, ss 141, 222—Alteration of charge from one offence to another.* A Magistrate, who is otherwise competent, has, under s 141 of Act X of 1872, a discretion to inquire into and try a person on any charge which he may consider covered by the facts complained of by any person, or reported by the police, without

he will charge the accused, it will be competent to him to adopt *Held*, therefore, when a person was brought before a Magistrate by the police, charged with an offence under s 457 of the Penal Code, an offence not triable in a summary way, that the Magistrate was competent to alter the charge to one under s. 411, and to try the accused summarily under the provisions of s. 223 of Act X of 1872 *In the matter of* MEWA . . . 6 N. W. 254

23. ———— **Appeal from summary trial**—*Insufficiency of evidence—Criminal Procedure Code, 1872, ss. 222 to 230.* If on appeal from a summary trial under Ch. XVIII of the Criminal Procedure Code (Act X of 1872), the evidence before the Judge is not sufficient to reasonably satisfy him that the prisoner has been rightly convicted, he ought to acquit him. QUEEN v. KHERAJ MULLAH . . . . 11 B L. R. 33

24. ———— **Magistrate, power of, to try case summarily**—*Criminal Procedure Code*

The Magistrate, having perused the petition of the complainant and examined him on oath, issued summonses against the persons named under those sections. The complainant was not himself an eye-witness of the occurrence, and merely stated in his petition and evidence what he had been told by his servants Subsequently, before the accused appeared, the Magistrate examined an eye-witness, and issued a fresh summons under s 447 only, and then proceeded to try the case summarily and convicted one of the accused. It was contended that he had no power so to try and dispose of the case. *Held*, that the Magistrate had power to try the case summarily

case summarily, and the mere fact that a complainant enumerates sections of the Penal Code not relating to offences not triable summarily does not affect the jurisdiction of the Magistrate, unless the facts of which he really complains disclose such offences GOLAP PANDEY v BODDAM

I. L. R. 16 Calc. 715

25. ———— *Criminal Procedure Code (Act V of 1898), s. 260—Summary procedure under Penal Code, s. 323, after enquiry into the graver charges under ss. 147 and 324 not triable summarily* A first class Magistrate took a case on his file and commenced a regular enquiry therein under ss. 147 and 324 of the Indian Penal Code; but after hearing evidence and being of opinion

SUMMARY TRIAL—*contd.*

that only an offence under s. 323 of the Indian Penal Code had been made out, he proceeded to deal with the case summarily *Held*, that, inasmuch as the evidence adduced was not sufficient to justify a committal, but clearly disclosed an offence over which he had summary jurisdiction, the Magistrate was right in acting as he did Such a course is different to disregarding part of a charge for the purpose of dealing with a case summarily The High Court will not interfere where a Magistrate has *bonâ fide* acted in the interests of justice *Empress v Abdool Karim, I L R 4 Calc 18*, distinguished QUEEN-EMPRESS v RANGAMANI . I. L. R. 22 Mad. 459

26 — — — Complaint disclosing facts constituting offence of a graver nature—*Process issue of—Trial for minor offences—Magistrate, jurisdiction of—Illegality—Criminal Procedure Code (Act V of 1898), s 260* Where the complaint stated that the accused with a large number of other persons armed with swords and other deadly weapons came upon the complainant's land, threatened him, and, in spite of his remonstrances, cut his paddy, and the Magistrate in examining *the complainant recorded merely the fact that* the complainant stated that his paddy had been cut by the accused, and thereupon tried the accused summarily and convicted them under ss 143 and 379 of the Penal Code —*Held*, that, as the petition of complaint disclosed the commission of a much more serious offence than the offences for which the Magistrate had held a summary trial, and the examination of the complainant, which had not been properly recorded, did not show that such offence had not been committed, the Magistrate had acted without jurisdiction, and it was ordered that he should hold a regular trial. BISHU SHEIKH v. SABER MOLLAH (1902)
I. L. R. 29 Calc 409; s c. 6 C. W. N. 713

27. ———— *Jurisdiction—Facts determining jurisdiction to try summarily—Criminal Procedure Code (Act V of 1898) s. 260—Distraint, legality of— Form of the distress-warrant —Bengal Municipal Act (Bengal Act III of 1884), s. 122* It is not the complaint alone, which determines the jurisdiction of the Magistrate to try a case summarily, but the complaint and the subsequent examination of the complainant taken together Where it appeared from the complaint and the sworn examination of the complainant that the facts amounted to an offence under s. 186 of the Penal Code —*Held*, that the Magistrate

attaching goods proved to belong to the defaulters, which were found within the municipal limits. FANINDRA NATH CHATTERJEE v. EMPEROR (1908)
I. L. R. 36 Calc. 67

SUMMARY TRIAL—*concld.*

28. ———— Record of reasons for conviction—*Code of Criminal Procedure (Act V of 1898), s 263 (h)—Omission of Magistrate to record reasons for conviction.* In a summary trial, the

6 C W. N. 40

29. ———— Workmen's Breach of Contract Act (XIII of 1859)—*Inquiry under the Act—Summary trial not permissible.* An offence under the Workmen's Breach of Contract Act, 1859, cannot be tried summarily *Emperor v Dhondu Krishna, I. L R. 33 Bom 22*, followed EMPEROR v BALU (1908)
I. L. R. 33 Bom. 25

SUMMING UP EVIDENCE.

See ASSESSORS . 7 B. L. R 63, 67 note
I. L. R. 9 Calc. 875
4 Mad. Ap. 39

See CHARGE TO JURY.

SUMMONS

See SUMMONS, SERVICE OF.

See INSPECTION OF DOCUMENTS—CRIMINAL CASES . I. L. R. 19 Calc 52

See PRODUCTION OF DOCUMENTS
W. R. 1864, 164

See WITNESS—

CIVIL CASES—SUMMONING AND ATTENDANCE OF WITNESSES
I. L. R. 24 Mad 200

CRIMINAL CASES—SUMMONING WITNESSES

———— application for—

See LIMITATION ACT, 1877, SCH II, ART. 178 . . I. L. R. 3 Calc. 312
I. L R. 5 Calc. 126

———— in chambers—

See COMPANY—WINDING UP—LIABILITY OF OFFICERS
I. L. R. 19 Bom. 88

———— issue of—

See PARDANASHIN WOMEN.
I. L. R. 21 Calc. 588

———— leave to amend—

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—IMMOVEABLE PROPERTY. I. L. R. 2 Bom. 91

———— not served—

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY . I. L. R. 14 Bom. 267

See WITHDRAWAL OF SUIT.
I. L. R. 15 Bom. 160

SUMMONS—*contd.*

——— **refusal to grant receipt for—**

See PENAL CODE, s 173.
5 Bom. Cr. 34
I. L. R. 3 Calc. 621
I. L. R. 20 Calc. 358

——— **to attend taxation—**

See COSTS—TAXATION OF COSTS.
7 B. L. R. Ap. 50

See LIMITATION ACT, 1877, s. 4
I. L. R. 20 Calc. 899

1. ——— Issue of summons—*Issue after period of limitation.* A summons ought not to be ordered to issue after the lapse of the period of limitation prescribed for a suit, unless the plaintiff has, in the meantime, done what he can to prosecute his suit with proper diligence. If a defendant is aggrieved by an order directing a summons to issue in such a case, he ought to apply to set aside the order and the summons under it. GERENDER COOMAR DUTT *v* JUGGADUMBA DABEE **I L. R. 5 Calc 126**

2. ——— Issue of fresh summons—*Return of old summons.* A fresh writ of summons will not be granted till the old one is returned into Court ISSURCHUNDER SEIN *v* ASHUTOSH CHATTERJEE . . . **1 Ind. Jur. N. S 283**

3. ——— Application for fresh summons—*Practice* An application for a fresh summons to appear, etc , should be issued on petition showing that a fruitless endeavour had been made on the part of the plaintiff to serve the first summons, and that it was not by any default of his that he had failed. URQUHART *v.* GILBERT **1 Ind. Jur. N. S. 224**

4. ——— Grant of second summons—*Discretion of Judge—Practice—Rule 12 of High Court Rules, 1st May 1875—Laches.* A Judge has, under rule 12 of the Rules of 1st May 1875, discretion as to granting a second summons, and is bound to inquire into the circumstances under which it is applied for; and when there has been great and unexplained laches, he should refuse it. Unless such discretion is clearly shown to have been improperly exercised, the Court will not interfere on appeal; but under the circumstances of this case, the Court on appeal finding there was no definite rule of practice as to the time within which a second summons might be applied for, allowed a second summons to issue GOUR CHURN SOOR *v.* PEARY LALL PAUL. . **15 B. L R. Ap. 12**

5. ——— Mistake in summons—*Amendment of summons at hearing—Practice.* The defendant was manager of a joint Hindu family carrying on business in Bombay, Madras, and other places. In a suit in the High Court of Bombay against him as such manager, a decree was passed on the 11th April 1896, in execution of which on the same day certain property, in which the joint family was interested, was attached. On the 9th April 1896, however, the defendant had been adjudged an insolvent by the Insolvent Court at Madras under s. 9 of the Insolvent Act. On the 6th May 1896 the Official Assignee, Bombay, took out a summons to have the attachment removed. By mistake the summons in this case purported to be taken out by the Official Assignee of Bombay, omitting to describe him as constituted attorney of the Official Assignee of Madras. *Held,* that the summons might be amended at the hearing by substituting the name of the Official Assignee of Madras and disposed of on that basis. SARDAMAL JAGONATH *v.* ARANVAYAL SABHAPATHY MOODLIAR . . . **I. L. R. 21 Bom. 205**

6. ——— Irregularity in procedure—*Summons, issue of—Fresh summons issued on the same information* Where on an information a summons is issued to the accused, and owing to its disclosing no offence a fresh summons is issued to the accused, without any fresh or supplemental information, the errors, omission or irregularity in the fresh summons is not sufficient under s. 537 of the Criminal Procedure Code to upset the finding and sentence unless it has in fact occasioned "a failure of justice," that is, unless it has unfairly affected the accused's defence on the merits. EMPEROR *v.* JEEVANJI (1907) . . . . **I. L. R. 31 Bom 611**

SUMMONS, SERVICE OF.

See CIVIL PROCEDURE CODE, 1882, s 80.
13 C. W. N. 490

See SOLDIER . **I. L. R. 11 Mad. 475**

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, 1882, s 622
I. L. R. 18 Bom. 606

See TRANSFER OF PROPERTY ACT, s. 132
I. L. R. 21 Bom. 60

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES . **5 Bom Cr. 20**
3 Mad. Ap 5
6 Mad. Ap. 29

——— **date of service—**

See LIMITATION ACT, 1877, SCH II, ART. 159 . . **I. L. R. 23 Calc. 573**

——— **fine for avoiding—**

See WITNESS—CIVIL CASES—DEFAULTING WITNESSES . **1 B. L R. A. C. 186**

——— **on juror—**

See JURY—JURY IN SESSIONS CASES
6 C. W N. 887

——— **on wrong person—**

See COSTS—SPECIAL CASES—SERVICE OF SUMMONS BY MISTAKE
I. L. R. 4 Bom. 610

1. ——— Proof of service—*Presumption—Objection taken on appeal* No legal decree can be passed *ex parte* without a Court being satisfied of the due service of the summons. From the mere fact of the plaintiff obtaining an *ex parte*

SUMMONS, SERVICE OF—*contd.*

decree, it is not to be presumed that the service of summons was proved To satisfy a Court of appeal if the objection is raised, there must be proof that the service of summons was actually made. RAM LOCHUN SOOR *v* NITTYA KALLEE DEBIA . . . . 12 W. R. 211

2. ——— *Onus probandi—Civil Procedure Code 1859 s 119* Under Act VIII of 1859, s. 119, the onus of proving non-service of summons was on the party claiming the benefit of that section TORAB ALI *v.* CHOORAMUN SINGH CHOWDHURY . 24 W. R. 262

3. ——— Omission to serve summons—*Appearance of defendant.* Where a summons has not been issued to a defendant, the defect is cured by his appearance KHALUT CHANDER GHOSE *v* SARODA SUNDARI DOSSEE
Bourke O. C 244

4. ——— Mode of service—Personal

5. ——— Substituted service.—*Civil Procedure Code, 1859, s 57—Application to set aside ex parte decree.* Substituted service if duly effected under the provisions of the law is as valid as personal service; and therefore, where substituted service had been effected under s. 57 of Act VIII of 1859, an *ex parte* judgment would not be set aside on an allegation of no notice, and of good defence on the merits. KISSUR CHUND *v.* BHOOBUNESSUR CHUNDER
Bourke O. C. 25 : Cor 151

6. ——— *Practice—Setting aside ex parte decree—Civil Procedure Code, 1877, ss 82, 84.* Where substituted service of the summons is ordered under s 82 of the Civil Procedure Code (Act X of 1877), a sufficient time ought, under s 84, to be given for notice of the fact to reach the defendant, wherever he may be; and, if an *ex parte* decree be obtained by the plaintiff, the Court on being satisfied that the time fixed was insufficient, will set aside the decree ALLY DEBANEE *v.* HYDER HOOSEIN
I. L. R 2 Bom. 449

7. ——— *Procedure in case of non service.* Every summons not actually served on a defendant or respondent, or his recognized agent, must be stuck up on the house in which the defendant or respondent is dwelling If the defendant or respondent cannot be found, the summons should be returned to the Court and an order obtained from the Court as to the mode of service GOPAUL DOSS *v* GREEDHAREE DOSS
6 W. R. 13

8. ——— *Civil Procedure Code (Act XIV of 1882), ss 78, 80, 82—Substituted service—Duty of process-server.* Mere temporary absence of a person to be served does not justify the process-server in fixing the summons to a door. It is the duty of the process-server to take pains to find out the person to be served in order that, if possible, personal service may be effected. SUBRAMANIA PILLAI *v.* SUBRAMANIA AYYAR . . . . I. L. R. 21 Mad. 419

9. ——— *Service of summons on minors carrying on partnership business with*

property belonging to a partnership business,

carried on *Held,* that there was no service of summons, either personal or substituted, upon the minors either under s 74 or under s 76 of the Code of Civil Procedure, even assuming that those sections can apply to a case in which some of the defendants who were interested in the partnership or business are minors *Held,* also, that ss. 74 and 76 of the Code of Civil Procedure are controlled by s. 443 of the said Code. JATINDRA MOHAN PODDAR *v* SRINATH ROY
I. L. R. 26 Calc. 267
3 C. W. N. 261

him. There may be a dwelling sufficient to give jurisdiction, and yet not the kind of dwelling necessary to make a good service ANANTHA NARAYANA *v* PERIYANA KONE . 5 Mad. 101

21 W. R. 242

11. ——— *House service—Civil Procedure Code, 1882, ss. 80-82—Practice.* Where a defendant is temporarily absent from

matter of the service of a summons does not take into account the female members of a defendant's family, and does not rely upon the presumption that they will take steps to inform the defendant

SUMMONS, SERVICE OF—*contd.*

of what takes place in his absence. BHOMSHETTI JINAPPASHETTI *v.* UMABAI

I. L. R. 21 Bom. 223

12. ———— *Civil Procedure Code (Act XIV of 1882), s. 80—Ex parte decree—Substituted service of summons* A decree was passed *ex parte* against defendants on whom the summons was served by affixing it to their house The defendants who had applied unsuccessfully under Civil Procedure Code, s 101, to be heard in answer to the suit, now preferred a petition under s 108 that the decree be set aside This application was dismissed On an appeal by one the defendants —*Held*, as it appeared from the serving officer's return, that, according to the information given to him, there was no prospect of his being able to serve the defendant personally within a reasonable time, that he was justified in affixing the summons to the door of the house SANKARALINGA MUDALI *v* RATNASABHAPATI MUDALI

I. L. R. 21 Mad 324

13. ———— *Substituted service—House—Dwelling-house* A mofussil Judge stated, in his return to the Sheriff of Calcutta, *that substituted service had been effected by* fixing a copy of the summons to the "house" of the defendant *Held*, that the return was insufficient, and that the word "dwelling-house" must be expressly mentioned. BUDDOO BABOO *v.* LAMBODAR MULLICK **1 Hyde 132**

14. ———— *Substituted service—Defendant not found and not heard of for some years.* In an application for substituted service it was shown that diligent inquiries and attempts to find the defendant had proved futile, that at the house where the defendant had last

followed the procedure in the English case of

by affixing another copy on the outer door of the house in which the defendant was known to have last resided, and by advertising the summons in such of the newspapers as the registrar should direct. RAJNARAIN GHOSE *v.* TEKH LAL SHAHA

1 C. W. N. 104

15. ———— *Substituted service—Persons not found, but serving officer saying he knew where he was—Civil Procedure Code, 1882, s 80.* Where the return of the peon of the service of a summons upon a witness was in these terms: "The remaining witness No. 1 being in Calcutta, the copy of *summons in his name has been hung* upon the mat wall of the kutchery house of the defendant's residence,"—*Held*, that the circumstance that the peon could not find the witness when he says he knew where the witness was, is not sufficient *per se* to warrant the peon in affixing a copy of the summons to the house of the witness, so as to constitute good substituted service under s. 80, Civil Procedure Code KALINARAIN ROY CHAUDHURI *v.* BAJOO **3 C. W. N. 307**

16. ———— **Service on railway company.** For the purposes of summons a railway company must be deemed to dwell at its principal office HANLON *v* INDIA BRANCH RAILWAY COMPANY . . . **1 Hyde 197**

17. ———— **Service in foreign territory.**—*Act VIII of 1859, ss 60 and 66* A summons cannot be sent by post to any place to which letters are not registered by a post office. A special bailiff cannot be sent to serve civil process in a foreign territory. KASIM AJIM DUPLAY *v* KASIM MOHAMMED BARUCHA

2 B. L R. A. C. 59

S C. KASSIM AZIM DOOPLAY *v.* CASSIM MAHOMED BAROOCHA . . . . **10 W. R. 349**

18. ———— **Service by post**—*Return through the post of packet containing the summons endorsed "refused"—Civil Procedure Code, 1882, s 82* A Small Cause Court having forwarded the summons to the defendant in a registered packet through the post office, the packet was returned endorsed "refused" The Small Cause Court held the service of the summons to be good service and passed an *ex parte* decree against the defendant *Held*, that the delivery of the summons by the post to a person who was not shown to be the defendant was not good service. JAGANNATH BRAKHBHAU *v* SASSOON. **I. L. R. 18 Bom. 606**

19. ———— Where a summons was sent by the Sheriff by registered letter to the defendant at Colombo, Ceylon, and delivered by the postman in the presence of a witness who knew the defendant and his address, and who saw the letter delivered to the defendant who refused it, it was *held* a sufficient service of the summons ABDUL ALI *v* CORUNJEE JAFFERJEE

1 C. W. N. 56

20. ———— **Affixing summons to place of business**—*Civil Procedure Code, 1859, s 55 Quære* Whether the affixing of a summons, to the outer door of the place of business of a defendant was good service upon him under s 55 of the Code of Civil Procedure. CHANBASAPPA BIN SANGAPPA *v* MAINABA BIN MAHADSHET

7 Bom. A. C. 138

21. ———— **Service on Agent**—*Civil Procedure Code, 1877, s. 37, cl. (a)—Non-resident—Recognized agent.* The term "non-resident" in s. 37, cl (a), of the Code of Civil Procedure (Act X of 1877) covers every absence which may reasonably

it was *new* that he was

SUMMONS, SERVICE OF—*contd.*

... Court ... er of ... ithin ... Sa-

I. L. R. 6 Bom. 100

22. ——————— *Service on agent —Suit to obtain relief respecting immoveable property—Civil Procedure Code (Act XIV of 1882), ss. 16 and 77* In a suit for foreclosure or sale of immoveable property, it appeared that the mortgagee had conveyed the mortgaged premises to trustees. The summons to one of the trustees was personally served upon his duly constituted agent, who was at the time of service in charge of the mortgaged premises *Held*, that the service was sufficient, the suit being one to obtain "relief respecting immoveable property" within the meaning of s. 16 of Act XIV of 1882 MICHAEL *v* AMEENA BIBI

I. L. R. 9 Calc. 733 : 13 C L. R. 161

23. — — — — — — — *Service of summons on agent—Principal and agent—Civil Procedure Code (Act X of 1877), ss 76 and 37, cl (c)*— ... To satisfy the conditions

of such work, that is, business either actually itself carried on by the agent or manager, or forming part of the business in the sense of a connected course of transactions to the management of which he has been duly appointed S. 76 and s 37, cl. (c), are to be construed together, and are intended to carry out the scheme of relief which rests upon the idea that where an agent has been put forward substantially to take the place of his principal within a particular jurisdiction, he should take the place of such principal (at the option of any person who has dealt with him) in any

plated by the Code is one who has an initiative and independent discretion, albeit subject possibly to principles and general orders prescribed for his guidance A mere servant employed to carry out orders or to execute a particular commission, or a factor or common agent who is not identified with the firm for which he acts, is not such an agent. The firm of *G S* carried on business at Agra. It had no place of business in Bombay, but it employed *G* as its agent in Bombay, in certain dealings which it had with the plaintiff. The letters and telegrams of the firm to *G* were sent to the plaintiff's place of buisness, or addressed ...

SUMMONS, SERVICE OF—*contd.*

the defendants service of summons upon him was not due service. *G* in particular instances drew hundis on the firm of *G S* which that firm duly accepted and paid ...

duly effected under s 76 is effectual without reference to the circumstances of its being or not being communicated to the real defendants. GOKULDAS *v* GANESHLAL. I. L. R. 4 Bom. 416

24. ——————— *Agent to whom ship is consigned—Matters connected with ship* Service of summons on an agent to whom a ship is consigned is good service on the owner in respect of matters connected with such ship RAJARAM GOVINDRAM *v.* BROWN . . 7 Bom. O. C. 97

25. ——————— *Civil Procedure Code, 1859, s. 17—Recognized agent—Carrying on business in name of principal—Ship's agents.* Messrs. *R S & Co.*, European merchants, carrying on business in Bombay, received a letter from the owner of the ship *Rialto* by which Messrs. *R S & Co.* were constituted agents to obtain freight for ...

no other authority from the owner of the *Rialto* than that contained in the above letter *Held*, that Messrs *R S & Co* did not carry on business for, and in the name of, the owner of the *Rialto*, and were not therefore his recognized agents within the meaning of s. 17, cl 2, of the Code of Civil Procedure, to accept service of a summons on his behalf in respect of a cause of action that arose out of the loading of the *Rialto*. Whether, in order to constitute a recognized agent within the meaning of the above section, the business carried on by him must be continuous, and not an occasional or desultory business. *Semble:* A Bombay firm simply employed by the owners of ship visiting Bombay to procure freight for her for a particular voyage cannot, under ordinary circumstances, be regarded as carrying on business in the name of the owners of such ship. RATANSI PANCHAM *v.* SAUNDERS . 8 Bom. O. C. 159

26. ——————— *Civil Procedure Code, 1859, s. 49—Agent* Persons merely looking after the affairs of a defendant are not agents on whom service of summons will be sufficient under s. 49, Act VIII of 1859. RAM SOONDUREE DASSIA *v* SURUT SOONDUREE DEBIA . 17 W. R. 33

27. ——————— **Service on co-partner for partner** Service of a summons intended for one partner upon another partner of the same

SUMMONS, SERVICE OF—*contd.*

firm is not a sufficient service. Partners are not the recognized agents of each other within the meaning of cl. 2, s. 17, Act VIII of 1859 LUCHMEPUT DOGARE *v* SIBNARAIN MUNDLE . 1 Hyde 97

28. ———— *Services on partner for co-partner—Agent—Act VIII of 1859, s. 17, cl 2.*—Service of summons on one partner for his co-partner is a good service *Luchmeput Dogare* v. *Sibnarain Mundle, 1 Hyde 97*, dissented from RAMCHANDRA BOSE *v.* SNEADE
7 B. L. R. Ap. 58

29. ———— *Service on partner for co-partner.* Service of summons on one partner for his co-partner is not sufficient service unless the service is effected at the place where the partnership business is carried on KUSTOOR MULL *v.* JOKEERAM . 11 B. L. R. Ap. 26

30. ———— **Brothers living in the same house.** Where an *ex parte* decree had been given against three brothers, and it was shown that there had been only one summons, and that the serving officer had merely posted the summons on the door of one of them without attempting to serve it personally on him —*Held*, that the notice had not been properly served even on the one brother, still less on the two others; and that the defendants were entitled to have the suit restored on their application. SHIBOO ROY *v* KASHEE ROY
25 W. R. 394

31. ———— **Summons transmitted to local Court for service**—*Issue of summons—Return of local Court when sufficient evidence of service— Form of return to be made by Civil Court* Where the service of summons has been effected on a defendant by affixing a copy of the summons on the door of his dwelling-house, the Court must decide whether the summons has been duly served by such affixing or not, and if it decides in the negative, a new summons must be issued, or substituted service directed Before the Court can decide in favour of the sufficiency of this mode of service, it must be satisfied that the defendant is keeping out of the way for the purpose of avoiding service Where a summons has been transmitted by one Court to another for service by the [illegible]

effected, that presumption must prevail, unless the [illegible]

vice has been effected, or substituted service under s. 82, or under ss. 80 and 82 combined, of the Civil Procedure Code (Act XIV of 1882). As proof of due service of summons, a return from the Court of Small Causes at K was relied upon in the High Court. The return was in the following

SUMMONS, SERVICE OF—*contd.*

words: "Read bailiff's endorsement on the back of the process stating that the summons has been affixed to the defendant's house on the 22nd December 1884, at 9 A.M., and proof of the same having been duly taken by me, it is ordered that the summons be returned." *Held*, that there was no sufficient service. The return itself proved the insufficiency. There was no statement, under the hand of the Judge, that the summons had been duly effected, and did not appear that anything had been done beyond fixing the summons on the defendant's door. That affixing was not sanctioned after inquiry by the local Court, as required by s 82. All that appeared to have been done was the affixing prescribed by s 80, which was insufficient until confirmed under s. 82. *Reg.* v. *Tulaya, I. L R. 1 Bom. 211*
NUSUR MAHOMED *v.* KAZBAI
I. L. R. 10 Bom. 202

32. ———— *Summons transmitted to local Court for service—Question of sufficiency or otherwise of service of summons—Civil Procedure Code, 1882, s 85—Practice.* When a summons is issued by one Court to persons resident outside its jurisdiction, and is sent to another Court for service to be effected, it is for the Court from which the summons originally issued to determine whether the service of summons by the [illegible] is suffi- [illegible]

33. ———— **Sufficiency of service**—*Evidence of service—Substituted service—Evidence of serving peon* The evidence of the serving peon that he endeavoured to serve the summons on the defendants, and that, not being able to serve them personally, he affixed a copy of the summons on the outer door of their dwelling house if believed by the Judge, is perfectly legal evidence of the fact that these defendants were served. RAMCOOMAR SINGH *v.* RAMSOONDUR SINGH
17 W. R. 362

34. ———— *Evidence of service—Peons' return of service.* A Collectorate peon's return of service is not admissible as legal evidence MOINOOLLAH *v.* GOLUCK MONEE CHOWDRAIN . . . . . 15 W. R. 270

35. ———— **Service on military officer**—*Army Act of 1881, ss 114, 151—Civil Procedure Code, s 468.* In a suit against a soldier to recover [illegible] The Com- [illegible] to cause [illegible] be served [illegible]
I. L. R. 1[illegible] Mad. 319

36. ———— *Military officer.* Service of summons on a military officer was effected by transmitting a copy by post to the Commanding Officer at Secunderabad, where the defendant was stationed, and it was returned with the defendant's acknowledgment endorsed on it, and with a certificate that it had been duly served,

SUMMONS, SERVICE OF—*contd*

but there was no affidavit of service : service was *held* to be sufficiently proved. HARRISON *v.* HOPE . . . . . 11 B. L. R. Ap. 43.

37. —— —— —— — — — *Army Act, 1881, s 144—Sub-Conductor, Ordnance Department, is a soldier—Civil Procedure Code, s 468* A Sub-Conductor of Ordnance on the Madras Establishment of Her Majesty's Indian Military Forces, holding a warrant from the Government of Madras, is a soldier within the meaning of s 144 of the Army Act, 1881 In a suit to recover R183-7-0, a summons having been sent by the Court to the Commissary of Ordnance to be served on the defendant, his subordinate, the Commissary of Ordnance returned the summons unserved and referred to

s 144 of the Army Act, 1881 ABRAHAM *v* HOLMES I. L. R. 11 Mad. 475

38. —————————— Return by Nazir—*Proof of service of notice.* A return by the Nazir to the effect that the peon swears that a notice has been served is insufficient in law to proof the service without the deposition on oath of the serving peon taken before a competent authority RAJ KISHORE DUTT, *v* BYDONATH SHAHA 12 W. R. 365

39. —————————— *Nazir's report.* A Nazir's report of service of summons or of issue of proclamation is not legal evidence on which to punish a witness failing to attend a Court of justice when duly summoned *In the matter of the petition of* NILKANT BHATTACHARJEE W. R. 1864, Mis. 9

OKHOY CHUNDER DUTT *v.* ERKSINE. 3 W. R. Mis. 11

SREENATH THAKOOR *v.* WATSON 4 W. R. Mis 4

RAM SOONDUR CHUCKERBUTTY *v* KALEE KOMUL DUTT . . . . 6 W. R. Act X, 92

KOONDUN LALL *v* NOOR ALI . 10 W. R. 3

See MEAH KHAN *v* NARAIN CHUNDER CHOWDHRY . . 18 W. R. 197

40. ———— Affidavit of service of summons—*Civil Procedure Code, 1882, s 80—Practice.* An affidavit in support of service of a writ of summons under s. 80 of the Civil Procedure Code should show that proper efforts have been made to find out when and where the defendant is likely to be found. COHEN *v* NURSING DASS AUDDY . . . . I. L. R. 19 Calc 201

41. —— —— — — *Civil Procedure Code (Act XIV of 1882), ss. 79, 80—Affidavit of*

SUMMONS, SERVICE OF—*contd.*

ordinarily resided at the time of service. Whether or not these conditions are established to the satisfaction of the Court must in each case depend on its own particular circumstances. RAJENDRO NATH SANYAL *v.* JAN MEAH I. L. R. 26 Calc. 101 2 C. W. N. 574

42. ———— Discretion to issue second summons—*Absence of return to first summons*

to move the Court to do what is necessary. DOWLUT MUNDUR *v* OMRAO SINGH RANA 14 W. R. 336

43. —————————— *Civil Procedure Code, 1882, ss 99A and 72—Application for fresh summons—Limitation.* An application for a fresh summons to a defendant, the summons originally

PARSOTAM VITHAL *v* ABDUL REHMANBHAI I. L. R. 13 Bom. 500

44. ———— Irregular service—*Ground for objecting to decree—Joint promissory note.* An irregular service of summons on two out of

GHOSE . . . . .

I. L. R. 11 Mad.

46. —————————— *Defendant resident in another district—Act X of 1859, ss. 47, 56.* In a suit for rent under Act X of 1859, service of

proclamation has been duly served according to the provisions of this Act," refer to the mode in which a summons is to be served, and not to the

SUMMONS, SERVICE OF—*concld.*

agency by which it is to be served. MACKINTOSH v. KALLY DOSS MULLICK

11 B. L. R. 1 : 19 W. R. 234

47. ———— *Service on wrong person—Erroneous description of defendant in plaint—Dismissal of suit.* In a suit brought by the plaintiffs against *A*, the summons was by mistake served upon *B*, who thereupon filed a written statement denying his liability and alleging that he was erroneously described in the title to the plaint. On the day of the hearing of the case the plaint

for hearing, and there being nothing to show that the plaintiffs had been in any way deceived by *B*, the proper order to be made was for the dismissal of the suit LONDON, BOMBAY, AND MEDITERRANEAN BANK v MAHOMED IBRAHIM PARKAR . . . . I. L. R. 4 Bom. 619

48. ———— Ex parte decree—*Civil Procedure Code, ss 89, 100, 101—Appeal—Service of summons on defendant residing out of British India—Burden of proof.* Where a defendant, against whom an *ex parte* decree has been passed, appeals against that decree, it is sufficient in the first instance to establish that in the Court which passed the *ex parte* decree the necessary proof of service of summons on the defendant was not given by the plaintiff It is not incumbent on the appellant to show that the summons was in fact not duly served Where a summons is sent by post to a defendant residing out of British India, it is not, in the absence of evidence that the person to be served was at the time residing at the place to which the summons was sent, sufficient proof of service to show that the summons was posted, but there must be some evidence of its having been received by the defendant S 100 of the Code of Civil Procedure is not limited in its application to defendant's residing within British India. FAKHR-UD-DIN v GHAFUR-UD-DIN (1900)

I. L. R. 23 All. 99

49. ———— *Civil Procedure Code, ss 80, 108—Application to set aside a decree passed ex parte—Irregular service of summons* Where a serving officer finds a defendant to be away temporarily from home, and knows where he is, it is not a good service if he thereupon does no more than fix the summons to the outer door of the house; but he must make further efforts to effect personal service. SAKINA v. GAURI SAHAI (1902) . I. L. R. 24 All. 302

SUMMONS CASES.

———— trial of—

See JURISDICTION I. L. R. 36 Calc. 869

SUNDAY.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 578 I. L. R. 30 All. 136

SUNDAY—*concld.*

———— arrest on—

See ARREST—CIVIL ARREST

4 Mad. Ap. 62:

See LORD'S DAY ACT.

———— delivery of goods on—

See CONTRACT—CONSTRUCTION OF CONTRACTS . . I. L. R 15 Bom. 338

— disposal of suit on—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s 578 . I. L. R. 29 All. 562
I. L. R. 30 All. 136

———— presentation of plaint on—

See HOLIDAY.
3 B. L. R. Ap. 72 ; 11 W. R. 537
18 W. R. 231

———— time expiring on—

See LIMITATION ACT, 1877, s. 5.
See WRITTEN STATEMENT . Cor. 39

———— trial on—

See HOLIDAY . 8 B. L R. Ap. 12
W. R. 1864, Cr. 2
17 W. R. 230

See LORD'S DAY ACT . 6 N. W. 177

SUNDERBUNS BOUNDARY.

———— Beng. Reg. III of 1828, s 13
S 13, Regulation III of 1828, was intended to make provision for the immediate settlement of the limits of the Sunderbuns ; hence it fixed peremptorily a period after which the demarcation of those limits,

to the line, unless he declared and offered proof that at the time of the survey he was in the occupation of a definite quantity of land cleared and under cultivation within the line After the line had once become final, no party could be heard to say that even cultivated lands within it were part of his settled zamindari. BARADAKANT ROY v COMMISSIONER OF THE SUNDERBUNS

2 B. L R. P. C. 33 : 11 W R. P. C. 14

SUNDERBUNS ESTATE

See BENGAL ACT VII OF 1864, s 1
I. L R. 14 Calc. 440

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI OF 1859.
I. L. R. 14 Calc 440

SUNDERBUNS SETTLEMENT REGULATION (BENG. REG. III OF 1828)

——— **Lease granted by duly constituted Revenue authority, Effect of settlement on.** *Per* Banerjee, J —Though certain provisions of Regulation III of 1828 go to show that the Sunderbuns, up to that date, continued the property of the State and had not been permanently settled with any one, that was intended to be said generally with regard to the tract of country known as the Sunderbuns as a whole, and it could not have been intended to undo the effect of any lease granted by any duly constituted Revenue authority Tamasha Bibi *v.* Ashutosh Dhur . . **4 C W. N. 513**

SUNNI LAW.

See Mahomedan Law
I L R. 32 Calc 982
I L R 31 All. 136

SUPERINTENDENCE OF HIGH COURT.

See Bond . . **5 B. L R. 167**

See Calcutta Municipal Consolidation Act (1888), s 135
I. L R. 26 Calc. 74
3 C. W N. 70

See Charter Act.

See Civil Procedure Code, 1882, s 622

See Criminal Procedure Code, s. 145
I. L. R 31 Calc. 685

See Criminal Procedure Code, s 195
I. L. R 27 Mad. 223

See Criminal Procedure Code, s. 439
I. L. R. 26 All. 1; 249

See High Court, Jurisdiction of—Bombay—Civil . **9 Bom. 249**

See Land Acquisition Act, 1870
15 B L. R. 197

See Revision—Civil Cases—Small Cause Court Cases

See Security for Good Behaviour.
6 C. W. N. 593

——— **Charter Act (24 & 25 Vict c. 104), s. 15—Criminal cases—**

See Criminal Procedure Code, s 146
I. L. R. 29 Calc. 382

See Possession, Order of Criminal Court, as to—Likelihood of Breach of the Peace. **I. L. R. 28 Calc. 416**

SUPERINTENDENCE OF HIGH COURT—*contd*

——— **Charter Act (24 & 25 Vict, c. 104), s. 15—Criminal cases—*concld.***

See Witness—Criminal Cases—Summoning Witnesses
I. L. R. 30 Calc. 508

——— **Civil Procedure Code, 1882, s. 622—**

See Appeal—Arbitration.
I. L. R 29 Calc 187

See Attachment—Subjects of Attachment—Trust Property
I. L. R. 28 Calc. 574

See Calcutta Municipal Consolidation Act (Ben. Act II of 1888), s 135
6 C. W. N. 480

See Compromise—Construction, Enforcing, Effect of, and Setting aside, Deeds of Compromise
I. L. R. 30 Calc. 613

See Decree—Alteration or Amendment of Decree
I. L. R. 24 Mad. 646

See Sale in Execution of Decree—Setting aside Sale—General Cases
I. L. R. 25 Bom. 631

See Special or Second Appeal—Order subject or not to Appeal.
6 C. W. N. 614

——— **criminal cases—**

See Revision—Criminal Cases

1. ACT XXIII OF 1861, S 35.

1 ——— **Exercise of superintendence** —*Orders of Court of first instance and Appellate Court.* The High Court could interfere, under s. 35, Act XXIII of 1861, with the order of the [illegible]

2. ——— *Case tried in two* [illegible]

3. ——— *Trial with jurisdiction—Error in decision on facts* The High Court cannot, where an inferior Court has jurisdiction to try a case, and has tried it, merely because there is an error apparent in the decision on the facts alter, that decision, where the law allows no appeal. *In the matter of the petition of* Pearee Lall Sahoo . . . . . **7 W. R. 130**

4. ——— *Courts of Revenue officers—Courts acting without jurisdiction.* The

SUPERINTENDENCE OF HIGH COURT—*contd.*

1. ACT XXIII OF 1861, S 35—*contd.*

provisions of s. 35 of Act XXIII of 1861 extended to the Courts of Revenue officers acting without jurisdiction under Act X of 1859. HURPERSHAD *v* LALU.

3 N. W. 60 : Agra F. B. Ed. 1874, 248

5. ——— *Act X of 1859 s. 108—Sale by Deputy Collector—Appeal.* A Deputy Collector sold an under-tenure in execution of a decree for rent An appeal was made to the Collector on the ground that the tenure could not be sold unless execution had been previously issued against the moveable property of the judgment-debtor The Collector affirmed the decision of the Deputy Collector, but on review set aside his former order, on the ground that he had no jurisdiction, the sale having taken place under the provisions of Act X of 1859 An application was made to the High Court under s 35 of Act XXIII of 1861 to set aside the order of the Collector, on the ground that the Collector had no power to review his own judgment, and consequently his first order stood, which the High Court ought to set aside, and pass such order as it might think right, and reverse the order of the Deputy Collector The question was referred to a Full Bench whether s 35 applied to the order of the Collector. The Full Bench refused to consider the question referred, on the ground that it was the intention of Act X of 1859 that the sale by the Deputy Collector should be final *In the matter of the petition of* DOCOWRI KAZI

B. L. R Sup. Vol. 517
6 W. R. Act X, 53

6. ——— *Order illegally made—Appeal entertained without jurisdiction.* [illegible]

by virtue of the powers given by the section, the order of the District Munsif was also annulled. SUBRAYA GOUNDEN *v.* VENKATAGIRI AIYAR

6 Mad. 22

7. ——— *Court exceeding its jurisdiction—Appeal heard without jurisdiction.* The true construction of s 35 of Act XXIII of 1861 was, that the High Court might call for the record in any case in which a subordinate Court exercised a jurisdiction when it had none, or exceeded it when it had jurisdiction The words in s. 35, "the Sudder Court may set aside the decision passed on appeal in such case by the subordinate Court, or may pass such other order in the case as to such Sudder Court may seem right," meant that, where a Court exceeds its jurisdiction, the High Court may set aside that part of the order which is in excess of jurisdiction, and that, where the decision of the subordinate Court is made on appeal in

SUPERINTENDENCE OF HIGH COURT—*contd.*

1. ACT XXIII OF 1861, S. 35—*contd.*

[illegible]

heard by another subordinate Court which has jurisdiction to hear it, the Court may set aside the decision of the Court which had no jurisdiction, and may, if it think right, refer the case to the Court which had jurisdiction, even if it be too late to prefer a fresh appeal to that Court. The Judge having entertained an appeal where none lay, is no ground for interfering with a decision which the legislature intended to be final. JACKSON, J., differed. *In the matter of the petition of* SUBJAN OSTAGUR

B. L R Sup. Vol. 531 : 6 W. R. Mis. 77

8. ——— *Power to call for record—Discretion of Court* Under s 35 of Act XXIII of 1861, there was a discretion in the Court to call for the record or not; and in cases where the application was made a considerable time after the decree, the Court refused to call for it BOODHEE *v* ALLEE HYDER

1 N. W. Ed. 1873, 271

9. ——— *Appeal from order* [illegible] powers of [illegible]

10. ——— *Application to transfer appeal—Laches.* An application to the High Court, under s. 35 of Act XXIII of 1861, to order a subordinate Court to receive an appeal, [illegible] to have been re- [illegible]

[illegible]

11. ——— *Appeal preferred* [illegible] *—Extension of time* [illegible] eferred [illegible] have [illegible] ade an [illegible] which [illegible] ADHI- to prefer his appeal to the Collect[illegible] RANI NARAIN KUMARI RAJRANI OF BURDWAN *v.* PURIKHIT RAWTRA

7 B. L. R. Ap. 15 : 15 W. R. 426

12. ——— *Decision by Collector* [illegible] Where a Collector [illegible] f sale, he [illegible] aird his [illegible] rt under [illegible] SIRDAR [illegible] t X, 26

SUPERINTENDENCE OF HIGH COURT—*contd.*

1. ACT XXIII OF 1861, S. 35—*contd.*

13. ——— *Illegal order of Deputy Collector.* Where a Deputy Collector, who

High Court under its general powers of revision. DEEN DYAL PURAMANICK *v.* RAMCOOMAR CHOWDHRY . . 10 W. R. 345

14. ——— *Order of Collector ejecting gantidar.* Where a gantidar on the suit of the patnidar was ejected from his holding, not-

MITTER *v.* WOOMANATH CHOWDHRY W. R. 1864, Act X, 47

15 ——— *Extraordinary jurisdiction of High Court—Power to deal with order staying execution.* Where a Subordinate

MAL . . . . [illegible]

16. ——— *Refusal to set aside Collector's order made without jurisdiction, where it reversed an illegal order.* A rule having been issued calling on a judgment-debtor to show cause why an order of the Collector in appeal,

17. ——— *Right of appeal*

RAM [illegible] 1 Ind. Jur. N. S. 1: 4 W. R. Act X, 28

18 ——— *Setting aside sale in execution—Courts exceeding jurisdiction.* If the Judge exceeded his jurisdiction in hearing the appeal from the order of the Sudder Ameen setting aside a sale in execution on the ground of the non-payment of the purchase-money within the proper time:—*Held*, that it was competent for the High Court, exercising its power under s. 35, Act XXIII of 1861, to set aside the order of the Sudder Ameen. AMANEE BEGUM *v.* KOORBAN ALI 3 Agra 204

MAHESH PANDEY *v.* BALDUT PANDEY 3 Agra Rev. 10

19. ——— *Act XXIII of*

CHETTI *v.* MUTHULINGA PILLAI . 6 Mad. 280

20 ——— *Order remanding suit—Application to set aside order from which appeal could have been brought.* Where a Judge on regular appeal by a defendant had remanded a

miscellaneous application to set aside the Judge's order. TUKEE ALI *v.* SAIDUT ALI . 5 N. W. 14

21. ——— *Power of Judge to interfere with order sanctioning complaint in* ... *against public judge.* The District Judge having reversed on appeal the order of the Subordinate Judge sanctioning the prosecution of the de

SUPERINTENDENCE OF HIGH COURT—*contd.*

1. ACT XXIII OF 1861, S. 35—*concld.*

in a suit in his Court for an alleged false statement, the High Court set aside the Judge's order under the provisions of s. 35 of Act XXIII of 1861. *In the matter of the petition of* BULWUNT RAI

6 N. W. 124

22. ———— *Power of High Court.* Under this section, the High Court should not only reverse the illegal order, but pass the order that should have been made ADURMONEE DOSSEE *v.* KAMINEE SONDUREE DEBIA

3 W. R Act. X, 145

RAJ CHUNDER ROY CHOWDHRY *v* GREESH CHUNDER ROY . . . **5 W. R. Mis. 45**

2. BOMBAY REGULATION II OF 1827.

———— *Plaint, presentation of—Return of plaint for presentation to proper Court—Jurisdiction of Subordinate Judge—High Court, power of, to interfere under Bom Reg II of 1827, s 5, cl 2* A second class Subordinate Judge returned a plaint for presentation in the proper Court on the ground that the subject-matter exceeded his pecuniary jurisdiction. The first class Subordinate Judge, to whom the plaint was then presented, also returned it for presentation in the proper Court on the ground that the subject-matter was below his pecuniary jurisdiction. The plaintiff thereupon presented the plaint to the successor of the second class Subordinate Judge who had originally returned the plaint. That Judge held that he had no jurisdiction to review the order passed by his predecessor. The plaintiff appealed, and the Judge rejected the appeal, holding that no appeal lay against an order of [illegible]

HARGOVANDAS *v* LALLU JAGJIVAN

I. L. R 20 Bom. 50

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15

(*a*) CIVIL CASES.

1. ———— **Functions of High Court under s. 15 of the Charter Act**—*Nature of superintendence. Held* (*per* STUART, C.J.), that under s. 15 of 24 & 25 Vict, c. 104, the power of superintendence to be exercised by the High Court is not merely administrative or ministerial, but also judicial. BIJFE KOOER *v.* DAMODUR DASS

5 N. W. 55

2. ———— *Object of superintendence* It was not the intention of s 15 of the Charter Act to confer any rights upon litigant praties, its whole object being to give the High

SUPERINTENDENCE OF HIGH COURT—*contd.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S 15—*contd.*

(*a*) CIVIL CASES—*contd.*

Court some control over the Courts subject to its appellate jurisdiction. DOSSEE *v.* SRINIBASH DEY

12 W. R. 74

3. ———— *Beng. Act VIII of 1869, s. 102.* The Court held that in a suit for rent, even if no appeal lay under s. 102, Bengal Act VIII of 1869, the Court on special appeal could interfere under s. 15 of Act 24 & 25 Vict, c 104. On appeal under the Letters Patent:—*Held*, that the power conferred by that section ought not to [illegible] that [illegible] ARDI [illegible]

[illegible] B. L. R. [illegible] 268

Reserving decision in MOKHODA SOONDUREE DASSEE *v.* KUREEM SHAIKH . **23 W. R. 11**

4. ———— *Existence of remedy by suit.* Where the applicant has a remedy by regular suit, the Court is reluctant to interfere MADHUB CHUNDER GIREE *v* SHAM CHAND GIREE. *In the matter of the petition of* MADHUB CHUNDER GIREE . **I. L. R. 3 Calc. 243**

MAHASANKAR HARISANKAR *v.* VALIBHAI UMANJI **6 Bom. A C. 174**

BISHNO CHUNDER BHUTTACHARJEE *v* SHOSHEE MOHUN PAL CHOWDHRY **22 W. R. 277**

HUREEHUR MOOKERJEE *v.* NOBIN CHUNDER DOSS **20 W. R. 202**

5. ———— *Existence of remedy by suit.* The High Court cannot interfere under s. 15 of the High Court Act where the lower Court has not acted without jurisdiction, or where there is a remedy by a regular suit KHORSHED ALI *v.* CHOWDHRY WAHID ALI . **15 W. R. 170**

DOORGA SOONDUREE DEBIA *v* KASHEE KANT CHUCKERBUTTY . . . **14 W. R. 212**

6. ———— *Existence of other remedy* Where a petitioner had his remedy under s. 269, Act VIII of 1859, and the Munsif had, whether right or wrong, acted within his jurisdiction, the Court *held* it had no power to interfere under s. 15 of the Charter Act. HUR KISHORE AUDHICARY *v.* SUDOY CHUNDER NUNDEE **17 W. R. 80**

7. ———— *Existence of remedy by regular suit* *S* was adjudicated an insolvent in the Insolvent Court, Calcutta. *R* thereupon deposited in the Court at Shahabad a sum for which *S* had obtained a decree against him. This decree had been attached by *T* under a decree obtained by him against *S*, and they applied to the Shahabad Court for satisfaction of their decree out of the money deposited by *R* The Official Assignee opposed the application, which was granted. The Official Assignee petitioned the High Court to interfere under s 15, 24 & 25 Vict, c 104,

SUPERINTENDENCE OF HIGH COURT—*contd.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15—*contd.*

(a) CIVIL CASES—*contd.*

but the Court refused to interfere, on the ground that there was a remedy by suit for injunction and application for a preliminary order under s. 92, Act VIII of 1859. *In re* MILLER
4 B. L. R. A. C. 72 note 12 W. R. 103

8. ——— ——— *Delay in making application.* The Court refused to extend assistance by the exercise of its extraordinary powers under the High Court Act, s. 15, to parties who were chargeable with great and unexplained delay. RADHA MOHUN ROY *v.* RAJ CHUNDER SHAH
22 W. R. 522

BHUGOOBUTTY KOWAR *v.* MONEY
2 C. L. R. 545

9. ——— *Laches of appellant—Power of High Court.* Where the Court below adopted a different procedure, and, after partitioning the property, put up for sale the divided share of the execution-debtor, the High Court in the exercise of its extraordinary jurisdiction refused to interfere, in consequence of the laches [illegible]

5 Bom. A. C. 63

10. ——— *Order of Judge under s. 269, Civil Procedure Code, 1859—Resistance to delivery of possession in execution of decree.* The Court declined to interfere under s. 15 of the Charter Act in order to set aside an order lawfully made by a Judge under s. 269, Act VIII of 1859, upon a complaint made to him of resistance or obstruction to the delivery of possession under s. 264, and stated that it would not have interfered even if the order had been made without jurisdiction [illegible]

[illegible]

11. ——— *Laches—Existence of another remedy.* [illegible]

12. ——— *Order rejecting claim of attorney to lien on document for his costs—Existence of other remedies.* A firm of solicitors, having been summoned to produce certain documents before the Court, objected to do so claiming a lien upon them for costs due to them from the [illegible]

Charter Act unless, in the interests of justice, it finds it necessary to do so, and that in the present case there is no danger of any such failure of justice as would render it necessary for the High Court to [illegible]

[illegible] W. R. [illegible]

13. ——— *Effect as to merits of case of rejection of claim to exercise of extraordinary jurisdiction.* The extraordinary powers [illegible]

[illegible] the second order of the High Court as a variation of the first and entertained the suit:—*Held,* that, though the action of the High Court did not affect the merits, yet, as plaintiff had a substantial claim, the second Munsif did right in receiving it. SHOOVANKURRY DABEE *v.* DWARKA NATH MOOKERJEE . . 25 W. R. 344

14. ——— Exercise of jurisdiction—*Giving appeal where none lies.* The High Court [illegible]

9 W. R. 115

15. ——— ——— *Giving appeal where none lies—Order doing injustice.* The High Court should not, in the exercise of its extraordinary powers, give an appeal in a case where the law provides none. Nor should the Court in the exercise of those powers interfere when such interference

SUPERINTENDENCE OF HIGH COURT—*contd.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*contd.*

(*a*) Civil Cases—*contd.*

would have the effect of working an injustice. Narayanbhai Lalbhai *v.* Gangakrishna Balkrishna . . . . 4 Bom. A. C. 87

16. ———— *Party bringing appeal without right of appeal.* Per Birch, J.—A party who has preferred an appeal to the High Court when the law gave him no right of appeal is not entitled upon the hearing to ask the Court to treat it as an application for the exercise of its extraordinary jurisdiction under s 15 of 24 & 25 Vict, c 104 *In the matter of the petition of* Soorja Kant Acharj Chowdhry

I. L. R. 1 Calc. 383

17. ———— *Admission of appeal after time—Appeal—Delay in filing—Act X of 1859, s 25* The High Court, under its general power of superintendence, set aside an order of a lower Appellate Court admitting an appeal filed beyond time, on the ground that the lower Appellate Court had no jurisdiction to entertain an appeal passed by the Collector under s 25, Act X of 1859 Amra Nashya *v* Gagan Shutar

2 B. L. R. Ap 35

s c Omra Nushyo *v.* Gugun Shootur

11 W. R. 130

18 ———— *Appeal withdrawn without authority—Application to set aside order refusing to restore appeal* An appeal which had

cumstances they thought the Judge should not be directed to take further action in the matter. Mudhoomutty Debia *v.* Dhunput Singh

13 W. R. 167

19. ———— *Order releasing property from attachment* An order of competent

Chunder Bhuttacharjee *v* Shoshee Mohun Pal Chowdhry . . . . 22 W. R. 277

20. ———— *Illegal arrest in Court of Magistrate*—The High Court declined to exercise the extraordinary powers described in s 15 of the High Courts Act, where a Magistrate did not interfere with the arrest in his Court, under a civil process, of a person who had been accused before the Magistrate, but was acquitted at the time of his arrest. *In the matter of the petition of* Guzeree Lall . . . . . 13 W. R. 393

SUPERINTENDENCE OF HIGH COURT—*contd.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*contd.*

(*a*) Civil Cases—*contd.*

21. ———— *Award under the Nawab Nazim's Debts Act, 1873, on matter already decided by decree.* Where certain judgment creditors submitted a decree of Court to the Commissioners appointed under the Nawab Nazim's Debts

Begum *v.* Commissioners under Act XVII of 1873

24 W. R. 394

22. ———— *Power over Collectors.* Under s. 15 of the High Courts Act, the High Court had a power of superintendence over Collector's Courts, and could interfere to restrain a Collector from exercising a jurisdiction which properly belongs to a Zillah Judge. Bhyrub Chunder Chunder *v.* Shama Soonderee Debia

6 W. R. Act X, 68

(*Contra*) Huro Mohun Mookerjee *v* Kedarnath Doss . . . . 5 W. R. Act X, 25

23. ———— *Setting aside decree made ultra vires.* Where a decree is *ultra vires*, the debtor's remedy is either by an application for review or by an application to the High Court to exercise its powers under the Charter Act, s. 15 Doorga Doss Sandyal *v.* Panchoo Ram Mundul

23 W. R. 271

24. ———— *Refusal of application under Act VIII of 1859, s 119—Ex parte decree.* Judgment was passed *ex parte* against a ... The defendant ... udgment ... applied ... 15 Vict, ... ecree as having been passed without jurisdiction. The Court refused to intefere. *In the matter of the petition of* Leslie . 10 B L R. 68 : 18 W. R. 474

25. ———— *Discretion of Municipality—Rates for cleaning tank.* Case in which the Munsif held that the Municipality had expended more money than was necessary in cleaning the petitioner's tank, and the Judge on appeal ... law the ... of the ... e rates ... n those ... ant was ... Court.

In the matter of ... 16 W. R. 285

26. ———— *Exercise of discretion under Act XX of 1863, ss. 4 and 5—Refusal of jurisdiction.* Where an application by a peti-

SUPERINTENDENCE OF HIGH COURT—*contd.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15—*contd.*

(a) CIVIL CASES—*contd.*

tioner under Act XX of 1863, s. 5, to be appointed manager of a religious endowment, was rejected by the Judge after hearing both sides, on the ground that there had been no transfer of the property by the Local Government under s. 4, the Court refused to interfere under s. 15 of the Charter Act, holding that the Judge had not declined to accept jurisdiction in the case, and that he was right in refusing to exercise the jurisdiction vested in him by s. 5. ASHRUF HOSSEIN v. HAZARA BEGUM 18 W. R. 396

27. ———— *Order rejecting document under s. 129, Civil Procedure Code, 1859.* The High Court refused to interfere under s. 15 of the Charter Act to set aside an order rejecting a document made by a Court under Act VIII of 1859, s. 129, an appeal from such order being barred by s. 363. *In the matter of* ERSKINE 18 W. R. 511

28. ———— Error of law.—*Quære* Is a conflict between a Judge's order and a direction of law ground for the High Court to exercise its powers of interference? DOSSEE v. SREENIBASH DEY . . 12 W. R. 74

29. ———— *Error of law—Case where no appeal lies to High Court.* Mere errors of law committed by a lower Appellate Court in cases in which the High Court has no appellate jurisdiction do not give the latter Court power to [illegible]

KALEE HUR DASS v. ROODRESSUR CHUCKERBUTTY 15 W. R. 90

ISSUR CHUNDER PODDAR v. SHOSHEE DHUR SEN 18 W. R. 289

30. ———— *Court acting without jurisdiction—Error in law* The interference of the High Court under s. 15, 24 & 25 Vict, c 104, should be confined to cases in which the lower Court has acted without jurisdiction, or has improperly declined jurisdiction, and should not be extended to cases in which the Court, though competent in respect of the subject-matter, has misconceived the law in deciding a case. *In re* KASINATH ROY CHOWDHRY 7 B. L. R. 146 note

s. c. KASHEENATH ROY CHOWDHRY v SHABITREE SOONDUREE DOSSEE . 11 W. R. 402

31. ———— *Error in law—Injustice, Prevention of* Where there has been [illegible] fest [illegible] ex- [illegible] the [illegible] y be

under R500 and the case may be one in which a special appeal is not allowed RAMABAI v TRIMBAK GANESH DESAI . . 9 Bom. 283

32. ———— *Erroneous order in law made in consequence of false statement of party* The High Court will interfere, under s. 15 of the Charter Act with an order made by a lower Court which is merely contrary to law, when that order has been passed in consequence of a wilfully false statement made by the opposite party. ROGHO NUNDUN LALL v. MOHESH LALL 3 C. L. R. 137

33. ———— *Wrong decision where no special appeal lay* Where the lower Court's decision was fundamentally wrong in law, and the liability of the defendants in the essential matter of the suit had not been properly tried, the High Court, although not warranted in interfering in special appeal (by reason of the suit being a money claim under R500), was justified in interfering under its general powers of supervision. SHAMDANEE v. BHOJOO RAM . 22 W. R. 44

34. ———— *Refusal of order of confirmation of sale—Error of law* A certified purchaser of property sold in execution of a decree [illegible]

[illegible] L. R. 100

s c DOORGA CHURN SIRCAR v DOORGA CHURN GHOSSAL 11 W. R. 23

35 ———— *Error of law.* The High Court will not, under s. 15 of 24 & 25 Vict, c. 104, interfere with judgments, decrees, or orders of lower Court on the bare ground that they are erroneous at law, or are based upon a wrong conclusion of facts; there must be some special ground justifying the High Court to exercise such powers MADHUB CHUNDER GIREE v. SHAM CHAND GIREE *In the matter of the petition of* SHAM CHAND GIREE . I. L. R. 3 Calc. 243

36. ———— *Error of law—Revision of judicial proceedings—Jurisdiction.* The High Court is not competent, in the exercise of the powers of superintendence over the Courts subordinate to it conferred on it by s. 15 of 24 & 25 Vict, c. 104, to interfere with the order of a Court subordinate to it, on the ground that such [illegible]

SUPERINTENDENCE OF HIGH COURT—*contd.*

3 CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*contd.*

(*a*) Civil Cases—*contd.*

I. L. R. 1 All. 101

37. ———— *Revision of judicial proceeding—Jurisdiction of High Court —Civil Procedure Code, s. 622* *Held* by Edge, *C J*, and Oldfield and Brodhurst, *JJ*, that under s 15 of 24 & 25 Vict, c. 104, it is competent to the High Court, in the exercise of its power of superintendence, to direct a subordinate Court to do its duty or to abstain from taking action in matters of which it has no cognizance; but the High Court is not competent, in the exercise of this authority, to interfere with and set right the orders of a subordinate Court on the ground that the order of the subordinate Court has proceeded on an error of law or an error of fact The High

within his jurisdiction *Held*, by Straight and Tyrrell, *JJ.*, that the word "superintendence" used in s 15 of the Charter Act contemplated and now includes powers of a judicial or quasi-judicial character, apart from those conferred on the Court by s. 622 of the Civil Procedure Code; but that the last-mentioned provision may properly be accepted as indicating the extent to which the Court should ordinarily interfere with the findings of such subordinate tribunals as are invested with exclusive jurisdiction to try and determine all questions of law and fact arising in suits within their exclusive cognizance, and in which their decisions are declared by law to be final. *Tej Ram* v. *Harsukh, I. L R, 1 All 101*; *Girdhari Singh* v. *Hardeo Narain Singh, L R 3 I. A 230*, and *In the matter of the petition of Mathra Parshad, I L. R 1 All 296*, referred to The judgment of Petheram, *C J.*, in *Badami Kuar* v *Dina Rai, 1 L R 8 All 111*, explained Muhammad Suleman Khan *v* Fatima . . I. L. R. 9 All. 104

38. ———— *Civil Procedure Code, 1882, s 622—Failure of duty by a Subordinate Court* Where a subordinate Court had

c 104, to direct the subordinate Court to do its duty, and complete the case according to law. *Muhammad Suleman Khan* v *Fatima, I. L. R. 9 All. 104*, referred to Abdullah *v.* Salaru

I. L. R. 18 All. 4

39. ———— *Error of law —Rejection of claim to attached property without decision on necessary questions.* Where it was found that the Court below was wrong in disallowing the claim without determining certain questions of law which it should have determined, the error was held to be not such that it ought to be rectified by the High Court in the exercise of its power of revision under s. 15 of the Stat. 24 & 25 Vict,

exercise of this power, and a party's claim to the

40. ———— Execution-proceedings —*Supervision as to execution of order.* The High Court has jurisdiction to direct a lower Court in what manner its own (the High Court's) decree or order shall be carried into effect by that Court, and to see that the lower Court does not pervert the order or do that which was not intended to be done, even when such order constitutes a part of the order in execution of a decree which the lower Court ought to have passed. Kalee Doss Sandyal *v.* Roy Luchmeeput Doogur . . 14 W. R. 145

41. ———— *Act X of 1859, s 151—Execution-proceedings.* Where a Deputy Collector refused to entertain an application by a defendant for realization of costs awarded by a Court of appeal, and for refund of the amount

and where, on appeal, the Judge ... *Held*, appeal lay under s 151 of Act X of 1859—*Held*, that the High Court had power, under 24 & 25 Vict, c. 104, s 15, to order the Deputy Collector to enforce restitution of the amount realized from the defendant in excess of the amount allowed by the Court of appeal, and also to execute that part of the decree which awarded costs to the defendant. *In the matter of the petition of* Gobind Koomar Chowdhry . B. L. R. Sup. Vol. 714 Ind. Jur. N. S. 199 7 W. R. 520

42. ———— *Order of Collector giving possession, reversal of.* Where a

VIII of 1865 for arrears of rent due upon it, and

SUPERINTENDENCE OF HIGH COURT—*contd.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*contd.*

(*a*) CIVIL CASES—*contd.*

had been put in possession, the High Court refused to exercise its powers under s. 15 of the Charter Act. NARAYANI DAYI DEBI *v.* CHANDI CHARAN CHOWDHRY . . 3 B. L. R. Ap. 65

NARAINEE DABEE *v.* CHUNDEE CHURN CHOWDHRY . 11 W. R. 512

43. ——— *Letters Patent, cl. 16—Release of person imprisoned in execution of decree.* Where, in execution of a summary decree for rent obtained under Regulation VII of 1799 in 1851 against the father of the petitioner and another, the petitioner was arrested and lodged in jail in January 1867 —*Held*, by the majority of the Court (NORMAN, J., dissenting) that the High Court could not, under the general powers of superintendence vested in it by s. 15 of the High Courts Act or s. 16 of the Letters Patent, interfere to order the release of the petitioner. GOPAL SINGH *v.* COURT OF WARDS . . . 7 W. R. 430

44. ——— *Assignment of decree—Civil Procedure Code, 1859, ss. 216, 265—*

assignee of the decree was or was not in *bonâ fide*

8 W. R. 26

45 ——— *Execution of decrees for rent—Act X of 1859, ss. 23, 77, and 160.* Whether a decree for rent, under Act X of 1859,

I. L. R. 9 Calc. 295 : 12 C. L. R. 361
L. R. 9 I. A. 174

47. ——— *Order exempting debtor from liability on ground of limitation.* S. 15 of the 24 & 25 Vict., c. 104, does not enable the High Court, by way of motion, to deal with an order made by a lower Appellate Court in cases where the latter has jurisdiction, and the law

KALEE PERSAUD CHOWDRY *v.* RAM SOONDUR SIRCAR 12 W. R. 129

48.

security or having the amount of the decree deposited —*Held*, that his proceeding, though erroneous, was in a case in which he had exercised jurisdiction, and that his decision ought not to be set aside under the 15th section of the Act 24 & 25 Vict., c. 104. *In the matter of the petition of* BAGRAM 20 W. R. 10

49. ——— *Execution of decree, refusal to stay—Allegation of fraud and finding against it.* W got a decree against M in the Court of the Sudder Ameen, and in execution attached certain property of the judgment debtor

High Court by s. 15 of the Charter Act. JUMAL ALI *v.* WAHED ALI . . . 11 W. R. 97

50. ——— *Order within jurisdiction—Suit for arrears of rent and ejectment.* A suit for arrears of rent, where the plaint

SUPERINTENDENCE OF HIGH COURT—*contd*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*contd*

(*a*) CIVIL CASES—*contd.*

51. ———— **Order made without jurisdiction.** The High Court exercised its powers of superintendence to set aside a judgment of a Judge reversing a judgment of a Munsif passed in accordance with the award, the Judge's order being without jurisdiction. *In the matter of* ILAHI BUX 5 B. L. R. Ap. 75

s c ELAHEE BUKSH *v* HAJOO . 14 W. R. 33

52. ———— *Suit brought in*

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passed without jurisdiction TARINI CHARAN MOOKERJEE *v.* PURNA CHANDRA ROY 6 B. L. R. 717 . 15 W. R. 397

53. ———— *Order made without jurisdiction—Appeal in rent suit to wrong Court* A suit to recover R254 as arrears of rent having been decreed by the Deputy Collector for R49, the defendant appealed to the Judge, but plaintiff appealed to the Collector. The Judge dismissed the defendant's appeal, and the Collector gave plaintiff a decree for the full amount originally claimed The High Court, under s 15 of the Charter Act, set aside the Collector's decree as made without jurisdiction ROOKNEE ROY *v.* AMRITH LALL . . . 14 W. R. 254

54. ———— *Order of Collector made without jurisdiction* *N* sued his gomashta *M* and *M's* surety *C* under s 24, Act

superintendence. GUDADHUR CHATTERJEE *v* NUNDLALL MOOKERJEE . . 12 W. R. 406

55. ———— *Order contrary to law from which no appeal lay—Civil Procedure Code, 1859, s. 246.* Where an order was made by a Munsif under s. 246 of Act VIII of 1859, and a regular appeal was preferred, and then a special appeal to the High Court, that Court, while refusing to entertain the appeal, on the ground that the Munsif's order was final, or to set aside the order under s 15 of 24 & 25 Vict, c. 104, expressed an opinion that the order was contrary to law, and left it to the Munsif to act upon such opinion. KALI CHURN GIR GOSSAIN *v* BANGSHI MOHAN DAS 6 B. L. R. 727 : 15 W. R. 339

56. ———— *Order contrary to law—Civil Procedure Code, 1859, s. 246—Want of jurisdiction—Act VIII of 1859, s. 246, order*

57. ———— *Order passed*

pleaded that the Judge had no jurisdiction, inasmuch as, if the suit had been properly valued, it was one cognizable by the Munsif. The Judge found that the value of the property did not exceed R500, and that the plaintiff had over-estimated

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jurisdiction, the High Court under s 15 of 24 & 25 Vict., c. 104 *In the matter of the petition of* WISE . . 10 B. L. R. Ap. 20

58. ———— *Order passed without jurisdiction—Revival of suit—Act X of 1859, ss 54, 55, and 58.* A suit for arrears of rent

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Deputy Collector and dismissed the ... plaintiff then applied under s. 58, Act X of 1859, for revival of the former suit, but the Deputy Collector rejected the application. On appeal, the Judge held that the suit might be revived, and remanded the case for trial. The High Court, under its general power of superintendence, set aside the order of the Judge as passed without jurisdiction, holding that, although the Deputy

SUPERINTENDENCE OF HIGH COURT—*contd.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15—*contd.*

(a) CIVIL CASES—*contd.*

Collector had formerly struck off the case under s. 54, yet it was in fact an order under s. 55, and therefore under s. 58, Act X of 1859, no appeal lay to the Judge. HABIB SOBHAN v. MAHENDRA NATH ROY 2 B. L. R. Ap. 32 : 11 W. R. 129

59. ——— *Order made without jurisdiction—Omission to object to illegal proceeding.* Where a respondent in a Collector's Court

as without jurisdiction, it was *held* that, as he had allowed the appeal to be heard without objection, he was not entitled to the relief sought. DROBO MOYEE DABEE v. BIPIN MUNDUL . 10 W. R. 6

60. ——— *Error in reversing judgment for want of jurisdiction.* Where the District Judge reversed the decree of the Munsif for want of jurisdiction, although the amount of the claim was under R500, the Court, in the exercise of its extraordinary jurisdiction, interfered. RATANSHANKAR REVASHANKAR v. GULABSHANKAR LALSHANKAR . . . . 4 Bom. A. C. 173

61. ——— *Judge exceeding his powers under s. 246, Act VIII of 1859.*

the possession of the claimant on his own account, and not on behalf of the judgment-debtor, inasmuch as the claimant professed to derive his title under

of the Charter Act, by setting aside the Judge's order and directing the property to be released. *In the matter of* KHELLAT CHUNDER GHOSE v. GOUREECHURN MOJOOMDAR . . 18 W. R. 402

62. ——— Improper exercise or

23 W. R. 402

63. ——— *Refusal to entertain suit by Court from which there is an appeal.* When a Court, subject to the appellate jurisdiction of the High Court, refuses to entertain a suit over which it has jurisdiction, the High Court may, under its general power of superintendence, order the Court below to entertain such suit, notwithstanding that no appeal would lie to the High Court from the decree in such suit. HARDAYAL MANDAL v. TIRTHANAND THAKUR 4 B. L. R. Ap. 28 : 13 W. R. 34

64. ——— *Refusal to make inquiry as to possession in claim under s. 246, Civil Procedure Code, 1859.* In a case of a claim to

gave the applicant possession. The High Court on application set aside both decisions as not being decisions on the investigation of a suit within the section. The question still remained for decision whether the property was *bonâ fide* in the possession of the applicant on his own account or on account of some person other than the defendant. WOOMESH CHUNDER ROY v. BIDHOO MOOKHEE DOSSEE . . . . . 11 W. R. 197

66. ——— *Order rejecting application by party dispossessed in execution of decree—Act VIII of 1859, s. 230.* Whether or not

diction. *Golucknarain Dutt* v. *Bistoopreа Dossee,* 1 W. R. 140, referred to and questioned. COLLECTOR OF BOGRA v. KRISHNA INDRA ROY 2 B. L. R. A. C. 301 : 11 W. R. 191

67. ——— *Denial of jurisdiction—Act X of 1859, s. 77.* A sued B, a rayat,

SUPERINTENDENCE OF HIGH COURT—*contd.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*contd.*

(a) CIVIL CASES—*contd.*

back the case to the Collector for trial of *C's* claim. *In the matter of the petition of* NASSIR JAN

7 B. L. R. 144 : 15 W. R. 418

68. ——— *Refusal to attach property—Refusal of jurisdiction* Where a Munsif refuses to attach property in execution which he is bound to attach, he may be compelled to do so by the High Court in the exercise of its powers of supervision. MUNOHUR PAUL *v* WISE

15 W. R. 246

69. ——— *Refusal to execute decree—Refusal of jurisdiction.* Where a Deputy Collector who had passed an informal decree refused to execute it on application, the decree-holder was *held* to be entitled to an order from the High Court, in the exercise of the powers it possesses under s. 15 of the High Courts Act directing the Deputy Collector to do his duty KHEMUNKUREE DABEE *v* SHURUT SOONDUREE DABEE

14 W. R. 9

70. ——— *Refusal of Deputy Collector to sell in execution of decree where plaintiff has obtained declaration of his right in Civil Court* If a decree of a Civil Court declares that the plaintiff has a right to bring certain property to sale in a Deputy Collector's Court, and the

71. ——— *Refusal to consider grounds—Review of judgment of predecessor.* Where a Court subordinate to the High Court rejected an application for a review of judgment, refusing to consider the grounds of the same, because the decree of which a review was sought was given by its predecessor, the High Court, in the exercise of its powers of superintendence under s 15 of the High Courts Act, directed such a Court to consider the grounds *In the matter of the petition of* MATHRA PARSHAD . I. L. R. 1 All. 296

72. ——— *Refusal to grant application for review of judgment of predecessor—Refusal to exercise jurisdiction.* Forty-six

District Judge, who ordered that the petition for review should stand over until the result of the special appeal should be known. The High Court having on special appeal restored the decision of the Munsif dismissing the suits, the application for review was renewed before the successor of the former District Judge. He refused to admit the application. *Held*, that the District Judge had not declined jurisdiction or acted beyond his jurisdiction, and that the High Court had therefore no power under s. 15 of the Charter Act to interfere. RAM LALL SINGH *v.* JANKI MAHATOON

4 C. L. R. 14

73. ——— *Wrongly declining to exercise jurisdiction.* Where a Judge de-

74. ——— Orders of Courts es-

ABDOOL ALI . . . 15 B. L. R. [illegible]

75. ——— Dismissal of ministerial officer. With reference to the rule that its extraordinary powers of superintendence should

76. ——— *Dismissal of* [illegible] A Munsif, having charged his

jurisdiction, he had done [illegible] by the Munsif, and the petitioner, if aggrieved, had

SUPERINTENDENCE OF HIGH COURT—*contd*

3 CHARTER ACT (24 & 25 VICT, C 104), S 15—*contd.*

(a) CIVIL CASES—*contd.*

a remedy under Act VI of 1871 in an application to the Local Government *In the matter of* FAKEER CHAND LALL . 20 W. R. 470

77. **Parties, addition of**—*Dismissal of suit in absence as original plaintiff, after adding third party of plaintiff* Per NORMAN, J (SETON KARR, J, dissenting) Where a Court added a third party as a plaintiff, and, in the absence of the original plaintiff, improperly dismissed the suit, it was *held* that the suit was still pending, and undisposed of by the lower Court as regards the plaintiff, and the lower Court was ordered, under the High Court s power of superintendence vested in it by the 24 & 25 Vict, c 204, s. 15, to take up and try the case accordingly CHUNDER KANT BHUTTACHARJEE v BINDABUN CHUNDER MOOKERJEE . 7 W. R. 277

s.c. *In the matter of the petition of* CHUNDER KANT BHUTTACHARJEE
B. L. R. Sup. Vol. Ap. 43

78. *Erroneous order*—*Putting on the record party not a legal representative.* Where a decree had been obtained against a British subject domiciled in India, who subsequently died intestate, and an order was made reviving the decree against one of his children, and ordering execution to proceed before letters of administration to his state had been taken out, and without inquiry being made as to who were his legal personal representatives.—*Held*, that, although no appeal lay against the order, yet that, as it was clearly erroneous and as, under the circumstances of the case, it must lead to the greatest confusion and injury to the interests of the parties if the execution was proceeded with, the Court was justified in interfering under s 15 of the Charter Act. POGOSE v. CATCHICK
I. L. R. 3 Calc. 708 : 2 C. L. R 278

But *See* POGOSE v AHSANOOLLAH
I. L R. 3 Calc. 710 note

79. ———— **Order substituting name of purchaser instead of plaintiff**—*Jurisdiction of Civil Court* A Civil Court is not competent to order the name of a purchaser of the rights of the plaintiff in a suit to be substituted for that of the plaintiff, or, upon the application of the party so substituted, to allow the suit to be withdrawn Such an order, if made, is made with-

JEE . . . . . . 9 W. R. 309

SUPERINTENDENCE OF HIGH COURT—*contd*

3 CHARTER ACT (24 & 25 VICT., C. 104), S 15—*contd.*

(a) CIVIL CASES—*contd.*

80. ———— **Recorder of Moulmein**—*Act XXI of 1863, ss 16 and 17—Suspension of pleader.* The High Court has, under s 15 of 24 & 25 Vict, c 104, general superintendence over the Court of the Recorder of Moulmein established under Act XXI of 1863 An order passed by the Recorder of Moulmein under s 16 or 17 of Act XXI of 1863, granting or withdrawing a license to practise as a pleader in the Small Cause Courts of Moulmein, is an exercise of power which comes under the superintendence of the High Court *In the matter of* THOMSON
6 B. L. R. 180 : 14 W. R. 257

81. ———— **Pauper, rejection of application to sue as**—*Civil Procedure Code, 1859, s 301—Case where there is no appeal*

82. ———— *Refusal of original Court to entertain application for review—Refusal of leave to sue in formâ pauperis.* Under s 15 of 24 & 25 Vict, c. 104, the High Court set aside an order of a Court of original jurisdiction, refusing to entertain an application to review an order refusing a petition for leave to sue *in formâ pauperis*, on the ground that the Court had no jurisdiction to entertain it. *In the matter of the petition of* UMASUNDARI DEBI 5 B. L R. Ap 29

83. ———— **Review, admission of, after prescribed time.** The High Court refused to interfere with the order of a Court granting a review of its judgment, although the application for review was not made until three years after the date of the decree, the party who preferred the application for the review having satisfied such lower Court of the existence of just and reasonable cause for his not having preferred his application for review within ninety days. AJONNISSA BIBEE v SURJA KANT ACHARJI
2 B. L. R. A. C. 181 : 11 W. R. 56

84. ———— *Review, admis-*

5 B. L. R. 316 : 13 W. R. 439

SUPERINTENDENCE OF HIGH COURT—*contd.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*contd.*

(*a*) CIVIL CASES—*contd.*

85. ——————— Execution Sales—*Order to compel Court to make sale absolute* The High Court may, on sufficient cause being shown, make an order upon motion to compel a lower Court to make

86. ——————— *Sale made pending inquiry under Act XVII of 1873 (the Nawab Nazim's Debts Act)—Order refusing to confirm sale* Certain immoveable property having been brought to sale in execution of decrees against Ameer Saheb at the time that the right, title, and interest thereof were under inquiry by commissioners appointed under Act XVII of 1873 (the Nawab Nazim's Debts Act), it was sold with an intimation that the purchaser would purchase an empty title. Subsequently the commissioners came to an actual finding under s 12, declaring the property to be held by the Government of India, and their opinion that it could not be alienated by the Nawab Nazim In consequence of this, the Court which had sold it refused to confirm the sale. The High Court refused to interfere under the High Courts Act, s 15, holding that it was so manifestly right and proper in the interests of all parties to withhold confirmation of the sale in this case that it was unnecessary to inquire whether the order was in strict conformity with the law or not KALEE MOHUN SIRCAR *v* HUMAYOON KADER MAHOMED ALI MIRZA BAHADOOR *alias* AMEER SAHEB 24 W. R. 311

87 ——————— *Order setting aside sale made on insufficient application.* When an application to cancel a sale does not mention

SOOKOOMAR SINGH *v* KASHEE SINGH 13 W. R. 250

88 ——————— *Act VIII of 1859, s. 361—Reversal of sale for inadequacy of price.* Certain bank shares, the property of a judgment-debtor, were sold in execution of a decree. The Sudder Ameen afterwards reversed the sale on the ground of the inadequacy of the price. The Judge having refused to entertain an appeal, the purchaser applied to the High Court

DACOSTA *v.* HALL 5 W. R. Mis. 25

89. ——————— *Civil Procedure Code, 1877, ss 290 and 622—Irregularity in sale in execution of decree—Order of Judicial Commis-*

sioner reversed this decision, on the ground that the fact of the sale having taken place twenty-nine instead of thirty days after the notification

to a Division Bench of the High Court to set

the question to a Full Bench; whether, assuming the requirements of s 290 to be essential to the validity of a sale, the High Court had any power, either under s 15 of the Charter Act or s 622 of ... as amended to set aside

the High Court had a right, under its summary

90. ——————— *Application to set aside sale in execution of decree—Circumstances disentitling party to relief* A party applying to the High Court for relief under s 15 of 24 & 25 Vict. c. 104, must clearly show that he has not

against *D* as manager on behalf of ... *M & Co.* the proprietors of the concern, although no member of *G M & Co* was living when the suit was instituted. In execution of this decree, the plaintiff obtained possession of the lands The executors of *M*, the last surviving member of *G M & Co.*, having subsequently assigned the concern to *A*, who also took upon himself the denapaona, the

SUPERINTENDENCE OF HIGH COURT—*contd.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15—*contd.*

(a) CIVIL CASES—*contd.*

why the decree should not be executed against him *A*, being advised that the suit was a nullity, and that under no circumstances could execution be had against him as heir or legal representative of any of the judgment-debtors, neglected to appear, and certain property belonging to him was *sold in execution of the decree without opposition* on his part, and the sale having been duly confirmed, the purchaser, who was also the decree-holder, was put into possession *A* thereupon applied to the Court executing the decree to have the sale set aside, and, his application being refused, petitioned the High Court under s. 15 of 24 & 25 Vict., c. 104, for the same relief. The High Court, however, refused to interfere, both upon the principle above stated, and likewise because the purchaser, being also the decree-holder, could not successfully oppose a suit by *A* to have the sale set aside *In the matter of the petition of* COCHRANE 14 B. L. R. 330 . 23 W. R. 310

91. ———— *Setting aside order properly made for rateable distribution of sale-proceeds—Claim, Order on* A claim was disallowed to certain property which had been attached in execution of a decree The property was sold, and after satisfaction of the decree it was ordered that the surplus proceeds should be rateably dis-

[illegible]

under its general power of superintendence. *In the matter of the petition of* DHIRAJ MAHTAB CHAND BAHADUR . . . 2 B. L. R. A. C. 217

s.c. MAHARAJAH OF BURDWAN *v.* HEERALALL SEAL . . . . . . 11 W. R 54

92. ———— **Order giving sanction to prosecution**—*Grant of certificate of administration to one holding under forged will* The application of a widow for a certificate having been opposed by a third party (*K*), who produced

[illegible]

produced the will unless he was quite satisfied that the will was genuine. As the order, however, directing that *K* should be sent to a Magistrate was

made with jurisdiction, the High Court could not interfere. *In the matter of* KOONJ BEHAREE GHTE 11 W. R. 171

93. ———— **Rejection of security offered for stay of execution pending suit brought.** Where the security offered by a judgment-debtor with a view to execution against him being stayed until the decision of a suit for [illegible]

[illegible]

94. ———— **Interference with decision of Small Cause Court**—*Act XI of 1865, s. 4*—The powers conferred by 24 & 25 Vict., c. 104, s. 15, and Act XI of 1865, s 4, do not enable the High Court to interfere with the decision of a Court of Small Causes refusing an application on the part of a defendant to send for a [illegible] of a letter which was filed in another [illegible] which the defendant desired to put in as evidence. *In the matter of the petition of* [illegible] 19 W. R. [illegible]

95. ———— *Order* [illegible]

[illegible]

not competent to take up the case [illegible] from the Judge, but that the party [illegible] apply to the High Court, if he [illegible] cise its extraordinary powers under [illegible] High Courts Act. DEEP CHAND [illegible]

96. [illegible] *special appeal lies and no* [illegible] *arises—Act XXIII of 1861,* [illegible] of 24 & 25 Vict., c 104, [illegible] not interfere with the decis[illegible] in cases in which a special [illegible] s. 27 of Act XXIII of 1861, [illegible] question of jurisdiction [illegible] *of the petition of* LUKH[illegible]

s.c. KETIKI CHUTIA[illegible]

97. ———— [illegible] *High Court in case* [illegible] *—Act XXIII of 1861,* [illegible] by the Small Cause Co[illegible] appeal lay to the H[illegible] XXIII of 1861, the H[illegible] ordinary powers and [illegible] MAHTAB CHUND BAH[illegible]

SUPERINTENDENCE OF HIGH COURT—*contd.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*contd.*

(a) CIVIL CASES—*contd.*

98 ———————— *Want of jurisdiction to determine part of case.* In a suit of a Small Cause Court nature (to recover the value of produce) which had been decided upon the real issues between the parties, the High Court refused to exercise its extraordinary powers under s. 15 of the Charter, merely on the ground that the Civil Court had no jurisdiction to determine a part of the dispute, which was whether the land whose produce was claimed was or was not in the British territory BHYRUL SINGH *v* JHOGRU PATNEE **11 W. R. 506**

99. ———— Stay of suit in India against company being wound up in England. The High Court will, in the exercise of its general power, stay the proceedings in a suit in India against a company which is being wound up by order of the Court of Chancery in England under the Companies Act, 1862, where the circumstances are such as to render it proper to do so BANK OF HINDUSTAN, CHINA, AND JAPAN *v* PREMCHAND RAICHAND. AHMEDBHAI HAB.BHAI *v* PREMCHAND RAICHAND . . . **5 Bom. O C. 83**

100. ———— Recorder of Rangoon, errors in trial before—*Decision against validity of will* The mere fact of errors of pro-

101. ———— Order passed without legal evidence—*Civil Procedure Code, 1859, s 246* A party to a certain proceeding instituted under s 246, Act VIII of 1859, having been summoned to give evidence did not attend The Court, considering that his absence was without lawful

aside the order as passed without legal evidence. *Held*, that such action would be substantially a special appeal, which could not be allowed with reference to s. 246. DHUNPUT SINGH *v* INDURCHUNDER DOOGUR . . **13 W. R. 121**

102. ———— Execution-proceedings—*Refusal of party to attend as witness.* A Principal Sudder Ameen ordered the attendance as a witness of a person seeking by his vakil to enforce the execution of a decree, and, on his refusal to attend, sent him to the Magistrate On an application to have the order set aside, a Division Bench of the High Court was of opinion that under the circumstances the order of the Principal Sudder Ameen was arbitrary, vexatious, and unnecessary; but being doubtful, in the absence of any provision

SUPERINTENDENCE OF HIGH COURT—*contd.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*contd.*

(a) CIVIL CASES—*contd.*

Court ought not to interfere with it. *In the m... of the petition of* JANKEE BULLUB SEN **B. L. R. Sup Vol. 716**

s.c JANOKEE BULLUB SEIN *v.* DUKHINA MOHUN CHOWDHRY . . . . **7 W. R. 519**

103. ———— Orders under Legal Practitioners' Act—*Improper exercise of judicial powers under Legal Practitioners' Act (XVIII of 1879), as amended by Act XI of 1896, s. 36—Nature of proof required* Where a District Judge relying upon an unverified report purporting to come from the Secretary of a Bar

Practitioners' Act. In such a case the High Court may interfere under the wide powers of superintendence given by s. 15 of the Charter Act. *In re* SIDDESHWAR BORAL . . **4 C. W. N. 36**

104. ———————— *Order under Legal Practitioners' Act, XVIII of 1879, s 36—Order including a person's name in the list of touts Held*, that in the case of an order passed under s 36 of Act XVIII of 1879 the High Court could only interfere in the exercise of the powers of superintendence conferred upon it by s. 15 of the High Courts Act, 1861, and that it would not interfere even then, where the sole ground upon which its interference was asked for was that the decision of the District Judge was against the weight of the evidence. *In the matter of the petition of* MADHO RAM . . **I. L.R. 21 All. 181**

105. ———— Order for rateable distri-

SUPERINTENDENCE OF HIGH COURT—*contd.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*contd.*

(a) CIVIL CASES—*concld.*

decided an appeal, which had meanwhile been pending, the result of which was that counter petitioners were held to be entitled to much less than they had been awarded by the District Court and had received from petitioner This sum was also less than had been realized by the sale of the six items of property Petitioner, in consequence,

that the petitioner was only entitled to receive back the balance, which had been paid in excess On an appeal being preferred to the High Court .—*Held*, (i) that no appeal lay from the order of the District Court. The order was not a decree; the parties were not parties to a suit, and the order was not one from which a special right of appeal was allowed by the Code. The right of appeal must not be assumed to exist in every matter, which comes under the consideration of a Judge, but must be given by statute or by some authority equivalent to statute Nor does s. 647 of the Code of Civil Procedure confer any right of appeal not expressly given elsewhere by the Code; (ii) that the High Court had no power to revise the order The District Court had jurisdiction to decide the

rate in so far as it was unnecessary; and *semble* that it was entirely illegal. PARASURAM AYYAR v SESHIER (1904) . . I. L. R. 27 Mad. 504

106. ———— Review of judgment—*Revision—Application for revision of an order rejecting an application for review Semble*, that it was the intention of the legislature that the Court, which originally heard a case, should be the Court to decide whether an application to review its former judgment should or should not

(b) CRIMINAL CASES.

107. ———————— *Refusal of High Court to interfere where right of appeal exists.* *Held per* AINSLIE and MCDONELL, *JJ.*, that the High Court, in the exercise of its powers of extraordinary jurisdiction, cannot, in criminal matters, interfere, unless all other remedies provided by law have been previously exhausted. Therefore, where parties who had been convicted of riot by a Magistrate, and who, having a right of appeal to the Sessions Court, instead of doing so, moved the High Court under cl. 15 of the Charter, the Court would not interfere until that remedy had been resorted to EMPRESS v RAJCOOMAR SINGH

I. L. R. 3 Calc. 573

s.c. RAJCOOMAR SINGH v. DINONATH GHUTTUCK

1 C. L. R. 352

108. ———————— *Setting aside valid conviction in case wrongly instituted Per*

v. NOBIN CHUNDER BANIKYA

I. L. R 8 Calc. 560

s c. NOBIN CHUNDER BANIKYA v. EMPRESS.

10 C. L. R. 369

109. ———————— *Order of discharge—Presidency Magistrates' Act (IV of 1876), s 168—Case in which there is no appeal* The only course to be pursued where it is sought to set aside an order of discharge made by a Presidency Magistrate is that laid down in s 168 of Act IV of 1877; and as by that section there is no appeal allowed to a complainant who is a private individual, it is not open to him, by invoking the aid of the High Court under s 15 of the Charter, to obtain under the Court's extraordinary powers that which he might obtain had he a right of appeal. *In the matter of* POONA CHURN PAL

I. L. R. 7 Calc. 447

110. ———————— *Error in law—Offence not constituted on facts proved in non-appealable case.* Where the High Court was of opinion (in a case in which no appeal lay to it) that the facts found by the Court that tried the

reversed the conviction and sentence. REG. v. HARGOVANDAS . . . . . 9 Bom. 448

111. ———————— *Act V of 1861, s 17—Order of executive nature.* The High Court, while considering that an order by a Magistrate professing to act under s. 17 of Act V of 1861 was illegal, refused to interfere, on the ground that the order was one of an executive nature *In the matter of the petition of* RAHOMAN SIRKAR

10 B. L. R. Ap. 4 : 18 W. R. Cr. 67

112. ———————— *Orders under Criminal Procedure Code, 1872, s. 518—Nuisance.* The extraordinary powers conferred on the High Court by s. 15 of the Charter Act extend to the

SUPERINTENDENCE OF HIGH COURT—*contd.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*contd.*

(*b*) CRIMINAL CASES—*contd.*

revising of orders passed under the Code of Criminal Procedure, s 518 GHOSHAIN LUCHMUN PERSHAD POOREE *v.* POHOOP NARAIN POOREE 24 W. R. Cr. 30

113. ———— *Order under Criminal Procedure Code (Act X of 1872), s. 518—Nuisances.* The High Court cannot interfere, under s 15 of the Charter Act, with orders duly passed by a Magistrate under s. 518 of the Criminal Procedure Code. *In the matter of the petition of* CHUNDER NATH SEN . . I. L. R. 2 Calc. 293

114. ———— *Orders under Criminal Procedure Code, 1872, s 518—Criminal Procedure Code, 1872, s. 297—Orders in judicial proceeding. Held*, that, orders legally made under s. 518 of the Code of Criminal Procedure not being orders made in a judicial proceeding, the High Court had no power to deal with them under s 297 of the Code of Criminal Procedure; but where an order under that section was illegal, the High Court set it aside under s. 15 of the Charter Act, 24 & 25 Vict., c. 104. *In the matter of the petition of Chunder Nath Sen, I. L. R 2 Calc 293*, followed BRADLEY *v.* JAMESON . I. L. R 8 Calc. 580

CHUNDER COOMAR ROY *v.* OMESH CHUNDER MOJOOMDAR . . . 22 W. R. Cr. 76

BANEE MADHUB GHOSE *v.* WOOMANATH ROY CHOWDHRY . 21 W. R. Cr. 26

SREENATH DUTT *v.* UNNODA CHURN DUTT 23 W. R. Cr. 34

115. ———— *Order of Magistrate under s. 518, Criminal Procedure Code, 1872.* [illegible]

though the matter had already been brought to the notice of the Court on a reference made by the Sessions Judge. KALI NARAIN ROY CHOWDHRY *v.* ABDOOL GUFFOOR KHAN 22 W. R. Cr. 24

116. ———— *Criminal Procedure Code (Act X of 1882), s 144—Order to abstain from certain act* A Deputy Commissioner [illegible]

out jurisdiction. ABAYESWARI DEBI *v.* SIDHESWARI DEBI . . . . . I. L. R. 16 Calc. 80

117. ———— *Criminal Procedure Code (Act V of 1898), ss 145, 435—Power of local Legislature—Power of revision by High Court—Order concerning a ferry purporting to be made under s. 145.* The local Legislature has power to overrule a statutory power conferred on the High Court; but this was not the object and result of the legislation expressed in s. 435 of the Criminal Procedure Code of 1898. *Empress v. Burah, I. L. R 4 Calc, 172 : L. R. 5 I. A. 178*, referr [illegible] under [illegible] must [illegible] such [illegible] dictio [illegible] passed under the exempted sections would not bring them within those sections so as to debar the exercise of powers by the High Court under s. 15 of the Charter Act. *Abayeswari Debi v. Sedheswari Debi, I. L. R. 16 Calc, 80 ; Ananda* [illegible] *19 Calc* [illegible] 3 C. W. N. 49

118. ———— *Criminal Pro-* [illegible] *of jurisdiction of Magistrate.* Where [illegible] was a dispute as to the ownership of the lands between certain zamindars and their tenants on the one side and other zamindars and their tenants on the other, and the real matter for determination [illegible] parties of zamin- [illegible] lands, [illegible] tled to [illegible] roceed- [illegible] cedure [illegible] the zamindars only were made parties and not the tenants. *Held* (AMEER ALI and STANLEY, *JJ.*), [illegible] necessary parties to the pro- [illegible] them parties [illegible] is an illegality [illegible] *stify* the High [illegible] PRINSEP, *J.*— [illegible] Court in setting aside [illegible] The omission to join the tenants could not vitiate an order as between the zamindars on an objection that it was without jurisdiction, and that no question of jurisdiction arose in the matter The High Court's powers are under the Charter Act, and these could be exercised only in respect of jurisdiction. Where a Magistrate recorded proceedings under s. 145 of the Code of Criminal Pro-

SUPERINTENDENCE OF HIGH COURT—*contd.*

3. CHARTER ACT (24 & 25 VICT , C. 104), S. 15 —*contd.*

(b) CRIMINAL CASES—*contd.*

cedure and his successor on the same materials revised those proceedings altering their entire character, converting the dispute, which was ori-

Magistrate so to alter the proceedings, and an abuse which would justify the intervention of the High Court under the powers conferred by the Charter. AMEER ALI, J —The High Court has the power to interfere both under its revisional jurisdiction as also under cl. 15 of the Charter *Hurbullubh Narain Singh v. Lachmeswar Prosad Singh, I L. R. 26 Calc 185*, referred to LALDHARI SINGH v SUKDEO NARAIN SINGH I. L. R. 27 Calc. 892
4 C. W. N. 613

119. ———— *Order of remand —Criminal Procedure Code (Act XXV of 1861), s. 224.* Where a Magistrate had adjourned an inquiry for a cause not contemplated by s. 224 of the Criminal Procedure Code, the High Court, in exercise of the power of superintendence conferred by s. 15 of 24 & 25 Vict , c. 104, set aside the order of remand. *In the matter of the petition of* MATHURANATH CHUCKERBUTTY
9 B. L. R. 354 : 17 W. R. Cr. 55

MENT OF BENGAL. QUEEN v AMEER KHAN
7 B. L. R. 250 note . 15 W. R. Cr. 60

121. ———— *Order by Judge*

re GOVERNMENT OF BENGAL QUEEN v. AMEER KHAN . . . . 7 B. L. R. 244 note

122. ———— *Order of Magistrate for warrant without jurisdiction.* The High Court has power under its general powers of super-

SUPERINTENDENCE OF HIGH COURT—*contd*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*contd.*

(b) CRIMINAL CASES—*contd.*

123. ———— *Power of High Court to revise an order as to sanction under s. 197 of the Criminal Procedure Code—Criminal Proce-*

124. ———— *Power of High Court to revise order of Presidency Magistrate dismissing complaint—Letters Patent, High Court, cl. 28—Order for further enquiry* The High Court has powers of revision in respect of an order of discharge passed by a Presidency Magistrate, by reason not of cl. 28 of the Letters Patent, 1865, but of s 15 of the Charter Act (24 & 25 Vict , c. 104). That section has always been interpreted in a very extended meaning so as to give ample

R. 26 Calc. 746, dissented from. *Opoorba Kumar Sett v. Probod Kumari Dassi, 1 C. W. N. 49,*

BARENDRA NATH MOZUMDAR
I. L. R. 27 Calc. 126
3 C. W. N. 601

OPOORBA KUMAR SETT v. PROBOD KUMARI DASSI
1 C. W. N. 49

125. ———— *Criminal Procedure Code, ss 145 and 435 (3)—High Court's*

of superintendence to interfere with an order passed

SUPERINTENDENCE OF HIGH COURT—*contd.*

3. CHARTER ACT (24 & 25 VICT., C 104), S. 15 —*contd.*

(*b*) CRIMINAL CASES—*contd.*

by a Court having jurisdiction under Cap. XII of the Code, interference with which in revision is excluded by s 435 (*3*). *Hurbullubh Narain Singh* v. *Luchmeswar Prosad Singh, I L. R. 26 Calc. 188*, and *Mahadeo Kunwar* v. *Bisu, I. L R. 25 All. 537*, referred to MAHARAJ TEWARI *v.* HAR CHARAN RAI (1904) . . I. L. R. 26 All. 144

126. ———— *Charter Act—Revocation of sanction—Power of High Court.* Under sub-s. (*6*) of s. 195 of the Code of Criminal Procedure a petition by way of appeal lies to the High Court in every case in which a Civil or Criminal Court subordinate to it, within the meaning of sub-s (7) (*a*), gives or refuses a sanction, whether in respect of an offence committed before it or of one committed before a Court subordinate to it, and, in the latter case, whether it gives a sanction refused by the Subordinate Court or revokes a sanction accorded by such Court Under cls (*b*) and (*c*) of sub-s (*1*), the sanction may be accorded in the first instance by the Court to which the Court in which the offence was committed is subordinate, even though no application for sanction has been made to the latter Court. For the purposes of cls. (*b*) and (*c*) of sub-s. (*1*), a sanction accorded by the High Court would operate as a sanction accorded by a Court subordinate to it, such as the District Court. An order passed by an Appellate Court is, in law, the order which ought to have been passed by the Subordinate Court, and will in consequence, have the same efficacy and operation as the order which ought to have been passed by the latter. S. 439 of the Code of Criminal Procedure provides that the High Court ... [illegible]

refusal proceeds on an error of law, it may accord the sanction which ought to have been granted by the Appellate Criminal Court and such sanction will be operative for the purposes of cls. (*b*) and (*c*) of sub-s. (1) A plaintiff in a suit applied for attachment before judgment and filed an affidavit in support of that application, in which he stated that the defendants intended to alienate their properties with *mala fide* intentions. He did not state in the affidavit that this statement was based on what he had been told. He was, however, orally examined, and then deposed that he had heard that the defendants were intending to alienate property. The petition was dismissed. Thereupon sanction was asked for, the Subordinate Judge according sanction only for an offence under s 199 of the Penal Code, and refusing sanction for offences under ss. 193, 196 and 200. The sanction accorded was not based on the oral evidence, but on the statement in the affidavit. The defendants appealed (under s. 195 of the Code of Criminal Procedure) against the refusal to grant sanction for offences, under ss. 193, 196 and 200, to the District Judge who accorded sanction for the prosecution of the petitioner under those sections also. *Held*, on revision, that the District Judge had not exercised a sound discretion in according the sanction, for although the petitioner had not stated in his affidavit that the statements therein were made on hearsay, he had stated so in his oral evidence and the affidavit was not inconsistent with that evidence. *Quære* Whether a Village Magistrate is a Magistrate within the meaning of s 197, cl (2) of the Code of Civil Procedure, as that expression is defined in the Imperial General Clauses Act PALANIAPPA CHETTI *v* ANNAMALAI CHETTI (1904) I. L R. 27 Mad. 223

[illegible]

"High Court" within the meaning of sub-s [illegible] s 195 of the Criminal Procedure Code. *Faliruddin* v. *G. L. Garth, 3 C. W. N. 91*, referred to. He may, therefore, extend the time for such prosecution, if good cause be shown *Darbari Mandar* v. *Jogoo Lal, I. L. R 22 Calc. 573*, dissented from. *Joydeo Singh* v. *Harihar Parshad Singh, I. L. R. 11 Calc. 577; Mangoram* v. *Behari*, [illegible] *Sinna Gounden*, I. L [illegible] 797

128. ———— *Power of superior Court to revoke sanction after complaint lodged.* P obtained sanction from a Stationary Sub-Magistrate to prosecute *S* for offences under ss. 211 and 193, Penal Code, alleged to have been committed before that Magistrate *P* did not prefer any complaint in pursuance of the sanction, but the police, relying on it, preferred a charge sheet to the Joint Magistrate against the accused in respect of all alleged offences under s 211. The Joint Magistrate struck the case off his file, giving as his reason for so doing that the ... *suo motu* quashed the Sub- ... 195 (*b*) of the Code [illegible]

though authorised under s. [illegible] appeals preferred by persons convicted on a trial by the Stationary Magistrate, is not the Court to which appeals from the Court of the Stationary

SUPERINTENDENCE OF HIGH COURT—*contd.*

3. CHARTER ACT (24 & 25 VICT , C 104), S. 15—*contd.*

(b) CRIMINAL CASES—*contd.*

Magistrate ordinarily be, within the meaning of s. 195 (7). The Court, to which the Court of the Stationary Magistrate is, within the meaning of [illegible]

[illegible] trict Magistrate alone having the power to revoke or grant a sanction given or refused by the Stationary Sub-Magistrate. Nor was it competent to a District Magistrate, under s 407, to direct that applications for revoking or granting a sanction given or refused by a Sub-Magistrate may be presented to the Joint Magistrate. Whether the Court authorised to exercise such a power (under sub-s. (6) can exercise it *suo motu*, as if it were a Court of revision, where no application has been made to it either to give a sanction, which has been refused or to revoke a sanction, *which has been* given. *Quære* The course pursued by the police in sending a police report in respect of the offence was contrary to law; but whether, on the strength of the sanction accorded to *P*, a police officer or other stranger might have preferred a complaint against *S* *Quære*. The mere fact that a complaint has been made, in pursuance of sanction, will be no bar to a Court competent under sub-s. (6) to deal with an application for revoking such sanction, entertaining such application and dis- [illegible]

I. L. R. [illegible] Mad. 1[illegible]

129. ——— *Sanction—Notice to accused—Reference to High Court—Revisional* [illegible]

[illegible] of Government whether such opportunity should [illegible]

SUPERINTENDENCE OF HIGH COURT—*contd.*

3. CHARTER ACT (24 & 25 VICT , C. 104) S. 15—*contd.*

(b) CRIMINAL CASES—*contd.*

the Court therefore acts in its judicial capacity in granting the sanction on legal evidence. But the Government in according or withholding sanction under s. 197 (for the prosecution of a public servant in respect of an offence alleged to have been committed by him as such public servant), acts purely [illegible]

[illegible] case of sanction accorded under s 195. *In the matter of* KALAGAVA BAPIAH (1904)

I. L. R. 27 Mad. 54

130. ——— *Sanction to prosecute—Revision—Appeal—Penal Code (Act XLV of 1860*) [illegible] under [illegible] dure n[illegible] by wa[illegible] what name the application is called in pursuance of which the appellate Court revokes (or grants) a sanction granted (or refused) by a subordinate Court *Mehdi Hasan v. Tota Ram, I. L. R. 15 All 61*, discussed. *Held*, also, that to constitute the offence provided for by s 211 of the Penal Code is sufficient that a false complaint should be made against any person It is not necessary that a summons should be issued upon such complaint HARDEO SINGH *v.* HANUMAN DAT NARAIN (1904) I. L. R. 26 All. 244

131. ——— *High Court's powers of revision—Criminal Procedure Code, s 195—Sanction to prosecute—Sanction granted by a Civil Court.* Where sanction to prosecute in respect of several offences under various sections of the Penal Code was granted by a Munsif, and his order was upheld by the District Judge in revision, it was *held* that the High Court had jurisdiction to interfere in revision under s. 439 of the Code of Criminal Procedure. *In re Chennanagoud, I. L R. 26 Mad. 139*, dissented from *Held*, also, that it is not expedient that a sanction to prosecute should be given to a debtor to use against his creditor. NAZIR HASAN *v* DOST MUHAMMAD (1904)

I. L. R. 26 All. 1

132. ——— *Sanction to pro-* [illegible]

SUPERINTENDENCE OF HIGH COURT—*contd.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15—*contd.*

(b) CRIMINAL CASES—*contd.*

no *locus standi* and should not be heard. JHALAN JHA *v.* BUCHAR GOPE (1904)
I. L. R. 31 Calc. 811

133. ——— *High Court's powers of revision—Order passed by a Munsif directing the prosecution of a party to a civil suit.* Where a Munsif acting under s. 476 of the Code of Criminal Procedure directed the prosecution of a party to a civil suit pending before him, it was held by STANLEY, *C J*, and BLAIR, *J*, that the High Court had no jurisdiction in the exercise of its revisional powers of the criminal side under [illegible]

High Court has power under s. 439 of the Code of Criminal Procedure to revise an order made under s 476 of the Code, whether such order be made by a Civil, Criminal, or Revenue Court *Emperor* v *Muhammad Khan, All. Weekly Notes, (1902), p 202 ; In the matter of the petition of Mathura Das, I. L. R 16 All 80 ; In the matter of the petition of Alamdar Hussain, I. L. R. 23 All 249 ; Khepu Nath Sikdar* v. *Gris Chunder Mookerjee, I. L. R. 16 Calc. 730 , Chudhura Mahomed Isarul Hug* v. *Queen-Empress, I. L R. 20 Calc. 349 ; Queen-Empress* v. *Srinivasalu Naidu, I L R. 21 Mad 124 ; Queen-Empress* v *Rachappa, I. L R. 3 Bom. 109 , In re Bal Gangadhar Tilak, I L R. 26 Bom 785 ; Eranholi Athan* v. *King-Emperor, I L. R 26 Mad. 98* , and *Kali Prosad Chatterjee* v *Bhubon Mohini Dasi, 8 C. W. N 73*, referred to. BHUP KUNWAR, *In the matter of the petition of.* (1904)
I. L R. 26 All. 249

134. ——— *Sessions Court—Charge, power to amend—Amendment not to go beyond subject-matter of indictment—Remand order by High Court, effect of—Discretion of Sessions Judge—Jurisdiction.* The Sessions Court is not a Court of Original Jurisdiction and though vested with large powers for amending and adding to charges can only do so with reference to the immediate subject of the prosecution and committal and not with regard to a matter not covered by the indictment. Where a remand order of the High Court directed the accused to be tried under [illegible]

had the power to alter the charge. It was found, however, that these charges related to events, [illegible]

accused on the amended charge, notwithstanding the remand order of the High Court, this objection not having been raised and dealt with, when that order was made BIRENDRA LAL BHADURI *v* KING-EMPEROR (1904) . . **8 C. W. N. 784**

4. CIVIL PROCEDURE CODE, 1882, S. 622

1. ——— *Order made by High Court, application to review.* S. 622 of the Civil Procedure Code (XIV of 1882) does not apply to a case where the order, of which review is sought, is made by the High Court. The Court referred to in s. 622 is a Court other than the High Court. *In re* PREMJI TRIKUMDAS
I. L. R. 17 Bom. 514

2. ——— *Application where it was found an appeal lay—Application* [illegible] made s 622 found [illegible]refore [illegible]e, the [illegible] appeal [illegible]h Court [illegible]n made [illegible] appeal) on the proper Court-fees being paid. [illegible]*ahomed* [illegible] *757, Wahidin* v. *Hakiman, I L. R. 25 Calc* [illegible] referred to. SRIDHARAU SOMAYAJIPAD *v* PURAMATHAN SOMAYAJIPAD . **I. L. R. 23 Mad. 101**

3. ——— *Delay in mov*[illegible] [illegible]chaser applied to [illegible]e of its [illegible]ode, an [illegible]roperty [illegible]at such [illegible]e near- [illegible] order, [illegible]it had the Court, having regard to the [illegible] elapsed before such application was made, refused to interfere. *In the matter of the petition of* DURGA PRASAD . . . **I. L. R. 4 All. 154**

4. ——— On the question whether the High Court should refrain from exer[illegible] [illegible] of the long [illegible] he decree, [illegible]y charge- [illegible]ATAY LAL [illegible] **All. 125**

5. ——— *Interference without] application by a party to suit.* A High Court can interfere under s. 622 of the Code of Civil Procedure without an application made to it by a party to the suit. ANTHONY *v* DUPONT
I. L. R. 4 Mad. 217

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622—*contd*

6. ——— *Interference*

of the District Judge, who took the same view, and the latter referred the case to the High Court under that section, it was *held* that the Court had no power to interfere. MAHOMED FOYEZ CHOWDHRY *v.* GOLUCK DASS . . 7 C. L. R. 191

7. ——— *Revision of order of lower Court—Power of High Court, on the application of a third party—Original order passed for delivery of possession to auction-purchaser—Dispossession of auction-purchaser by a claimant—Order for registration of name of claimant—Jurisdiction of Court to re-open execution-proceedings.* On a dispute arising between two contending parties, *A* and *B*, for registration of their names, a reference was made to the District Judge under s. 55 of the Land Registration Act, and a decision was passed in favour of *A*, the petitioner, who was

Judge issued a fresh writ of possession but *A* resisted the execution of that writ and possession,

were made to the delivery of possession to the opposite party, and several successive writs of possession were issued by the Subordinate Judge. *Held*, that, under the above circumstances, *A* had

to be taken. *Mahomed Foyez Chowdhry v. Goluck Dass, 7 C. L. R. 191*, explained and distinguished. *Raghu Nath Gujrati v. Rai Chatrapat Singh, 1 C. W. N. 633*, referred to That it was not open to the Subordinate Judge to make the original order for delivery of possession over again, and the proceedings of the Subordinate Judge were bad *ab initio* GOLAM MAHAMMAD *v.* SARODA MOHAN MOITRA . 4 C. W. N. 695

8. ——— *Case where other specific remedy exists—Bom. Reg II of 1827, s. 5—Certiorari—Mandamus—Prohibition—Specific Relief Act (I of 1877) Ch VIII* A Division Bench (PINHEY and NANABHAI HARIDAS, JJ.) of the

subject to the general control of the Court. (ii)

Inferior Court in any matter committed by the Legislature to the discretion of such Court. (iv) Where an appeal is provided, the Court will not

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622 —*contd.*

interfere by any peremptory order with the ordinary course of adjudication, save in cases wherein a defeat of the law and a grave wrong are manifest, and are irremediable by the regular procedure (v) Where a decree or order of a subordinate Court is declared by the law to be, for its own purposes, final or conclusive, though in its nature provisional, as subject to displacement by the decree in another more formal suit, the Court will have regard to the intention of the Legislature that promptness and certainty should, in such cases, be in some measure accepted instead of juridical perfection. It will rectify the proceedings of the inferior Court

to the inquiry and decision, it will respect the intended finality, and will intervene peremptorily only when it is manifest that by the ordinary and prescribed method an adequate remedy, or the intended remedy, cannot be had. (vi) The Court will, in all cases, regard its exercise of the extraordinary jurisdiction as discretional, and subject to con-

is sought Should other special causes appear for or against the Court's intervention, due weight is to be given to them, regard being always had to the principles already enunciated. (vii) The Court will "sedulously abstain" from making any order or refusing to make it on grounds the appreciation of which is exclusively assigned by law to some other authority, provided the legal competence be exercised in good faith on matters that may reasonably be understood as within its lawful range SHIVA NATHAJI *v* JOMA KASHINATH

I. L. R. 7 Bom. 341

9. ———— *Cases in which appeal lies—"Decree"—Order rejecting memorandum of appeal* An order rejecting a memorandum of appeal as barred by limitation is a "decree"

10. ———— *Civil Procedure Code, 1882, s 381—Order dismissing suit on failure to give security for costs* *Held* by the Full Bench, that an order passed under s. 381 of the Civil Procedure Code, dismissing a suit for failure by the plaintiff to furnish security for costs as ordered, was the decree in the suit, and appealable as such, and consequently was not open to revision by the High Court under s. 622 of the Code. WILLIAMS *v* BROWN . I. L. R. 8 All. 108

11. ———— *Order amending decree under s 206, Civil Procedure Code, 1882—High Court's powers of revision.* A District Judge,

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622 —*contd.*

FIELD, J.—That the order passed by the ...

the suit, and superseded the original decree. *Per* MAHMOOD, *J.*—That an order passed under s. 206 of the Civil Procedure Code constituted an adjudication separate from that concluded by a decree under the Code passed after the parties had been heard and evidence taken, and that the order in the present case was therefore a separate adjudication, and was not appealable under s. 588 Also that, in saying that by "dismissed" his predecessor meant "decreed," the Judge had altered the decree in a manner not warranted by the terms of s. 206; that he had therefore exercised his jurisdiction "illegally and with material irregularity," within the meaning of s. 622 of the Code; and that the Court was consequently competent to revise his order. *Raghunath Das* v. *Raj Kumar, I. L R 2 All. 276, referred to.* SURTA *v.* GANGA

I. L. R. 7 All. 411

s c on appeal under the Letters Patent reversing the judgment of OLDFIELD, *J*, and affirming that of MAHMOOD, *J.* SURTA *v* GANGA

I. L R 7 All. 875

12. ———— *Civil Procedure Code, s 206—Order amending decree in respect of Court-fee in pre-emption suit* An order as to costs contained in a decree for pre-emption directed that the pleader's fees should be calculated with reference ...

calculating the pleader's fees upon the ... of the property. *Held per* OLDFIELD, *J.*—When ... decree is amended under s 206 of the ... is the decree ... lies from it ... the validity of the amendment can be questioned. The matter of amending a decree under s. 206 does not by itself ... "case" within the meaning of s. 622 ... is part of the ... decree is made ... that where an ... was amended ... der s 206 of ... Court had no power to revise such amendment under s. 622 of the Code. *Per* MAHMOOD, *J.* (*contra*). RAGHUNATH DAS *v.* RAJ KUMAR . I. L. R. 2 All. 276

SUPERINTENDENCE OF HIGH COURT—*contd*

4. CIVIL PROCEDURE CODE, 1882, S 622 —*contd*

Held, on appeal under the Letters Patent, that the alteration of the decree was improper, and was not an amendment of the kind authorised by s 206 of the Civil Procedure Code An order passed under s. 206 amending a decree is a separate adjudication, and is not merely a part of the original decree, and such an order is not appealable under s. 588 of the Code Such an order therefore can be revised by the High Court under s 622 The judgment of OLDFIELD, J, reversed, and that of MAHMOOD, J, affirmed. RAGHUNATH DAS v RAJ KUMAR

I L R. 7 All. 876

13. ———— *Civil Procedure Code, s 206—Amendment of decree—Munsif acting illegally but in exercise of jurisdiction.* The holder of a decree passed in a suit on a hypothecation-bond applied under the Civil Procedure Code, s. 206, to have the decree amended by bringing the description of the land contained therein into accordance with that contained in the hypothecation-bond, and the Court made an order accordingly On a revision petition preferred under the Civil Procedure Code, s. 622, by the judgment-debtor —*Held* (reversing the judgment of PARKER, J, but on different reasoning by the two learned Judges constituting the Court), that the High Court had no power to interfere on revision NARAYANASAMI v NATESA . . I. L. R. 16 Mad. 424

14. ———— *Civil Procedure Code, 1882, s 44—Order refusing leave to join claims—Rejection of plaint* In a plaint filed in the Court of a Subordinate Judge, the plaintiff claimed to recover possession of a house, together with some grain which was stored in it The plaintiff applied to the Subordinate Judge for leave, under s 44, rule (a), of the Civil Procedure Code, to join the claim for grain with the claim for pos-

dinate Judge's order was substantially an order

15. ———— *Case in which appeal lies* A tenure having been sold in execution of an *ex parte* decree for rent due in respect of it, the judgment-debtor made an application, to which the purchaser was not made a party, to set

SUPERINTENDENCE OF HIGH COURT—*contd.*

4 CIVIL PROCEDURE CODE, 1882, S. 622 —*contd.*

aside the decree, and the decree was set aside. The decree-holder thereupon applied under s. 622 of the Civil Procedure Code to set aside the order of the Munsif *Held*, that, inasmuch as an appeal lay, under s 558 (cl. 6), from the order of the Munsif, the court ought not to interfere under s 622 RAM KRISTO ROY v NAIK TARA DASS

12 C. L. R. 449

16. ———— *Case in which no appeal lies—Calling for record in case—Per*

dealt with the case as a second appeal under Ch XLII of that Act *Per* STUART, C.J.—The High Court may, under that section, pass in such case any order, whether in regard to fact or law, as it thinks proper *In the matter of the petition of* MUHAMMAD v HUSAIN . I. L. R. 3 All. 203

17. ———— *Interference of High Court where no appeal lies* Where an appeal preferred to the Distict Court against an order refusing an application for execution of a decree for costs was allowed, the High Court, on a second

18.———— *Objection to attachment of property—Objection allowed—Costs —Suit to establish right—Appeal—Refund of costs —Civil Procedure Code, 1882, ss. 244, 280, 283.* An objection to the attachment of property attached in execution of a decree was allowed, the

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622 —*contd.*

19. ——————— *Arbitration—Illegal procedure on arbitration—Invalid award.* Where two of five arbitrators nominated by the parties to a suit and appointed by the Court had not consented before and after ... [illegible]

... new arbitrators was not warranted by the provisions of s. 510 of the Code of the Civil Procedure, and the order of reference to such arbitrators, the award made by them and the decree passed upon the award were consequently illegal —*Held*, that the High Court could set aside the decree under the powers given by s 622 of the Code of Civil Procedure. PUGARDIN RAVUTAN *v* MOIDINSA RAVUTAN

I. L. R. 6 Mad 414

20 ——————— *Arbitration—* [illegible]

I. L. R 3 Mad. 68

21. ——————— *Arbitration—Order setting aside award for misconduct of arbitrator.* An order under s. 521 of the Civil Procedure Code, setting aside an award, made on a reference to arbitration in the course of a suit, under Ch XXXVIII of the Code, on the ground of the arbitrator's misconduct, is not subject to revision by the High Court in the exercise of the powers conferred on it by s. 622 of the Code. CHATTAR SINGH *v.* LEKHRAJ SINGH

I. L. R 5 All. 293

22. ——————— *Arbitration—Act VIII of 1859, s. 318—Award made after time allowed by Court.* An order of reference to arbitration was made on 21st January. Six weeks' time was allowed for the return of the award No application was made for extension of time. The award [illegible]

... the High Court under s 622 of the Code of Civil Procedure :—*Held*, that the award was invalid, and the Court had not failed to exercise jurisdiction within the meaning of s. 622 of the Code of Civil Procedure SIMSON *v.* VENKATAGOPALAM

I. L. R 9 Mad. 475

23. ——————— *Arbitration—Award—Error of procedure—Relief refused on equitable grounds.* *R M*, party to a suit, having authorised his agent to conduct the suit, the agent consented to the case being referred to arbitration by the Court The arbitration was carried on to the knowledge and with the assent of *R M*. On an application by *R. M*, under s. 622 of the Code of Civil Procedure, to set aside the award made by the arbitrators, on the grounds (i) that his pleader had not been authorized in writing, as required by s 506 of the Code, to apply for arbitration; and (ii) that he himself had not consented to the reference —*Held*, that, under the circumstances, *R M* was not entitled to relief. UNNIRAMAN *v.* CHATHAN . . I. L. R. 9 Mad. 451

24. ——————— *Arbitration—Award—Application to file award, objection to—Decree on award, finality of—Private arbitration—Revisional powers of High Court—Jurisdiction—Civil Procedure Code (Act XIV of 1882), ss 520, 521, 525, 526, and 622.* Certain disputes between parties were referred under a written agreement to an arbitrator, who, in due course, made his award. The plaintiff then applied to the Subordinate Judge to have the award filed in Court under the provisions of s. 525 of the Code of Civil Procedure. The defendants came in and objected to the award on the following amongst other grounds: (i) That the value of the property in suit was R500 only, and therefore that the application should have been made in the Munsif's Court and not in that of the Subordinate Judge (ii) That the agreement of submission was vague and indefinite, and did not clearly set out the matters in dispute. The Subordinate Judge overruled the objection without taking any evidence, and directed the award to be filed and a decree to be passed thereon. The plaintiff appealed. The defendants contended ... [illegible] ... it lay to the ... *Held*, ... 525 ... ob-

... and 526 the Court has power to consider ... jections as are mentioned in ss 520 and 521, the above objections did not fall under either section, but that the Subordinate Judge, before entertaining the application, was bound to satisfy himself that he had jurisdiction to entertain it, and for that purpose to take evidence regarding the value ... appeal lay, [illegible]

SINGH . . . I. L. R. [illegible]

25. ——————— *Attachment—Power to set aside order for attachment by another Court.* No Court, other than a Court of appeal or a High Court acting under s. 622 of the Code of Civil Procedure, can discharge an order of attachment issued by another Court. KOLASHERRI ILLATH NARANIAN *v.* KOLASHERRI ILLATH NILAKANDAN NAMBUDRI . I. L. R 4 Mad. 131

26. ——————— *Commission, Order refusing issue of—Civil Procedure Code, ss. 130, 387—Interlocutory orders.* Under s. 622

SUPERINTENDENCE OF HIGH COURT—*contd*

4 CIVIL PROCEDURE CODE, 1882, S 622 —*contd*

of the Code of Civil Procedure, interlocutory orders passed under s 367, refusing applications for the issue of a commission to examine witness, or under s 130, directing the production of documents, cannot be revised *In re* NIZAM OF HYDERABAD

I. L. R 9 Mad. 256

27 ——— *Decree, construction of—Order misconstruing decree.* Where in a case of the execution of a decree in which no second appeal lay to the High Court, the Appellate Court held, on the construction of the decree, that it awarded interest on the principal amount of the decree, the High Court, under s 622 of Act X of 1877, holding that the Appellate Court had misconstrued the decree, and that the decree did not award such interest, modified the order of the Appellate Court accordingly *In the matter of the petition of* MUHAMMAD v HUSAIN

I. L. R 3 All. 203

28. ——— *Decree—Order reversing refusal to set aside ex parte decree* After a decree had been made *ex parte*, the defendant applied to have it set aside The Subordinate Judge refused the application, but his order was reversed by the District Judge *Held*, that no appeal lay, nor would the Court interfere under s 622 of the Civil Procedure Code AUBINASH CHUNDER MOOKERJEE v MARTIN

I. L. R. 8 Calc. 832

29. ——— *Discretion, interference with exercise of—Collector—Hereditary Offices Act (Bom III of 1874), s 10—Collector's certificate* The Collector, when granting a certi-

[illegible]

obvious bad faith, or reckless disregard or wanton perversion of the law on his part. COLLECTOR OF THANA v BHASKAR MAHADEV SHETH

I L. R. 8 Bom. 264

30. ——— *Suit for arrears of rent—Decision of Collector on appeal from Assistant Collector—N.-W. P Rent Act (XII of* [illegible]

[illegible]

31. ——— *Discretion, interference with exercise of—Refusal to grant certificate of sale under Madras Rent Recovery Act—Civil Procedure Code, 1882, s 4* A sale of the tenant's interest in certain land having taken place under ss. 39 and 40 of the Rent Recovery Act, the Deputy Collector refused to issue a sale-certi-

SUPERINTENDENCE OF HIGH COURT—*contd.*

4 CIVIL PROCEDURE CODE, 1882, S 622 —*contd.*

ficate to the purchaser, on the ground that the sale had been irregularly conducted. *Held*, that the [illegible]

I L R. 9 Mad. 332

32 ——— *Discretion, interference with exercise of—Admission by District Court of appeal presented out of time.* Where a [illegible]

[illegible]

33 ——— *Madras Rent Recovery Act (Mad Act VIII of 1865), ss. 10 and 76* The defendant in a suit under the Madras Rent Recovery Act was evicted in pursuance of an order made under s 10 That order having been reversed on appeal, he applied to be replaced in possession, but the Sub-Collector dismissed that application *Held*, that the High Court could not interfere in revision under the Civil Procedure Code, s 622 APPANDAI v SRIHARI JOISHI

I. L. R. 16 Mad. 451

34 ——— *Madras Rent Recovery Act (Mad. Act VIII of 1865), s 76* Orders passed by a Collector under the Madras Rent [illegible]

I. L. R. 17 Mad. 288

35 ——— *Error in law—Civil Procedure Code, 1882, s 32—Interpleader suit, application to be made a party to—Power of High Court on revision—Erroneous construction of Act* A merely erroneous construction of the provisions of an Act is not a ground for relief under s 622 of the Civil Procedure Code *M J* instituted an interpleader suit against two rival claimants, *N* and *A*, in respect of a sum of R20,000 *R* subsequently claimed a portion of the money and applied to be made a party to the suit, but was opposed by *M J* and *N*. The Subordinate Judge [illegible]

[illegible]

ledge, she was not a necessary party under the special provisions of Ch. XXXIII of the Civil [illegible]

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622—*contd.*

nate Judge had failed to exercise a jurisdiction vested in him by law RABBABA KHANUM *v.* NOORJEHAN BEGUM *alias* DALIM SHAHIBA
I. L. R. 13 Calc. 90

36. ——— *Error in law—Dismissal of suit by Small Cause Court—Legal Practitioners' Act* A Small Cause Court having dismissed a suit brought by a pleader to recover from his client a fee claimed for the conduct of a suit, on the ground that such a suit would not lie, because it was based on an oral contract, and such contract could not be enforced by reason of the provisions of the Legal Practitioners' Act, the High Court, under s 622 of the Code of Civil Procedure, reversed the decree of the Small Cause Court. RAMA *v.* KUNJI **I L. R 9 Mad 375**

37. ——— *Error of law—Application to bring decree into conformity with judgment.* A Small Cause Court rejected an application made under s. 206 of the Code of Civil Procedure to bring a decree into conformity with the judgment, on the ground that a former application had been dismissed for default and the petitioner was bound to apply within one month from the date of dismissal and was now too late On an application to the High Court under s 622 of the Code to set aside this order —*Held*, that the High Court could not interfere JIVRAJI *v* PRAGJI
I L. R. 10 Mad. 51

38. ——— *Court acting without jurisdiction—Suit for rent entertained by Small Cause Court under erroneous impression it was due under a contract* A Small Cause Court, which had jurisdiction under Act XI of 1865 to entertain suits for rent only where the claim was founded on contract, erroneously assumed that a sub-tenant, by entering on land with notice that his lessor was bound to pay rent to the landlord, became liable by an implied contract to pay the rent to the landlord, and passed a decree against the sub-tenant for the rent in arrears :—*Held*, that under s. 622 of the Code of Civil Procedure, the High Court had power to set aside the decree *Amir Hassan Khan* v. *Sheo Baksh Singh, I. L. R 11 Calc 6*, discussed and explained. MANISHA ERADI *v* SIYALI KOYA . **I. L. R. 11 Mad. 220**

39. ——— *Material irregularity—Small Cause Court, motion for new trial of case in* The defendant contracted to sell to the plaintiffs a quantity of rapeseed, April-May delivery On the 23rd of April the defendant endorsed over to the plaintiffs a delivery order for the seed given him by *L M & Co*, which plaintiffs presented to *L M & Co* On the 26th April and on three or four subsequent occasions, *L M & Co.* refused to deliver, on the ground that they had till the 31st May for delivery On the 15th May *L M & Co.* failed, and then, but not before, plaintiffs informed the defendant that they had not had delivery from *L M & Co*, and demanded it of him.

SUPERINTENDENCE OF HIGH COURT—*contd.*

4 CIVIL PROCEDURE CODE, 1882, S 622—*contd.*

[illegible]

that the damages were assessable as of the [illegible] April, on which day it was admitted the market rate was as high or higher than the contract rate. The plaintiffs, on this ruling, without going into their case further, accepted judgment for nominal damages, and took out a rule for a new trial on the ground that the Judge was in error in assigning the 25th April, and not the 31st May, as the date which ruled the question of damages. On the argument of the rule, the Full Court decided against the plaintiffs, not on this point, which they did not decide one way or the other, but on another point altogether, *viz*, that the plaintiffs ought to [illegible] *L M & Co*'s refusal [illegible]ing [illegible]rer [illegible]der s 622 of the Civil Procedure Code (Act XIV of 1882) to set aside the order of the Full Court of the Small Cause Court as one which at that stage of the proceedings that Court had no right to make *Held*, that in making the order in question under the circumstances of the case, and the state of the record, the Full Court had acted with material irregularity within the meaning of s. 622 of the Civil Procedure Code, and that the case must be remanded to be dealt with according to law RALLI *v.* PARMANAND JEWRAJ
I. L. R. 13 Bom 642

40. ——— *Execution of decree—Application for execution of decree—Civil Procedure Code, 1877, s 241—Registration Act,* [illegible] made to a District [illegible]ution [illegible]med [illegible]tion [illegible]ecu[illegible]tion, the decree being one passed, not in a regular suit, but in a summary suit, and governed by the period of limitation prescribed by Art. 166, Sch. II, Act IX of 1871. On appeal the Subordinate Judge reversed the order of the Munsif, holding that Art. 167, Sch. II of Act IX of 1871, applied *Held*, that under s. 622 of Act X of 1877, the High Court could not interfere, as the Subordinate Judge had jurisdiction to hear the appeal. SURYAPRAGASA RAU *v* VAISYA SANNYASI RAZU
I. L. R. 1 Mad. 401

41. ——— *Execution of decree—Civil Procedure Code, 1882, s 335—Resistance to execution of decree.* An order under s. 335 of the Civil Procedure Code is subject to revision by High Court under s. 622 of that Code *Shiva Nathaji v Joma Kashinath, I L. R. 7 Bom 341*, followed. SHEORAJ SINGH *v* BANWARI DAS . . . . **I. L. R. 6 All 172**

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622 —*contd.*

42 ———— *Order for possession on application by usufructuary mortgagee ejected by auction-purchaser to be restored to possession—Civil Procedure Code, 1882, s 335* In a suit for sale upon a mortgage the plaintiff, having obtained a decree, assigned the same, and the assignee brought the property decreed to be sold to sale and purchased it himself and obtained possession. A usufructuary mortgagee of the property who had been a party to the suit, and in whose favour the decree was, in so far that it declared his right to continue in possession, applied to be restored to possession and obtained an order in his favour Thereupon the assignee, auction-purchaser, applied in revision to have the order restoring the usufructuary mortgagee to possession set aside *Held*, that the order in question was an order which

SABHAJIT *v* SRI GOPAL . I. L. R. 17 All. 222

43 ———— *Jurisdiction, exercise of—Erroneous decision in suit tried with jurisdiction—Act XII of 1879 s 92* A court that has decided a suit over which it had jurisdic-

HASSAN KHAN *v* SHEO BAKSH SINGH
I. L. R. 11 Calc. 6 . L. R. 11 I. A. 237

44. ———— *Discretion of Court exercised with jurisdiction.* S. 622 of the Code is one of very limited operation ; and where a lower Court has jurisdiction to decide a question of law or fact, the High Court has no power to interfere on revision with the decision on those questions *Amir Hassan Khan* v. *Sheo Baksh Singh, I. L. R. 11 Calc 6*, followed KRISHNA MOHINI DOSSEE *v.* KEDERNATH CHUCKERBUTTY
I. L. R. 15 Calc. 446

45 ———— *Decision by*

46. ———— *Jurisdiction, interference with exercise of—Civil Procedure Code, 1882, s 320—Transfer of decree to Collector for execution—Rules made by Local Government.* A decree passed by a Subordinate Judge upon a bond, in which certain immoveable property was mortgaged, was, in accordance with the rules made by the Local Government under s. 320 of the Civil Procedure Code, transferred to the Collector for execution, A sale in execution took place and the Collector gave the purchaser a certificate of the sale. Upon this certificate the purchaser applied to the Subordinate Judge to give him possession of a larger amount of property than that specified in the certificate, and, upon the refusal of the Court to do so, applied to the Collector to amend the certificate The amend-

Judge had jurisdiction to decide the question, and inasmuch as, even if his decision were wrong,

11 Calc. 6, referred to. SUNDAR DAS *v* MANSA RAM . . . . . I. L. R. 7 All. 407

47. ———— *Jurisdiction, interference with exercise of—Limitation.* A Court

action may therefore be made the subject of revision by the High Court under that section *Amir Hassan Khan* v *Sheo Baksh Singh, I. L. R. 11 Calc 6*, and *Magni Ram* v. *Jiwa Lall, I. L R 7 All 336*, commented on by MAHMOOD, J. *Per* MAHMOOD, J.—The term " jurisdiction " as used by their Lordships of the Privy Council in *Amir Hassan Khan* v. *Sheo Baksh Singh* must be understood in its broad legal sense signifying the power of administering justice according to the means which the law has provided, and subject to the limitations imposed by the law upon the judicial authority. HAR PRASAD *v.* JAFAR ALI
I. L. R. 7 All. 345

48. ———— *Erroneous deci*

the Code of Civil Procedure *Amir Hassan Khan* v. *Sheo Baksh Singh, I. L. R 11 Calc 6* ; *L R. 11 I. A. 237*, and *Sarman Lal* v. *Khuban, I. L. R 17 All. 422*, referred to. SUNDAR SINGH *v.* DORU SHANKAR . . . I. L. R. 20 All. 78

SUPERINTENDENCE OF HIGH COURT—*contd.*

4 CIVIL PROCEDURE CODE, 1882, S. 622 —*contd.*

49. ————— Where the lower

can interfere under s 622 of the Civil Procedure Code. *Semble* In dealing with a case under s. 622 the High Court can look into the evidence and itself investigate the facts KAILASH CHANDRA HALDAR *v.* BISSONATH PARAMANIC

1 C. W. N. 67

50. ————— *Jurisdiction, question not relating to—Alleged errors in decision of suit for pre-emption* In a suit to enforce the right of pre-emption in respect of ...

session of the property, on payment of an amount less than that mentioned in the deed, and this decree was affirmed on appeal The mortgagees appealed to the High Court on the following grounds: "(i) Because it was for the respondents to prove that any portion of the consideration was not paid (ii) Because the lower Court has not considered the evidence of the appellants. (iii) Because the finding of the lower Court is based on conjecture." *Held*, on the question whether such grounds not being grounds on which a second appeal is allowed by Ch XLII of the Civil Procedure Code, the appeal should not proceed rather under Ch XLVI, s 622 of that Code, that the appeal could not proceed under s 622 of the Civil Procedure Code, in consequence of the decision of the Privy Council in *Amir Hassan Khan v Sheo Baksh Singh, I L R 11 Calc. 6*, that only questions relating to the jurisdiction of the Court could be entertained under that section. MAGNI RAM *v* JIWA LAL . . . I. L. R. 7 All. 336

51. ————— *Jurisdiction, interference with exercise of—Second class Subordinate Judge—Subject-matter of suit under R5,000 and within jurisdiction—Amount of decree with accumulations of interest exceeding R5,000—Application for execution—Second appeal.* The plaintiffs obtained a decree in the Court of a second ...

ground that the Court had no jurisdiction under s. 24 of Act XIV of 1869 On appeal the District Judge made an order confirming the decision of the ...

relief under the extraordinary jurisdiction conferred by s. 622 of the Civil Procedure Code (Act XIV of 1882) ...

as were within his cognizance, amongst which were matters in execution in the suit. The mere circumstance that the amount actually due by ... R5,000 could ...

52. ————— *Jurisdiction, interference with exercise of—Error of Mamlatdar—Possessory suit in a Mamlatdar's Court.* The opponents had obtained a decree for the possession of certain land against the brother and father ... Mamlatdar at ... applicants ... decree was executed, and the opponents were put into possession. Thereupon the applicants, on the 19th May 1884, presented a petition in the Mamlatdar's Court, under s 4 of Bombay Act III of 1876, alleging that they had been in actual possession of the lands and had been ousted from them in execution of the decree, and praying that they might be again put into possession The Mamlatdar was of opinion that the matter was *res judicata*, and dismissed the petition He relied on a circular of the Executive Government as his authority. The applicants applied to the High Court under its extraordinary jurisdiction *Held*, that it was not a case for the exercise of the extraordinary jurisdiction of the High Court. The Mamlatdar was no doubt guilty of a formal error. In the exercise of his judicial functions he was bound to be governed by the law as he understood it, or as it had been expounded by superior judicial authority, not as it was understood or expounded by unjudicial persons. This, however, was merely an irregularity on the part of the Mamlatdar not apparently involving an injustice to the applicants, who might bring a suit on their title if they had a title NANA BAYAJI *v.* PANDURANG VASUDEV . I. L. R. 9 Bom. 97

53. ————— *Jurisdiction, interference with exercise of—Civil Procedure Code, 1882, s. 315.* Where an order was passed under s. 315 of the Code of Civil Procedure directing refund to a purchaser in execution of a decree in a suit in which a second appeal lay to the High Court:—*Held*, that under s 622 of the Code of Civil Procedure the High Court could set aside the order, because the judgment-debtor having been found to have a saleable interest, the lower Court had no power to order a refund. KUNHAMED *v.* CHATHU . . I. L. R. 9 Mad. 437

SUPERINTENDENCE OF HIGH COURT—*contd*

4. CIVIL PROCEDURE CODE, 1882, S 622 —*contd*

54. ——— *Jurisdiction, interference with exercise of—Excess of jurisdiction —Arbitrators exceeding jurisdiction* In any case where there is a disregard of the law amounting to an excess of jurisdiction, or a perversion of the purposes of the legislature, the High Court will interfere under its extraordinary jurisdiction where no other remedy is available DAGDUSA TILAKCHAND *v* BHUKAN GOVIND SHET
I. L. R. 9 Bom. 82

55. ——— *Judge putting erroneous construction on section of Act—Civil Procedure Code, 1882, s 329* Where a Judge took an erroneous view of s 329 of the Civil Procedure Code, and proceeded on such erroneous construction to make orders which on a proper construction of the section he would have no jurisdiction to make —*Held*, that it was a proper case for the exercise of the powers given to the High Court under s. 622 of the Code. SALAMBHA *v* MARTYAVA
I L R. 16 Bom. 711 note

See also VISHVAMBHAR PANDIT *v* VASUDEV PANDIT . I L R. 16 Bom. 708

a case where his erroneous construction of s 9 of Bombay Regulation VIII of 1827 resulted in similar action being taken by a Judge

56. ——— *Jurisdiction, interference with exercise of—Civil Procedure Code, 1882, s. 492—Civil Procedure Code, 1859, s 92—Injunction to stay sale pending suit to establish title.* A claim by *R* to certain property which had been attached by *B* in the course of execution-proceedings in the Court of the First Subordinate Judge of Dacca having been rejected, *R* instituted a suit in the Court of the Second Subordinate Judge to establish his title to the property. In that suit he applied to the Court in which his suit was brought for an injunction under s 492 of the Civil Procedure Code to stay the sale of the

[illegible]

of 1882 has, and was intended to have, a wider application than s. 92 of Act VIII of 1859 had, and provides a remedy where property is "in danger of being wrongfully sold:" if the circumstances justified it, an order could have been obtained under that section from the Court of the Second Subordinate Judge to stay the sale. There being this alteration in the law, and such a remedy provided and no express provision in

[illegible]

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622 —*contd.*

the matter of the petition of BRAJENDRA KUMAR RAI CHOWDHURI BROJENDRA KUMAR RAI CHOWDHURI *v* RUP LALL DOSS
I. L. R. 12 Calc. 515

57. ——— *Jurisdiction—Sale set aside on account of irregularity only.* Where a Court, professing to act under s. 311 of the Code of Civil Procedure, set aside a sale in execution of a decree without proof of substantial injury having been suffered by the applicant: —*Held*, that such order was passed without jurisdiction within the meaning of s 622 of the said Code. LAKSHMANA *v*. NAJIMUDIN
I. L. R. 9 Mad. 145

58. ——— *Sale in execution of decree set aside—Material irregularity—Inadequacy of price—Exercise of jurisdiction by*

[illegible]

and that in consequence thereof a grossly inadequate price had been obtained for the property. The Munsif found these allegations to be proved and set aside the sale. On appeal the District Judge, while agreeing with the Munsif as to these findings, held that there was no proof that the inadequacy of price was due to irregularities alleged and proved, and that such could not be presumed. He accordingly reversed the Munsif's order The judgment-debtor, having appealed to the High Court against the order of the District Judge and failed in such appeal by reason of no second appeal lying from such order, applied to the High Court under the provisions of s 622 of the Code to have the order set aside *Held*, that the District Judge having full jurisdiction to determine whether the sale was good or bad, it was impossible to say that, in arriving at the decision he did, he either acted without jurisdiction or illegally in the exercise of his jurisdiction, and that the High Court could not therefore interfere with the order under that section. GOPAL KOERI *v* GOPI LAL . I. L. R. 21 Calc. 799

59. ——— *Jurisdiction, interference with exercise of—Possession given to purchaser—Restitution sought in execution by judgment-debtor—Remedy by suit* Certain land having been attached in execution of a decree by a District Court, *S*, the representative of the judgment-debtor, preferred a claim to the land in his own right, which was rejected, and the land was subse[illegible]

[illegible]

ignorance of the order of the High Court, having subsequently put the purchaser in possession of the land, *S* applied for restitution, but his petition

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622 —*contd.*

was rejected by the District Judge In an application under s 622 of the Civil Procedure Code to revise the Judge's order, on the ground that he refused to exercise his jurisdiction to restore *S* to possession :—*Held*, that the order of the District Judge confirming the sale was passed without jurisdiction, and that the District Judge had no power to restore possession to *S* The High Court therefore could not interfere under s 622. The remedy of *S* was by a separate suit SUBBAYA *v.* YALLAMMA I. L. R. 9 Mad. 130

60. ———— *Jurisdiction, interference with exercise of—Trial of case cognizable only by Small Cause Court.* *S* instituted a suit against *T* in the Court of an Assistant Collector of the first class, who dismissed the suit. On appeal by *S* the District Court gave her a decree ... held that, ... gnizable in ... would not ... thereupon applied to the High Court to set aside, under the provisions of s. 622 of Act X of 1877, the proceedings of both the lower Courts, on the ground that both those Courts had exercised a jurisdiction not vested in them by law. *Held*, that the High Court was competent to entertain such application and to quash the proceedings of both the lower Courts, under the provisions of s 622 of Act X of 1877, and the proceedings of both those Courts should be quashed Observations by STUART, *C.J*, on the powers of revision of the High Court under s 622 of Act X of 1877 SARNAM TEWARI *v* SAKINA BIBI

I. L. R. 3 All. 417

61. ———— *Jurisdiction, interference with exercise of—Beng. Reg. XVII of 1806—Redemption of mortgage* After a mortgage had been foreclosed under the provisions of Regulation XVII of 1806, the representative of the ...

the notice required by s. 8 of that Regulation, and that it did not appear that she had been aware of the foreclosure proceedings. The District Judge subsequently ordered the mortgagee, who was in possession of the mortgaged property under the terms of the mortgage, to surrender the property. The mortgagee applied to the High Court ...

62. ———— *Jurisdiction, interference with exercise of—Improper refusal of jurisdiction.* Where a Munsif improperly refused to investigate a claim under ss 278-280, Civil Procedure Code, 1877, he was *held* to have refused to exercise jurisdiction he was bound to exercise, and the Court set aside his order and ordered the investigation to be made JAMMELA *v.* LUCHMUN PANDAY . . . . 4 C. L. R. 74

63. ———— *Appeal against appellate decree by party to suit who did not appeal* ...

a mortgage of his own land to secure its repayment, and that *V* had dispossessed him, sued *S*, *V*, and *C* to recover the debt by sale of the land mortgaged, mesne profits from *V*, and costs from *S*, *V*, and *C*. The District Munsif decreed payment against *S*; mesne profits, and, in default of payment by *S*, a sale of the land against *V*; and costs against *S*, *V*, and *C*. *V* and *C* appealed against this decree. The Subordinate Judge found that the debt had been paid, and held that, even if the debt had not been paid, *K* had no cause of action against *V* or *S*, but, if at all, against *C*, and dismissed the suit as against *V*. The Subordinate Judge also held that he had no jurisdiction to interfere with the decree against *S*, and saw no reason to interfere with the decree against *C*. *S* appealed against the decree *Held*, that, even if *S* was not entitled to appeal in order to have the decree ... rdinate ... e Code ... se the discretionary power given by s 544 of the said Code SESHADRI *v.* KRISHNAN I. L. R. 8 Mad. 192

64. ———— *Jurisdiction, interference with exercise of—Bengal Minors Act (XL of 1858), s. 3—Refusal to admit person with certificate of administration to defend suit on behalf of minor.* Under s 3 of the Bengal Minors Act (XL of 1858), the Civil Court has no power to refuse to admit a person who has obtained a certificate of administration under the Act, to defend a suit on the minor's behalf, as guardian of such minor. Where a Subordinate Judge had so acted :—*Held*, that the High Court has no power to revise his order under s 622 of the Civil Procedure Code BALDEO DAS *v.* GOBIND SHANKAR I. L. R. 7 All. 914

65. ———— *Jurisdiction, interference with exercise of—Decree, refusal to amend* Where a Court improperly refused to amend a decree which was at variance with the judgment :—*Held*, that in so acting the Court had acted in the exercise of its jurisdiction illegally and with material irregularity within the meaning of s. 622 of the Civil Procedure Code, and its order was

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622—*contd.*

consequently subject to revision under that section. BALMAKUND *v.* SHEOJATAN LAL

I. L. R. 6 All. 125

66. ——————— *Jurisdiction, interference with exercise of—Material irregular-*

not apply is a material irregularity within the meaning of the section *Magni Ram* v. *Jiwa Lal, I. L. R. 7 All. 332*, observed on SEW BUX BOGLA *v.* SHIB CHUNDER SEN

I. L. R. 13 Calc. 225

67. ——————— *Jurisdiction, interference with exercise of—"Illegality"—"Material irregularity."* A suit was instituted in the Court of a Munsif to recover from the defendants a sum of R49, being the amount due under a bond and which the plaintiff alleged had been recovered on her account by one of the defendants from the obligor. The Munsif, being of opinion that the determination of the plaintiff's right to the bond involved the question of her heirship to the estate of a certain deceased person, and that consequently the case before him raised a question affecting the title to property exceeding R1,000 in value, held that he had no jurisdiction to entertain the suit, and accordingly returned the plaint for presentation to the proper Court under s. 57 of the Civil Procedure Code. *Held* by the Full Bench, that the Munsif had acted upon an erroneous view, as the only subject-matter of the suit was the R49; that he had consequently failed to exercise a jurisdiction vested in him, and the High Court was therefore competent to revise his order under s. 622 of the Civil Procedure Code. The result of *Amir Hassan* v. *Sheo Baksh Singh, I. L. R. 11 Calc. 6*, and *Magni Ram* v. *Jiwa Lal, I. L. R. 7 All. 336*, is that the questions to which s. 622 of the Civil Procedure Code applies are questions of jurisdiction only. The meaning of the decision of the Privy Council in the former case is that, if the Court has jurisdiction to

both kinds is final. *Per* STRAIGHT and TYRRELL, JJ.—Clauses (*a*) and (*b*) of s. 584, specifying the grounds on which a second appeal lies to the High Court, embody what s. 622 refers to in the word "illegally," that is to say, to cases where the Court below has, in the exercise of its jurisdiction, come to a decision which is contrary to some specified law or usage having the force of law, or failed to determine some material issue of law or usage. Cl. (*c*) of s. 584 indicates the meaning of the words "material irregularity" in s. 622,—*i.e.*, some material irregularity in procedure, "which may possibly have produced error or defect in the decision of the case upon the merits." *Muhammad* v. *Husain, I. L. R. 3 All. 203* referred to. BADAMI KUAR *v.* DINU RAI . . I. L. R. 8 All. 111

68. ——————— *Jurisdiction, interference with exercise of—Meaning of "jurisdiction"—Amendment of decree—Civil Procedure Code, s. 206—Act XV of 1877, Sch. II, Art. 178.* In execution of a decree for partition of immoveable property passed in 1872, a dispute arose as to the execution in reference to portion of the property, and in 1881 it was finally decided that the decree was defective in its description of the property, and therefore incapable of execution. In May 1885, on application by the decree-holder, the Court passed an order amending the decree, the amendment having reference to an ... applied ... on the ... ree was ... e itself being barred by limitation and finally pronounced to be incapable of execution, the Court

Rai, I. L. R. 8 All. 111* and further that, upon the facts stated, the Court ought not to interfere. *Per* MAHMOOD, J., that the Court was not precluded from entertaining the application for revision under s. 622 of the Civil Procedure Code. *Amir Hassan Khan* v. *Sheo Baksh Singh, I. L. R. 11*

... referred to *Bhagwant Singh* v. *Jagesher Singh, All. Weekly Notes* ... *Hamid* ... dissented ... diction" ... must no ... cuniary limits of the powers of a Court or to the nature of the class to which the case belongs.

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S 622
—*contd*

to the High Court power to interfere with the action of subordinate tribunals in cases where there is no remedy, either by appeal or otherwise, and where those tribunals have either exceeded or wrongly declined to exercise the authority, the power and the jurisdiction which the law confers upon them, or, under the pretence of exercising such authority, power and jurisdiction, have acted against a positive prohibition of the law *Combe* v *Edwards, L R 3 P. D 103,* and *Crepps* v *Durden, 1 Smith's L C, 8th Ed, 711,* referred to *Held*, also, *per* MAHMOOD, *J*, that in the present case the Court below had jurisdiction to entertain the application under s. 206 of the Code, that it did so entertain it, and that in making the amendment its action could not be regarded as beyond the limits of its legal power and authority, so as to render it open to the objection of the exercise of jurisdiction "illegally or with material irregularity" within the meaning of s. 622 *Lucas* v *Stephen, 9 W R 301*, *Oomanund Roy* v. *Suttish Chunder Roy, 9 W R 471*, *Zuhoor Hossein* v *Syedun, 11 W R 142*, and *Goluck Chunder Mussant* v. *Ganga Narain Mussant, 20 W. R. 111,* referred to DHAN SINGH *v* BASANT SINGH . . . . **I. L. R. 8 All. 519**

69. ———————— *Dismissal of suit without considering merits on technical ground—Suit by sole partner for partnership debt* A Court of Small Causes, without considering the merits, dismissed a suit brought by a sole surviving partner to recover partnership debt, on the ground that the plaintiff was not competent to maintain the suit without joining the representatives of the deceased partner as co-plaintiff. *Held*, that it was the Judge's duty to hear and determine the suit which was brought by the person legally entitled to bring it alone in his Court, and in declining to entertain it on the merits he had failed to exercise his jurisdiction, and had acted with material irregularity within the meaning of s 622 of the Civil Procedure Code. *Muhammad Suleman Khan* v. *Fatima, I. L R 9 All* [illegible]

done. GOBIND PRASAD *v.* CHANDAR SEKHAR
I. L. R. 9 All. 486

70. ———————— *Failure to exercise jurisdiction.* Where a Subordinate Judge wrongly held that a suit was one of the nature contemplated by s 539 of the Civil Procedure Code, and returned the plaint for presentation to the District Judge:—*Held*, that the High Court had power, under s 622 of the Code, to interfere, the Subordinate Judge having failed to exercise a jurisdiction vested in him by law. VISHVANATH GOVIND DESHMANE *v.* RAMBHAT
I. L. R. 15 Bom. 148

SUPERINTENDENCE OF HIGH COURT—*contd.*

4 CIVIL PROCEDURE CODE, 1882, S 622
—*contd.*

71. ———————— *Jurisdiction, interference with exercise of—Alleged irregularity by District Judge in decision of suits* A and B, both of whom set up a claim to certain land, brought [illegible] one of R100 [illegible] B to [illegible] The District Judge before whom the rent suits came on appeal allowed them to stand over until the decision in the suit between *A* and *B* That suit was decided in favour of *B*, and the Judge then decided the rent suits instituted by *B* in his favour, and dismissed the suits instituted by *A* *Held*, that there was no such irregularity on the part of he District Judge in the course which he pursued, of making his decision in the rent suit depend upon the decision in the suit to establish title as would justify the Court in interfering under s 622 of the Civil Procedure Code. DOORGA NARAIN SEN *v* RAM LALL CHHUTAR . . . **I. L R 7 Calc. 330**

S C DURGA NARAIN MISSER *v* GOBURDHUN GHOSE . . . . . **9 C. L. R. 86**

72. ———————— *Jurisdiction, interference with exercise of—Sale in execution of decree against estate of deceased—Suit against representatives of deceased husband's estate—Order releasing property from attachment.* In 1862 a suit for mesne profits was brought against certain persons as being the heirs of one Romanath Lahury, deceased, among whom were his widow and two infant sons During the pendency of this suit the two infant sons died, and the widow was made a defendant as representing the estate of her deceased sons The suit was decreed in favour of the plaintiffs in 1875, and on the plaintiff's applying for execution the widow objected that $\frac{5}{16}$ ths of the properties, against which execution was sought, was the property of her adopted son, whom she alleged to have adopted in 1874 The adopted son was not made a party to the suit: this objection was overruled, but the same objection was taken by the adopted son through his natural father as his guardian and next friend and the Court released the $\frac{1}{16}$ th share from attachment, and allowed the objection. Against this order some of the plaintiffs appealed, but pending the appeal another of the plaintiffs applied to the High Court, under s 622 of the Code of Civil Procedure, to have the order set aside The Court refused to interfere with the order, inasmuch as there appeared to be no material irregularity therein. SOTISH CHUNDER LAHIRY *v* NIL COMUL LAHIRY . . **I. L. R. 11 Calc. 45**

73. ———————— *Jurisdiction, interference with exercise of—Civil Procedure Code, 1882, s. 30—Party added after decree.* A Subordinate Judge having permitted the junior widow of a Hindu to be made a party to the proceedings

SUPERINTENDENCE OF HIGH COURT—*contd*

4 CIVIL PROCEDURE CODE, 1882, S 622 —*contd*

in execution of a decree obtained by the senior widow against a debtor of their deceased husband, the High Court declined to interfere under s 622 of the Code of Civil Procedure LINGAMMAL v CHINNA VENKATAMMAL . I. L. R 6 Mad. 227

74. ———— *Jurisdiction, interference with exercise of—Death of sole defendant —Application to add representative* In a suit for the recovery of lands against a sole defendant, the latter died before the hearing Sixty-three days after the death of the defendant the plaintiff applied to the Court to enter on the record the legal representative of the deceased defendant On the 22nd November 1880 the Court rejected the application under the provisions of Art 171B of Act XV of 1877, and ordered the suit to abate On the same day the plaintiff applied to the Court

1880 was out of time, but that the High Court would take cognizance of the case under s. 622 of the Civil Procedure Code BENODE MOHINI CHOWDHRAIN v. SHARAT CHUNDER DEY CHOWDHRY . . . I. L R. 8 Calc. 837
10 C L. R. 449 : 12 C. L. R. 421

75. ———— *Transfer of interest pending suit—Lis pendens—Application to bring transferee upon the record—Civil Procedure Code, s 244.* A decree of the High Court, giving

their purchaser for value. The Court passed an order directing that *G's* name should be placed on the record, so that the decree might be executed against him *Held*, that the application by *R* was meant to be and actually was one praying

SUPERINTENDENCE OF HIGH COURT—*contd.*

4 CIVIL PROCEDURE CODE, 1882, S. 622 —*contd.*

in so far as such interest had passed from him, be brought under the operation of the execution-proceedings; that this was an application under s 372 of the Civil Procedure Code; and the order passed on it, being appealable under s 588 (21), was not open to revision by the High Court under s 622 RAYNOR v. MUSSOORIE BANK
I. L. R. 7 All. 681

76 ———— *Act XX of 1863, s. 18—Order refusing permission to sue* An order passed under s 18 of Act XX of 1863, refusing

See ANONYMOUS.
I. L. R. 10 Mad 98 note

77. ———— *Revision of interlocutory order when appeal lies from final decree —Power of High Court.* There is nothing in s 622 of the Code which prevents the High Court from

I. L. R. 14 Calc. 705

78. ———— *Application and purpose of s 622—Civil Procedure Code, 1882, s 591—Interlocutory orders* An application under s 622 of the Civil Procedure Code cannot be entertained in the case of those interlocutory orders against which, though no immediate appeal lies, a remedy is supplied by s 591, which provides that they may be made a ground of objection in the appeal against the final decree. The purpose with which s 622 was framed was to enable a party to a suit to get a decision or order of a lower Court rectified by the High Court where there would otherwise be no remedy. MOTILAL KASHIBHAI v NANA . I. L R. 18 Bom. 35

79. ———— *Interlocutory order —Rejection of application to appeal as a pauper.* An application for permission to appeal as a pauper was presented, not by the applicant personally, but by his pleader, and was on that ground rejected. *Held*, on an application to the High Court for revision, that s. 622 of Act X of 1877 did not apply to a proceeding

I. L. R. 4 All. 91

SUPERINTENDENCE OF HIGH COURT—*contd.*

4 CIVIL PROCEDURE CODE, 1882, S. 622 —*contd.*

80. ———————— *Rejection of application to sue as a pauper—Refusal on ground of suit being barred.* An application to sue as a pauper having been refused, on the ground that the suit was barred by limitation, the High Court on revision permitted the applicant to renew

... and asked that the petition might be taken as a plaint filed on the date of the first application · this offer was mentioned and refused in the written judgment *Held,* on the case coming up to the High Court under s 622 of Act X of 1877, that the circumstances of the case were not such as would justify the Court in interfering under that section RAM SAHAI SING *v* MANIRAM .

I. L. R. 5 Calc. 807 : 6 C. L. R. 223

81. ———————— *Rejection of application to sue in formâ pauperis—"Right to sue"—Limitation.* Where an application for leave to sue as a pauper was rejected with reference to s 407 (c) of the Civil Procedure Code, on the ground that the claim was barred by limitation, and therefore the applicant had no right to sue·—*Held,* by the Full Bench that the Court had acted within its powers, and that its jurisdiction not having been exercised illegally or with material irregularity, the High Court had no power of interference in revision under s 622 of the Civil Procedure Code. *Amir Hassan Khan* v *Sheo Baksh Singh, I L R 11 Calc 6,* referred to *Per* MAHMOOD, *J*—The word "case" as used in s. 622 of the Civil Procedure Code should be understood in its broadest and most ordinary sense, including all adjudications which might

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fall under the same general category of adjudications as the rejection of an ordinary plaint under s. 53 or s 54 *Phul Singh* v. *Jagan Nath, All Weekly Notes (1882) 39; Bhulneshri Dat* v. *Bidiadhis, All Weekly Notes* (1882) 69; and *Sital Sahu* v. *Bachu Ram, All Weekly Notes (1882), 92,* referred to. Also *Per* MAHMOOD, *J*—The provisions of s. 407 must be interpreted strictly, inasmuch as they operate in derogation of the right possessed by every litigant to seek the aid of the Courts of justice, and an exercise of jurisdiction under that section when such exercise of jurisdiction is open to the objection of illegality or material irregularity, would form a proper subject of revision by the High Court. *Har Prasad* v. *Jafar Ali, I. L R 7 All. 345,* and *Ammal* v. *Nayudu, I. L. R. 4 Mad.* *323,* referred to. CHATTARPAL SINGH v. RAJA RAM . . . . . I. L. R. 7 All. 661

82. ———————— *Res judicata, erroneous decision on.* A wrong decision on a question of *res judicata* is not a subject for the interference of the High Court under s. 622 of the Code of Civil Procedure (Act XIV of 1882). HARI BHIKAJI *v.* NARO VISHVANATH

I. L. R. 9 Bom. 432

83. ———————— *High Court's power of revision—Res judicata—Jurisdiction, meaning of the term.* The plaintiff sued the defendant to recover arrears of an annual allowance to which the plaintiff claimed to be entitled under a sanad dated 1846. The defendant in his defence raised certain points most of which

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even though wrong, of a question of *res judicata* was not a failure or a cause of failure, to exercise jurisdiction and did not warrant the interference of the High Court under s. 622 of the Civil Procedure Code AMRITRAV KRISHNA DESPANDE *v* BALKRISHNA GANESH AMRAPURKAR

I. L R. 11 Bom. 488

84. ———————— *Sale in execution of decree—Fraud—Setting aside order confirming sale.* The purchaser at a sale by public auction succeeded, by the exercise of fraud and collusion with the agent of the execution creditors (though without the creditors' personal knowledge), in becoming the purchaser at a depreciated value. There was no material irregularity in publishing or conducting the sale *Held,* that the High Court had power, under *s. 622* of Act X of 1877, to rescind the order made by the Court of first instance confirming the sale SUBBAJI RAU *v.* SRINIVASA RAU . I. L. R. 2 Mad. 298

85. ———————— *Sale in execution of decree—Pre-emption—Civil Procedure Code, 1877, ss. 310, 311—Locus standi of pre-emptor in execution-proceedings* A person claiming to be a co-sharer in certain undivided immoveable property, a share of which had been *sold in execution* of a decree, objected to the confirmation of the sale in favour of the person recorded as the auction purchaser, and prayed that it might be confirmed in his favour, with reference to the provisions of s. 310 of the Civil Procedure Code.

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622—*contd.*

The Court disallowed the objection and confirmed the sale in favour of the auction purchaser The objector thereupon applied to the High Court for revision of the order of the lower Court under s. 622 of the Civil Procedure Code. *Held*, that, having been allowed to object to the confirmation of the sale and treated as a party to the proceeding held therein, it was competent for him to make such application, notwithstanding that he was not one of the persons mentioned in s. 311 of the Code; that there being no appeal in the case, so far as he was concerned, the High Court was competent to entertain the application under s. 622 of the Code, but that, as he was not one of the persons who was competent to avail himself of the provisions of s 311, he had no *locus* [illegible]

[illegible]

86. ——— ——— *Distribution of assets—Application of decree-holder struck off* Where a rateable distribution was ordered among decree-holders whose applications had been struck off the file prior to realization of assets —*Held*, that it was open to the party injured to apply to the High Court under s 622 to reverse the order. TIRUCHITTAMBALA CHETTI *v* SESHAYYANGAR

I. L. R. 4 Mad. 383

87. ——— *Execution-proceedings—Rateable distribution—Application for further execution—Notice. A* and subsequently *B* obtained decrees against *X*, in execution of which the same land was attached, and *B* obtained an order for rateable distribution. Neither decree was [illegible]

I. L. R. 9 Mad. 508

88. ——— *Failure to exercise jurisdiction—Refusal of application for rateable distribution of sale-proceeds* A debtor against whom several decrees had been passed filed his petition in the Insolvency Court at Madras and the usual vesting order was made. One of the decree-holders had already attached property of [illegible]

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S 622—*contd.*

for rateable distribution of the proceeds of sale to be held in execution of the attachment already made. The District Judge held that the vesting [illegible]

by law VIRARAGHAVA *v* PARASURAMA

I. L. R. 15 Mad. 372

89 ——— *Sanction for prosecution —Act X of 1872 (Criminal Procedure Code), ss. 468, 469.* The discretionary power [illegible]

petition of MADHO PRASAD . **I. L. R. 3 All. 508**

90. ——— *Power of revision over Small Cause Court, Calcutta—Alleged excess of jurisdiction by Small Cause Court—Trespass to immoveable property* The plaintiff brought a suit in the Calcutta Court of Small Causes to recover damages for trespass to certain immoveable property of which he proved he was in possession The defendant contended that such a suit was [illegible] erest not The the [illegible]

[illegible] on such application, that the Court had jurisdiction to entertain such a suit PEARY MOHUN GHOSAUL *v.* HARRAN CHUNDER GANGOOLY

I. L. R. 11 Calc. 261

91. ——— *Civil Procedure Code, 1882, s 43—Cause of action—Splitting a claim—Separate suits for rent due for successive years.* Petitioners filed two suits in a Small Cause Court on the same day to recover rent due for two successive years under the same lease The sum of the two claims exceeded the pecuniary limit of the Court's jurisdiction. The suit for the rent of the first year was dismissed [illegible]

[illegible] the maintenance of the two suits, yet as the petitioners had no intention of abandoning either claim, the proper course was to allow them to withdraw both suits and file a fresh suit in a competent Court. ALAGU *v.* ABDOOLA

I. L. R. 8 Mad. 147

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622 —*contd.*

92. ——— *Civil Procedure Code, s 25, order under, for transfer of suit. Held,* that an order under s. 25 of the Civil Procedure Code, transfer
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to revision by ... High Court under s. 622. FARID AHMAD *v.* DULARI BIBI . I. L. R. 6 All. 233

MUHAMMAD SAFDAR HUSEN *v.* PURAN CHAND I. L. R. 20 All. 395

93. ——— *Court Fees Act, 1870, s. 6, and Sch. II, Art 17 (1)—Stamp—Valuation by subordinate Court—Practice—Civil Procedure Code (Act XIV of 1882), s 622, and Bom. Reg. II of 1827, s 5* A decision by a subordinate Court on a question of valuation, determining the amount of a Court-fee, *is,* notwithstanding its declared finality, subject to revision by the High Court under s 622 *of the Civil Procedure* Code (Act XIV of 1882) *and s 5 of Regulation* II of 1827. VITHAL KRISHNA *v.* BALKRISHNA JANARDAN . . . I. L. R. 10 Bom. 610

94. ——— *Order dismissing suit for insufficient stamp* In a suit instituted upon a ten-rupee stamp for an account, the removal of the *original trustee* and the appointment of a new trustee, where the value of the trust property was 5 *lakhs* of rupees, the Court below directed that the stamp should be calculated upon the value of the trust property, and ordered that the deficiency should be made up within a particular time Before the time expired, a rule was obtained from the High Court under s 622 of the Civil Procedure Code to show cause why the order should not be set aside. *Held,* that the

valued, there would have been an appeal. OMRAO MIRZA *v* JONES . . . 12 C. L. R. 148

95. ——— *Order made without jurisdiction under Act XIX of 1841, ss. 3 and 4.* Where a District Court, purporting to act under s 4 of Act XIX of 1841, directed an inventory of the estate of a deceased person to be taken without conforming to the requirements of s 3 of that Act, the High Court set aside the order under s 622 of the Code of Civil Procedure as made without jurisdiction. ABDUL RAHIMAN *v* KUTTI AHMED . . I. L. R. 10 Mad. 68

96. ——— *Act XIX of 1841, ss. 2, 3, 5, 15—Order of District Court on petition by Court of Wards.* On a petition presented by the Agent of the Court of Wards, a District Court made an order which purported to have been made under Act XIX of 1841, s 5 The conditions
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I. L. R. 12 Mad. 341

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S 622 —*contd.*

97. ——— *Bengal Tenancy Act (VIII of 1885), ss 104, cl 2, 105, 106, 108—Rule 33 of the rules made under the Act —Jurisdiction—Record of right—Civil Procedure Code (Act XIV of 1882), ss. 108, 622—Order of Special Judge as to settlement of rents.* The High Court has no jurisdiction either to entertain a second appeal from, or to interfere under s 622 of the Code of Civil Procedure with, an order of a special Judge in regard to settlement of rents. SHEWBARAT KOER *v.* NIRPAT ROY I. L. R. 16 Calc. 596

98. ——— *Bengal Tenancy Act (VIII of 1885), s 174—Deposit, nature of—Jurisdiction—Application under s 622 of the Civil Procedure Code.* The deposit under s. 174 of the Tenancy Act must be of such a nature as to be at once payable to the parties, and a court has no power to set aside a sale under that section unless the judgment-debtor has complied strictly with its provisions Where, therefore, the Court accepted a deposit partly of cash and partly of a Government Promissory Note, and notwithstanding the objection of the auction purchaser gave the judgment-debtor the benefit of s 174 and set aside the sale, the High Court set aside such order under s. 622 of the Civil Procedure Code. RAHIM BUX *v.* NUNDO LAL GOSSAMI I. L. R. 14 Calc 321

99. ——— *Bengal Tenancy Act (VIII of 1885), s 190 Suit for rent—Co*

Singh, I L. R. 11 Calc. 6 L. R. 11 I. A. distinguished JUGOBANDHOO PATTUCK *v.* JADU GHOSE ALKUSHI . . I. L. R. 15 Calc. 47

100. ——— *High Court's power of interference with order of Special Judge —Rules under Bengal Tenancy Act, Ch. VI, No 25, —Power of Local Government to make the rule— Bengal Tenancy Act, ss 104, 108, and 189* A number of tenants were joined as defendants in a proceeding for settlement of rents under s. 104, cl. 2, of the Bengal Tenancy Act, and an appeal preferred by the landlords under s. 108, cl. 2, from the Revenue officers' decision making all or nearly

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622 —*contd*

all the tenants respondents The appeal was dismissed by the Special Judge, on the ground that as many Court-fees of R10 each as there were tenants defendants had not been paid, and the appellants petitioned the High Court to set aside the order under s 622 of the Civil Procedure Code *Held*, by a Full Bench (i) that the Special Judge refused to exercise a jurisdiction vested in him by law; that the Court of Special Judge is a Court subordinate to the High Court, and the High Court had power to interfere under s 622 of the Civil Procedure Code *Sheobarat Koer* v *Nirpat Roy, I. L. R. 16 Calc 596*, dissented from. (ii) That the Local Go ernment acted within the powers conferred by s. 189, cl 1, of the Bengal Tenancy Act, in making rule 25 of Ch VI of the Government rules under the Act, by which a landlord is authorized to join as defendant several tenants in one application for settlement of rents. UPADHYA THAKUR *v.* PERSIDH SINGH

I. L. R. 23 Calc. 723

101. ——— *Refraining from exercise of jurisdiction—Special Judge acting under Bengal Tenancy Act (VIII of 1885), ss 106, 8—Boundary dispute—Decision of settlement officer acting as survey officer under Bengal Survey Act (Beng Act V of 1875).* Where the Special Judge under the Bengal Tenancy Act (VIII of 1885), in a case of a boundary dispute which had been tried and decided by a settlement officer

of the Government rules under the Tenancy Act, to act as he had done, and that therefore, in

102 ——— *Special Judge, discretion of—Dekkan Agriculturists' Relief Act (XVII of 1879)—Finding of fact* When the Special Judge under the Dekkan Agriculturists' Relief Act (XVII of 1879) entertains a clear opinion that the findings of the Subordinate Judge on the questions of fact are erroneous, and exercises his discretion in setting aside the decree, the High Court will not, in its extraordinary jurisdiction, interfere with that discretion except under most exceptional circumstances. RAYACHAND MAYACHAND *v* RAHIMBHAI . I. L. R. 18 Bom. 347

103. ——— *Revisionary power of the Special Judge—Cases in which failure of justice appears to have taken place—Jurisdiction—Discretion of Court—Dekkan Agriculturists'*

SUPERINTENDENCE OF HIGH COURT—*contd*

4 CIVIL PROCEDURE CODE, 1882, S. 622 —*contd*

Relief Act, s. 53. S 622 of the Civil Procedure Code (Act XIV of 1882) gives to the High Court

the Special Judge has a revisionary power in all cases where a failure

I. L. R. 19 Bom. 288

104. ——— *Mamlatdars' Courts Act (Bom Act III of 1876), s 15, cl (a), sub-cls (1) and (2), s 18—Execution of decree for possession against a third party—Jurisdiction of Mamlatdar* A obtained an order in a Mamlatdar's Court against G for possession of a house, and in execution N, who was found in possession

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I. L. R. 18 Bom. 449

105. ——— *Irregular decree of Mamlatdar made by consent of parties—Subsequent refusal of Mamlatdar to order execution of decree—Questions of fact.* The applicant brought

The Mamlatdar found that the money had been tendered to the applicant, but had been wrongfully refused by him. He

had not been duly tendered *Held*, that the decrees

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622—*contd.*

ordinary jurisdiction, to go into this question of fact, nor would it be proper to further the execution of an irregular decree, especially as the applicant had a clear remedy by suit RAMRAO TATYAJI PATIL *v* BABAJI DHONDJI BIBVE

I. L. R. 20 Bom 630

106. ———————— *Mamlatdar, jurisdiction of.* The plaintiff sued in a Mamlatdar's Court for possession of certain lands, alleging that the defendants held them under a lease, the time of which had expired The Mamlatdar found the execution of the lease proved, but held it to be colourable, and that the defendants did not hold under it. He therefore rejected the plaintiff's claim The plaintiff applied to the High Court in its extraordinary jurisdiction and obtained a rule to set aside the order, contending that the Mamlatdar had no jurisdiction to decide that the lease was colourable, and that he ought not to have admitted evidence upon that point. *Held* (discharging the rule), that the matter was not one for the extraordinary jurisdiction of the High Court under s 622 of the Civil Procedure Code (Act XIV of 1882) The Mamlatdar had not declined jurisdiction. He had considered the materials laid before him, and had come to a conclusion That conclusion, if erroneous, ought to be corrected in a regular suit and not by an application to the High Court under s 622 of the Civil Procedure Code (Act XIV of 1882) KASHINATH SAKHARAM KULKARNI *v* NANA . **I. L. R. 21 Bom. 731**

107. ———————— —*Dispossession of a third person not a party to suit—Remedy of person so dispossessed—Mamlatdar acting without jurisdiction* *G* got a decree for possession against *P* in a Mamlatdar's Court. In execution the Mamlatdar directed the ouster of *P*, who was in possession, and who was not a party to the decree. *Held*, that the Mamlatdar's order for the execution of the decree by the ouster of *P* was without jurisdiction, and that it should be set aside under s. 622 of the Civil Procedure Code (Act XIV of 1882) CHINAYA *v.* GANGAVA

I. L. R. 21 Bom. 775

108. ————————*Order of District Judge acting under Bombay District Municipal Act (Bom. Act II of 1884), s 23—Application to set aside a Municipal election—Order made as to costs—"Court," meaning of.* A District Judge acting under s. 23 of the Bombay District Municipal Act (Bombay Act II of 1884) is not a "Court" within the meaning of the word in s 622 of the Civil Procedure Code (Act XIV of 1882), and the High Court has no jurisdiction

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622—*contd.*

109. ———————— *Revision—Illegality in exercise of jurisdiction—Judge's duty to decide secundum allegata et probata* The plaintiffs sued upon two bonds executed by the defendant in their father's favour, one for R200 and the

Judge was—are the bonds in suit proved? He held that the plaintiffs had failed to prove execu-

bonds in question, the Assistant ... illegally in the exercise of his jurisdiction in raising the question of the execution. The first rule of adjudication is that a Judge shall decide *secundum allegata et probata.* The only question that could be tried in the present case was non-receipt of consideration GORAKH BABAJI *v.* VITHAL NARAYAN JOSHI

I. L. R. 11 Bom. 435

110. ———————— *Passing decree unsupported by proof—High Court's powers of revision—Bailment—Negligence.* A Judge has no jurisdiction to pass, in a contested suit, a decree ... there is no evi ... ecree, and ... not contr ... passes such ... n revision a decree it is liable to be set aside ... under s. 622 of the Civil Procedure Code *Moulvi Muhammad* v. *Syad Husain, I. L. R. 3 All. 203,* and *Harnam Tewari* v. *Sakina Bibi, I. L. R. 3 All. 417*, referred to. *S* hired a horse from *B* ... m rupture ... have been ... ach. In ... lue of the ... the effect horse, the defendant gave evidence to the effect that the horse became restive and plunged about, that he might then have touched it with his riding cane, that it shortly afterwards again became excited, bolted for two miles and at last fell down and died. This evidence was not contradicted on any point, nor was any other evidence offered as to how the horse came to run away. There was evidence that the horse was a quiet one, that for some time previously it had done hardly any work, that it was fed immediately before it was let out for hire, and that rupture of the diaphragm was a likely result of the horse running away while its stomach was distended with food. The Court of first instance held that the defendant was bound

SUPERINTENDENCE OF HIGH COURT—*contd*

4. CIVIL PROCEDURE CODE, 1882, S. 622 —*contd.*

to prove that he had taken such care of the horse as a man of ordinary prudence would under similar circumstances have taken of his own property, that he must have used his whip freely or done something else which caused the horse to bolt, and that in so doing he had acted without reasonable care and had thus caused the animal's death. The Court accordingly decreed the claim *Held*, by EDGE, C J, that if the burden of proof was originally upon the defendant, it was shifted by the explanation which he gave and which was neither contradicted nor *primâ facie* improbable, and that the decree of the lower Court, being unsupported by any proof, and based on speculation and assumption, was one which that Court had no jurisdiction to pass, and should consequently be set aside in revision under s 622 of the Civil Procedure Code *Per* BRODHURST, J that as the decree was not only unsupported by proof but opposed to the evidence on the record, the lower Court had "acted in the exercise of its jurisdiction illegally" within the meaning of s. 622 *Collins* v *Bennett, 46 New York Rep*, *Byrne* v. *Boadle, 2 H & C 722*, *Gee* v *Metropolitan Railway Company, L R 8 Q. B 161*, *Scott* v *London Dock Company, 3 H. & C 596; Manzoni* v. *Douglas, 6 Q B D 145*, *Colton* v *Wood, 8 C B. N. S 569*, *Davey* v. *London and South Western Railway Company, 12 Q. B D 70;* and *Hammack* v. *White, 11 C. B. N S 588*, referred to. SHIELDS v WILKINSON . I L R. 9 All. 398

111. ——————— *Civil Procedure Code, 1882, s. 516—Material irregularity—Omission to give notice of proceedings* A District Munsif passed a decree in the terms of an award without giving notice of the filing of the award under s. 516 of the Code of Civil Procedure *Held*, that the District Munsif acted with material irregularity within the meaning of s. 622 of the Code Civil Procedure. RANGASAMI v MUTTUSAMI I. L. R. 11 Mad 144

112. ——————— *Civil Procedure Code, 1882, s 156—Decree passed upon an award filed in Court without notice of its filing having been* [illegible]

followed. CHATARBUJ DAS v. GANESH RAM I. L. R. 20 All. 474

113. ——————— *Error of law—Material irregularity—Personal decree against minors for debt of deceased Hindu father.* In a suit to recover a debt incurred by the deceased father of a Hindu family, the District Judge gave a personal decree against the sons of the debtor of whom two were minors *Held*, that, under s 622 of the Code of Civil Procedure, the decree against the minors should be reversed, but that the Court has no power to revise the decree against the other defendants BHASHYAM v. JAYARAM I. L. R. 11 Mad. 303

114. ——————— *Civil Procedure Code, s 373—Leave given by District Court on appeal to withdraw suit—Material irregularity* A District Munsif having dismissed a suit, plaintiff appealed to the District Court, and at the same time applied to the Court to allow him to withdraw his suit with permission to bring a fresh suit on the same cause of action The District Court granted the application without assigning any reasons for its order *Held*, under s. 622 of the Code of Civil Procedure, that the District Court had acted with material irregularity TIRUPATI v MUTTA . I. L. R 11 Mad. 322

115. ——————— *Immoveable property—Right of fishery—Possession—Dispossession—Specific Relief Act (I of 1877), s 9—Civil Procedure Code (Act XIV of 1882), ss. 30 and 622. —Objection under s 30 where suit is under s 9 of Specific Relief Act.* The plaintiffs were fishermen belonging to the village of *N* They claim in this suit for themselves and the other fishermen of their village the exclusive right of fishing in the Nagothna Creek between high and low-water marks, within certain limits set forth in the plaint, and, under s 9 of the Specific Relief Act, I of 1877, they sought to recover possession of that right from the defendants, who, they alleged, had dispossessed them within six months before this suit was filed. The Subordinate Judge held that they had established their right, and made an order directing that possession should be restored to them. The defendants then applied to the High Court under its extraordinary jurisdiction, contending that the order made by the first Court was beyond its jurisdiction, the right of fishing not being immoveable property within the meaning of that section. *Held*, that the first Court did not act without jurisdiction, the right claim coming within the denomination of immoveable property It was contended by the defendants that the plaintiffs, who claimed on behalf of other fishermen of the village, should have proceeded under s. 30 of the Civil Procedure Code (Act XIV of 1882). *Held*, that the objection was a good one; but, [illegible]

[illegible]

I. L. R. 12 Bom. 221

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622 —*contd.*

116. ———————— *Jurisdiction, Presumption of—Maxim, omnia præsumuntur rite et solemniter esse acta—Civil Procedure Code, ss 103, 283, 647.* The consideration of an objection under s 278 of the Civil Procedure Code, having first been entertained and adjourned by an Additional Subordinate Judge, subsequently came before the Subordinate Judge, who struck off *the case for default* *No order under s 25* transferring the case to the Subordinate Judge was on the record, nor was it otherwise shown how he obtained jurisdiction to deal with it *Held*, that the High Court, in the exercise of its revisional powers under s 622 of the Code, should not presume that the Subordinate Judge had taken up the case without jurisdiction that the proper remedy of the petitioner was an application under s. 103, read with s 647, or a suit under s 283, and that the High Court should not interfere in revision. SHEO PRASAD SINGH v KASTURA KUAR

I. L. R. 10 All 119

117. ———————— *Limitation—High Court's revisional powers—Material irregularity.* On the 29th November 1886 this suit was filed on a bond dated the 29th November 1881, payable in two years The Subordinate Judge dismissed it as time-barred, being of opinion that the cause of action had accrued on the 28th November 1883 Against this decision the plaintiff applied to the High Court under s 622 of the Code of Civil Procedure (Act XIV of 1882) *Held*, reversing the decision of the Subordinate Judge, that the suit was not barred by time, the cause of action having accrued on the 29th November 1883, that is, the day of the month corresponding with the day on which the bond was dated *Held*, [illegible]

under cl. 2 of s 5 of Regulation II of 1827. But it is otherwise in any case where the Court, having a mistaken and wrong apprehension of the questions at issue proceeds to determine an issue, which does not really arise in the case, and bases its decision of the case on its determination of that issue. If it does so, it acts with material irregularity in the exercise of its jurisdiction. VENKUBAI v. LAKSHMAN VENKOBA KHOT

I. L. R. 12 Bom. 617

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622 —*contd*

118. ———————— *Orders in pauper suit—Civil Procedure Code, s. 407.* All orders passed under s. 407 of the Code of Civil Procedure are not excluded from the exercise of the revisional powers of the High Court under s 622 of the Code *Chatterpal Singh* v. *Rajaram, I. L R. 7 All. 661,* notwithstanding. In the exercise of revisional powers it is not the duty of the High Court to enter *into the merits of the evidence;* it has only to see whether the requirements of the law have been duly and properly obeyed by the Court whose order is the subject of revision, and whether the irregularity as to failure or exercise of jurisdiction is such as to justify interference with the order MUHAMMAD HUSAIN v. AJUDHIA PRASAD

I. L. R. 10 All. 467

119. ———————— *Pauper suit—Costs of plaintiff—Right of appeal—Decree omitting to order plaintiff to pay Court-fees—Power of Collector to apply under the extraordinary jurisdiction of High Court—Amendment of decree* [illegible] was rejected [illegible] ver, [illegible] I of [illegible] ctor [illegible] ary [illegible] It [illegible] are been remedied by an appeal or on review, the Collector could not apply under the extraordinary jurisdiction of the Court. *Held*, on the authority of *Collector of Ratnagiri* v. *Janardan, I. L. R* [illegible] would [illegible] of the [illegible] would [illegible] to pay [illegible] v. RAMBHAT

I. L. R. 15 Bom. 454

120. ———————— *Civil Procedure Code, ss 494, 588—Appeal against order for issue of notice under s 494—Revision by High Court of an order purporting to be made on appeal from such an order.* A petition praying for a temporary [illegible] presented by the plaintiff [illegible] e refused to [illegible] e defendants. The plaintiff [illegible] ho granted [illegible] t no appeal lay from the subordinate Court, and that the District Judge had purported to exercise a jurisdiction not vested in him by law. LUIS v LUIS

I. L. R. 13 Mad. 186

121. ———————— *Civil Procedure Code, s 269—Order on appeal affirming order granting application for review of judgment.* The High Court will not, in the exercise of its revisional powers under s 622 of the Code, interfere with an order dismissing an appeal from an order under s. 629, inasmuch as there is a remedy by

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622 —*contd*

way of appeal from the final decree at the re-hearing GOPAL DAS *v* ALAF KHAN

I. L. R. 11 All. 383

122. ———— *Pauper suit—Judge applying to suit a course of inquiry not applicable—Civil Procedure Code, 1882, ss. 407, 622.* Where the Judge in the Court below in making an inquiry under cl. (c) of s. 407 of the Civil Procedure Code found that the applicant was a pauper, but having addressed himself to the merits of the case, to the rights of parties and to matters which ... that he had ... the ground ... did not show ... —*held*, that the High Court could interfere under s. 622, Civil Procedure Code, inasmuch as the Judge of the lower Court applied a course of enquiry to the matter he had to investigate under s 407, Civil Procedure Code, which was not applicable to it, and he thereby failed to apply to the matter a course of enquiry which was applicable; and that upon the allegations contained in the plaint there was nothing to show that the petitioner had no right to sue within the meaning of s. 407, Civil Procedure Code. *Mathuranath Sarkar* v *Umesh Chunder-Sarkar, 1 C. W. N 626; Amir Hassan Khan* v. *Sheo Baksh Singh, I. L R. 11 Calc. 6; Sew Bux Bogla* v. *Shib Chander Sen, I L R 13 Calc. 225; Rahim Bux* v. *Nundo Lal Gossami, I. L. R 14 Calc. 321; Jagbandhu Pattuck v. Jadhu Ghose, I. L. R. 15 Calc. 47;* and *Brij Mohun Thakur* v *Rai Umanath Chowdhury, I L R 20 Calc 8,* referred to and explained. DEBO DAS *v* RAM CHARAN DAS CHELLA . . 2 C. W N. 474

123. ———— *Civil Procedure Code (Act XIV of 1882), s. 412—Dismissal of suit in formâ pauperis without trial—Liability of plaintiff for Court-fee* A plaintiff who sues *in formâ pauperis* is liable to pay the stamp duty if his suit is dismissed without trial; and where in such a case the Judge decided that the plaintiff was not liable for the Court fees, it was *held* that he had by misconstruing s 412 of the Code failed to exercise a jurisdiction vested in him by law; his order was rectified under s 622. COLLECTOR OF VIZAGAPATAM *v.* ABDUL KHARIM

I. L. R 21 Mad. 113

124. ———— *Landlord and tenant—Suit for rent.* In a suit in a Small Cause Court for rent due in respect of two pieces of land, the Court passed a decree in favour of the plaintiff. The defendant preferred a petition to the High Court under the Civil Procedure Code, s 622, which came on for hearing before one Judge. He held that the Small Cause Court had failed to give effect to a former decree between the parties in respect of one piece of land, and made an order reversing the decree as to that, and calling for a report of what was due on the other piece of land. The plaintiff preferred an appeal under the Letters Patent, cl. 15 *Held*, that, even if the Subordinate Judge had failed to give effect to the previous decree, the error was not such as to give the Court jurisdiction to revise his proceedings under the Civil Procedure Code, s. 622. VANANGAMUDI *v* RAMASAMI

I. L. R. 14 Mad. 406

125. ———— *Revision, powers of High Court in—Jurisdiction, want of, by lower Court* Unless the facts from which want of jurisdiction on the part of a subordinate Court may be inferred are patent upon the face of the record, the High Court will not interfere in revision. MIHR ALI SHAH *v.* MUHAMMAD HUSEN

I. L R. 14 All. 413

126. ———— *Transfer of Property Act (IV of 1882), s 87, Order under—Right of appeal* An order under s 87 of Act IV of 1882 extending the time for payment of the mortgage-money by a mortgagor is a "decree" within the ...

I. L. R 14 All. 520

See KEDARNATH *v.* LALJI SAHAI

I. L. R. 12 All. 61

127. ———— *Order made without jurisdiction—Order cancelling sale in execution of decree under s. 308, Code of Civil Procedure—Appeal* A person who had attached a decree and obtained leave to bid at the sale of ...

... Civil Procedure Code, s. 308, cancelling the sale and ordering a re-sale on the ground that the purchaser had ...

... that the petitioner was the representative of the decree-holder within the meaning of the Civil Procedure Code, s. 244, and might have preferred an appeal against the order sought to be revised; and that therefore the petition for division was not maintainable, although, under the circumstances above stated, the Court had no jurisdiction to make an order under the Civil Procedure Code, s. 308. SAH MAN MULL *v.* KANAGASABAPATHI

I. L. R 18 Mad. 20

128. ———— *Erroneous decision with jurisdiction—Succession Certificate Act (VII of 1889), s 4.* A person applied for leave to sue *in formâ pauperis* to recover assets forming part of the estate of a deceased person. H

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622 —*contd.*

application was dismissed on the ground that he produced no certificate under Act VII of 1889. *Held*, that the application was wrongly dismissed; and that the High Court had jurisdiction to interfere on revision under the Civil Procedure Code, s 622. KAMMATHI *v* MANGAPPA.

I. L. R. 16 Mad. 454

129. ——————— *Order allowing withdrawal of suit—Civil Procedure Code s 373—Revision* A Subordinate Judge, in granting the application of a plaintiff before him for permission to withdraw with leave to file a fresh suit in the same matter, made an order as to costs in favour of the defendants in the following terms: "As the case has not been contested to the bitter end, half the pleader's fees are allowed and the process expenses, etc, incurred in the case, except those already refused to the defendants For travelling and incidental expenses defendants to put in a bill in one week, this to be subject to the decision of the Court after hearing both parties. The application under s. 373 of the Code of Civil Procedure is granted with leave to the plaintiff to bring a fresh suit for the same matter Cost allowed to defendants as above." *Held*, that the order under s. 373 of the Code of Civil Procedure was an order liable to revision, as it was not open to appeal. *Kalian Singh* v. *Lekhraj Singh, I. L R 6 All. 211*, referred to. DICK *v* DICK

I. L R. 15 All. 169

130. ——————— *Order refusing to discharge surety for insolvent judgment-debtor—Civil Procedure Code, ss 336, 344—Appeal.* One *B M* became surety under s 336 of the Code of Civil Procedure on behalf of one *G R*, a judgment-debtor, to the effect that *G R* would appear before the Court when called on and would within one

order refusing to discharge him was not appealable, and was therefore open to revision under s. 622 of the Code BANNA MAL *v* JAMNA DAS

I. L. R. 15 All. 183

131. ——————— *Transfer of execution-proceedings from one subordinate Court to another—Discretion of Court* The High Court will not in its extraordinary jurisdiction interfere, except under circumstances of a very special nature, with the discretion of a Judge who has transferred execution-proceedings under a decree from one subordinate Court to another. KRISHNA VELJI MARWADI *v.* BHAU MANSARAM

I. L. R. 18 Bom 61

132. ——————— *Judge of Small Cause Court erroneously treating defective service of summons as good—Material irregularity* Where a Judge of the Small Cause Court, Bombay, treated the delivery of a summons by post to a person who was not shown to be the defendant as good service and had passed a decree against the defendant, he was *held* to have acted with material irregularity, and the High Court reversed his decree in the exercise of their powers under s. 622 of the Civil Procedure Code JAGANNATH BRAKHBHAU *v.* SASSOON . . **I. L. R. 18 Bom. 606**

133. ——————— *Decision on un-*

I. L R. 18 Bom.

134. ——————— *Decision on inadmissible evidence.* A decision taking into consideration as evidence an unregistered lease was set aside under s 622 GURUNATH SHRINIVAS DESAI *v* CHENBASAPPA . . **I. L. R. 18 Bom. 745**

135. ——————— *Construction of document.* The fact that a Court has misunderstood the effect of a document in evidence does not constitute a ground upon which the High Court can interfere in revision under s 622 of the Code of Civil Procedure. DASRATH RAI *v* SHEODIN RAI

I. L. R 16 All. 39

136. ——————— *Allowing objection to application in execution of decree by person not party to decree—Failure of exercise of jurisdiction vested by law—Decree against wrong person as representative.* A person not a party to a suit is not entit ... order for ... execution ... stance of ... pass an ... application. ... Judge failed to ... by law, and ... ode (Act XIV ... NATHUBHAI

19 Bom. 454

137. ——————— *Dismissal of appeal "for default of prosecution," appellant and his pleaders being present—Refusal to reinstate appeal—Civil Procedure Code, 1882, ss 556 and 558—Appeal from order rejecting appeal.* A civil appeal was being heard before a Subordinate Judge, ... his behalf being ... the pleaders ... and remained ... ader nor the appellant was in a position to continue the argument, the Subordinate Judge passed an order, purporting to be under s. 556 of the Code of Civil Procedure, dismissing the appeal "for default of prosecution." An application under s. 558 to

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622 —*contd.*

reinstate the appeal was rejected. The appellant appealed under s. 588 to the High Court against the order under s. 558. *Held*, that no such appeal lay, as the order in question could not have been made under s. 556. But the appellant was allowed to apply in revision under s. 622 against the order under s. 556, and upon that application it was held that the Court below had acted illegally and with material irregularity in dismissing the appeal for default under s. 556. JAWAHIR SINGH *v.* DEBI SINGH . I. L. R. 18 All. 119

138. ———— *Discretion of Court in exercising revisional powers—Civil Procedure Code, ss. 623 et seq.—Review of judgment granted on ground not allowed by s. 629.* A Munsif granted a review of judgment on a ground which was no ground in law for granting a review, but his order in review had the effect of making the

open to him. On an application for revision of the Judge's appellate order, it was *held* that the proper course was to set aside only the District Judge's order and to leave standing the order of the Munsif granting a review of judgment, which order, though wrong in principle, was, it appeared, right in its results. ABDUL SADIQ *v.* ABDUL AZIZ . . . . I. L. R. 21 All. 152

139. ———— *Land Acquisition Act (X of 1870), ss. 3, 24, and 25—Exercise of jurisdiction by Judge under the Act—"Material irregularity"—Mistake in regard to the principle of calculation of the value of the land acquired.* If a Judge and assessors, sitting to determine the amount of compensation to be awarded for land acquired under the Land Acquisition Act of 1870, have refused to take into consideration any of the matters prescribed by s. 24 of that Act, or have improperly taken into consideration any of the matters prohibited

pans, and was in error in so doing, his mistake would be only one concerning the principles of valuation, and not an irregularity in the exercise of jurisdiction. JOSEPH *v.* SALT CO. I. L. R. 17 Mad. 371

140. ———— *Power to call for record of cases not appealable to High Court—*

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622. —*contd.*

When a Court can be said "to have acted in the

mitted other appeals after they had become time-barred. *Held*, by the majority of the Full Bench, that where a Subordinate Court, having applied its mind to a question of law or procedure, arrives at an erroneous decision, such decision is not by itself any ground for the exercise by a High Court of the powers given by s. 622 of the Code of Civil Procedure. *Amir Hassan Khan* v. *Sheo Baksh Singh, I. L. R. 11 Calc. 6*, followed. *Held*, further, (BEST and DAVIS, JJ., dissenting), that the case contemplated by the words "act . . . . illegally or with material irregularity" in s. 622 of the Code of Civil Procedure is that of a perverse decision on a question of law or procedure, a decision being perverse where it is a conscious departure from some rule of law or procedure. *Per* BEST, J.—The words in question of s. 622 of the Code are applicable to illegalities or irregularities which are the result merely of ignorance of law or carelessness, and the disposal of a suit on a point taken by the Court itself on appeal without affording the parties an opportunity of proving

case. KRISTAMMA NAIDU *v.* CHAPA NAIDU I. L. R. 17 Mad. 410

141. ———— *Error of procedure—Mode of applying powers of superintendence of Court under s. 622.* The words "acting with material irregularity" in the third clause of s. 622, Civil Procedure Code, imply only the committing of an error of procedure, but "acting illegally" does not mean the same thing. The third clause of s. 622, Civil Procedure Code, is intended to authorize the High Court to interfere

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622 —*contd.*

from. *Amir Hassan Khan* v. *Sheo Baksh Singh, I. L. R. 11 Calc. 6,* explained BHAGWAN RAMANUJ DAS *v.* KHETTER MONI DASSI

1 C. W. N. 617

142. ———————— *Succession Certificate Act (VII of 1889), s. 9—Order granting certificate on the applicant's furnishing security—Discretion of Court.* The widow of a deceased person having applied for a certificate under the Succession Certificate Act (VII of 1889), the Judge ordered the certificate to issue on the applicant's furnishing security under s 9 of the Act. *Held,* that such an order was within the discretion of the Judge, and there being shown to be nothing improper in the exercise by the Judge of his jurisdiction, the Court refused to interfere to set the order for security aside *Mhalsabhai* v. *Vithoba Khandappa Gulbe, 7 Bom. Ap. 26,* referred to. BAI DEVKORE *v.* LALCHAND JIVANDAS

I. L. R 19 Bom. 790

143. ———————— *Decision of Appellate Court as to jurisdiction of lower Court—Reversal of order rejecting plaint.* Where a Court of first instance having ordered a plaint presented to it to be returned to the proper Court under s 5 7, cl (*a*), Civil Procedure Code, the Court of Appeal, acting under s. 588, cl (*6*), Civil Procedure Code, set aside such order and directed the original Court to hear the cause:—*Held,* that the High Court had no jurisdiction to interfere with such appellate order under s 622, Civil Procedure Code, for it could not be said that the lower Appellate Court acted in the exercise of its jurisdiction illegally or with material irregularity simply because its decision as to the jurisdiction of the first Court to entertain the suit was erroneous in law. *Amir Hassan Khan* v. *Sheo Baksh Singh, I. L. R 11 Calc. 6 11 I A 237, Birj Mohan Thakur* v. *Ray Uma Nath Choudhry, I L. R. 20 Calc. 8 19 I. A 154; Jugobundhu Pattuck* v *Jadu Ghose, I. L. R 15 Calc. 47;* and *Kristamma* v. *Chapa Naidu, I. L. R 17 Mad 410,* referred to. *Held, per* BANERJEE, *J*—The scope of the third clause of s 622, Civil Procedure Code, is not limited merely to cases of material irregularity of procedure, for the third clause not only refers to cases, where a Court has acted with material irregularity but also to those in which it has acted illegally. The clause is evidently intended to authorize the High Courts to interfere and correct gross and palpable error of subordinate Courts, so as to prevent grave injustice in non-appealable cases. *Bhagwan Ramanuj* v. *Khetter Moni Dassi, I. C. W. N. 617,* referred to *Amir Hassan Khan* v. *Sheo Baksh, I. L R 11 Calc. 6,* explained. *Kristamma Naidu* v. *Chapa Naidu, I. L R. 17 Mad 410,* disapproved. MATHURA NATH SARKAR v. UMESH CHANDRA SARKAR . **1 C. W. N. 626**

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882. S. 622 —*contd*

144. ———————— *Error in distribution of proceeds of sale in execution of decree—Civil Procedure Code (Act XIV of 1882), s 295—Jurisdiction—Powers of revision by High Court.* An application by a decree-holder under s. 295 for rateable distribution was refused by the Judge in the lower Court on the grounds (i) that the decree was not a *bond fide* one; (ii) that the decree in favour of the petitioner, which was sent down by the High Court for execution to his Court, was sent down by the High Court with direction merely to hold under attachment the property of the judgment-debtor, but not to proceed to sell the property until further instructions were received, and the petitioner could not be regarded as one who had applied for execution of decree within the meaning of s. 295; and (iii) that the petitioner had not obtained satisfaction of her decree in whole or in part of any of the other districts to which her decree [illegible] sent for execution. *Held,* [illegible] Court below [illegible] ocedure Code, [illegible] view to the division of assets, he had made a mistake in the principle upon which they ought to have been divided, such an error was one of law merely, and not subject to review under s. 622, Civil Procedure Code. *Held,* further, that a mere mistake in law by a lower Court does not bring a case under s 622, Civil Procedure Code *Amir Hassan Khan* v. *Sheo Baksh Singh, I. L R 11 Calc. 6,* followed. *Birj Mohun Thakur* v *Rai Uma Nath Chowdhry, I L R 20 Calc. 8,* referred to *Held, per* BANERJEE, *J*, that the third clause of s. 622, *viz.,* "acted illegally or with material irregularity," is not limited to cases of procedure only. This clause is intended to empower the High Court to interfere in non-appealable cases with orders or decisions of lower Courts where the orders or decisions are vitiated by an error which is so gross and palpable, and which has led to injustice so grave and manifest that it is desirable that the High Court should interfere with them. *Held,* [illegible] had no juris- [illegible] *bond fide* [illegible] ourt might [illegible] the error, [illegible] this clause [illegible] 295, Civil [illegible] a regular [illegible] decision [illegible], can be [illegible] ird clause [illegible] *Hassan* [illegible] *Calc. 6,* [illegible] *I L R.* [illegible] *Naidu,* [illegible] approved. v. *Chapa Naidu, I L. R.,* [illegible] RAGHU NATH GUJRATI *v.* RAI CHATRAPUT SINGH

1 C. W. N. 633

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622 —*contd*

145. —————— *Civil Procedure Code, s 283—High Court's powers of revision—Remedy by suit* The High Court will not exercise its revisional jurisdiction so long as there is any other remedy open to the applicant. Where a Subordinate Judge disallowed an application for the release of certain property which had been attached before judgment:—*Held*, that, there being a remedy by suit under s 283 of the Code of Civil Procedure, the High Court should not interfere with such order in revision. *Ittiachan* v. *Velappan, I L R 8 Mad 484; Sheo Prasad Singh* v *Kastura Kuar, I L R 10 All 119;* and *Gopal Das* v. *Alaf Khan, I. L R. 11 All. 383,* referred to GUISE v JAISRAJ
I. L. R. 15 All. 405

146. —————— *Exercise of power of High Court under s 622 of the Civil Procedure Code, 1882, where there is no appeal—Order refusing to make person party to oppose probate.*

to the application and to oppose the grant of

Code, and remanded the case for trial as a contested application KHETTRAMONI DASI v SHYAMA CHURN KUNDU . I. L. R. 21 Calc. 539

147. —————— *Order refusing to amend a clerical error in the form of probate—Probate and Administration Act (V of 1881), s 86—Succession Act (X of 1865), s. 263.* Where there was a clerical error in the form of probate granted and the Judicial Commissioner refused to amend it on the ground that the probate was granted by his predecessor, it was *held* that, though there was no appeal from such an order either under s 26 of the Probate and Administration Act (V of 1881) ...
1865), yet ...
case under ...
set aside th...
Churn Kun...
GERINDRA KUMAR DAS GUPTA v. RAJESWARI ROY.
I. L. R. 27 Calc. 5

148. —————— *Exercise of revisional powers when there was remedy by separate suit—Right of suit—Executing Court delivering possession of property not specified in sale-certificate.* In execution of a decree against several joint

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622 —*contd.*

area. The judgment debtors possessed property in those villages over and above that sought to be sold. The property as above described was sold, and certificates of sale were granted which in terms followed the description contained in the proclamation of sale. The decree-holder purchased the property so sold and applied for possession thereof, but in their application they

fication of shares and ordered possession to be delivered over certain specific shares of the several judgment-debtors *Held,* that, under the circumstances described above, the High Court would interfere in revision under s. 622 of the Code of Civil Procedure, although it was possible that the matters complained of might be grounds for a separate suit. *Guise* v. *Jaisraj, I. L R 15 All 405, Gopal Das* v. *Alaf Khan, I L R 11 All 383;* and *Prosunno Kumar Sanyal* v. *Kali Das Sanyal, I. L. R 19 Calc 663,* referred to GHULAM SHABBIR v. DWARKA PRASAD
I. L. R. 18 All. 163

149. —————— *Decision as to admissibility of document—Error in law. Per* FARRAN, *C.J.*—When Courts in the exercise of their judicial functions decide that a document is inadmissible in evidence, having exercised their judgment upon the questions of its admissibility or inadmissibility, we have no jurisdiction to interfere in the matter under s 622 What the Courts do in such a case, assuming the document tendered to be erroneously rejected, is to make a mistake upon a question of law, and it does not appear to me to be material whether the mistake in law is made during the hearing of the case or in the final decision. A mere error in law is

150. —————— *Revision. Powers of—Stamp Act (I of 1879), s 34, sub-s. (3).* A certain document, although unstamped, was admitted in evidence by the first Court. Upon appeal the Subordinate Judge refused to admit the document in evidence, on the ground that it was unstamped, and on the merits reversed the judgment of the first Court and dismissed the suit. The plaintiff moved the High Court under s. 622, Civil Procedure Code, on the ground that, under s. 34, sub-s. (3), of the Stamp Act, the document, although unstamped, was admissible in the lower Appellate Court, inasmuch as the first Court ...

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622 —*contd.*

illegally or with material irregularity within the meaning of s 622, Civil Procedure Code. *Amir Hassan Khan* v *Sheo Baksh Singh, I. L. R. 11 Calc. 6*, relied upon. *Mathura Nath Sarkar* v. *Umes Chandra Sarkar, 1 C. W. N. 626*; *Mohunt Bhagwan Ramanuj Das* v *Khetter Moni Dassi, 1 C. W. N 617*, referred to *Held* by BANERJEE, J, that the error of the lower Appellate Court in rejecting the document, admitted by the first Court, as not stamped, in contravention of s 31 of Act I of 1879, comes within that part of s 622, Civil Procedure Code, which speaks of a Court's acting with material irregularity in the exercise of its jurisdiction That the rejection of the document is more in the nature of a materially irregular act than an erroneous decision on a point of law The case of *Amir Hassan Khan* v *Sheo Baksh Singh, I L R 11 Calc. 6*, must be taken to have settled that it is not every error of law that will come within the scope of s 622, Civil Procedure Code, but it does not follow that no error of law, unless it is also an error of jurisdiction, can come within the operation of that section. That the error in this case was gross and palpable, and it was likely to have led to injustice *Amir Hassan Khan* v. *Sheo Baksh Singh, I L R. 11 Calc 6*, explained *Mohunt Bhagwan Ramanuj Das* v. *Khetter Moni Dassi, 1 C W. N. 617*; *Mathura Nath Sarkar* v. *Umes Chandra Sarkar, 1 C W N 626*; and *Raghu Nath Gujrati* v *Rai Chatraput Singh, 1 C. W N. 633*, referred to. ENAT MONDUL *v* BALORAM DEY

3 C. W. N. 581

151. ———— *Civil Procedure Code (Act XIV of 1882), s 108—Ex parte decree, setting aside, effect of, as against contesting defendants who preferred appeal—Jurisdiction of a Court to set aside, under s. 108, Civil Procedure Code, decree of a superior Court* Plaintiff brought a suit against defendants 1 and 2 for declaration of title to, and for khas possession of, certainl and against the other defendants The suit was contested by defendants 1 and 2 only, and plaintiff obtained a decree Defendants 1 and 2 preferred an appeal to the Subordinate Judge's Court and a second appeal to the High Court, with the result that the judgment of the first Court was upheld; the other defendants, who were no parties to the appeal, applied to set aside the *ex parte* decree; the Munsif ordered that "the *ex parte* decree be set aside and the original regular suit be restored." By a later order defendants 1 and 2 were allowed to defend the suit *de novo* and to file fresh defences. *Held*, that the Munsif had no jurisdiction to set aside the decree as against defendants 1 and 2, which was not an *ex parte* decree and was not a decree of his Court, but that of a superior Court; and that the High Court had jurisdiction, under s 622, Civil Procedure Code, to set aside the order of the Munsif. That s. 108, Civil Procedure Code, contemplates the case of a Court setting aside its own decree and not that of another and a higher tribunal. *Mahamed Hamidulla* v. *Johurennessa Bibi, I. L R. 25 Calc. 155*, distinguished. MONOMOHINI CHOWDHURANI *v.* NARA NARAYAN ROY CHOWDHRY . . . . **4 C. W. N. 456**

152. ———— **Arbitration**—*Award—Setting aside an award on ground of misconduct—Civil Procedure Code (Act XIV of 1882), ss 521 and 622—Practice—Procedure* Where an award, made under Chapter XXXVII of the Civil Procedure Code (Act XIV of 1882), on a reference to arbitration in the course of a suit, is set aside on the ground of the arbitrator's misconduct, the order setting aside the award is not subject to revision under s. 622 of the Civil Procedure Code. It is an interlocutory order, and may be a ground of appeal against the decree passed in that suit DAMODAR TRIMBAK DHARAP *v.* RAGHUNATH HARI (1902)

I. L. R. 26 Bom. 551

153. ———— **Counsel and client**—*Suit by client to recover fees paid to counsel—Cause of action—Status of a barrister practising as an advocate in the High Court for the North-Western Provinces—Revision* A client who had paid a fee to a barrister for professional services, which in fact were not rendered, sued the barrister in Court of a Munsif, claiming a refund of the fee paid The Munsif dismissed the suit, holding that such a suit could not lie On appeal, the District Judge held that the suit would lie, and [illegible] Against this decision [illegible] High Court [illegible] *dissentiente* [illegible] competent to interfere, in the exercise of its revisional jurisdiction. *Amir Hassan Khan* v. *Sheo Baksh Singh, I. L. R 11 Calc. 6*, distinguished. *Jugobundhu Pattuck* v. *Jadu Ghose Alkushi, I. L. R 15 Calc. 47*; *Manisha Eradi* v. *Siyali Koya, I L. R. 11 Mad. 220*; and *Chenbasada* v *Lakshman Ramchandra, I. L. R. 18 Bom 369*, referred to by STANLEY, C.J. *Held*, by BANERJI, J, that the application for revision preferred by the defendant could not be entertained under s. 622 of the Code of Civil Procedure *Amir Hassan Khan* v. *Sheo Baksh Singh, I. L R. 11 Calc. 6*; *Magni Ram* v. *Jiwa Lal, I. L R 7 All 336*; *Badami Kuar* v. *Dinu Rai I. L R. 8 All. 111*; *Enat Mondul* v. *Baloram Dey, 3 C W. N. 581*; *Sarman Lal* v. *Khuban, I. L R 17 All 499*; and *Sundar Singh* v. *Doru Shankar, I. L. R 20 All. 78*, referred to. ROSS ALSTON *v.* PITAMBAR DAS (1903)

I. L. R 25 All. 509

154. ———— **Duty of High Court.** Where it appears that the Court of first instance, or of appeal, has exercised a jurisdiction not vested in it by law, the High Court is bound to interfere under its revisional powers RAMASAMY CHETTIAR *v.* ORR (1902). **I. L. R. 26 Mad. 176**

SUPERINTENDENCE OF HIGH COURT—*contd*

4. CIVIL PROCEDURE CODE, 1882, S 622 —*contd*

155 ———— Order amending a decree —*Civil Procedure Code (Act XIV of 1882), ss. 206, 622, 623—Appeal—Second appeal—Review.* An order under s 206, Civil Procedure Code, amending a decree, is not a decree, and no appeal lies against such an order The proper remedy is by an application

[illegible]

6 C. W. N. 102

156. ———— Power of High Court— —*Code of Civil Procedure (Act XIV of 1882), ss 310A, 622—"Exercised a jurisdiction not vested in it by law," meaning of—Appeal* Whether an order under s 310A is subject to appeal or to revision under s. 622, Civil Procedure Code, depends upon the circumstances of each particular case. Where the purchaser is the decree-holder himself, and the question arises between him and the judgment-debtor, an appeal lies *Chundi Charan Mandal v. Banke Behary Lal Mandal, I. L. R. 26 Calc 449,* followed. Where the auction-purchaser is a stranger, s 622, Civil Procedure Code, is applicable *Jogodanund Singh v Amrita Lal Sircar, I L R 22 Calc 767,* and *Bungshidhar Haldar v. Kedar Nath Mondal, 1 C W N. 114,* followed. Where the lower Court sets aside a sale under s 310A, Civil Procedure Code, in a case to which the section is not applicable, the High Court can interfere under s. 622, Civil Procedure Code, as the order is not merely an erroneous order but is made without jurisdiction KEDAR NATH SEN *v* UMA CHARAN (1900) 6 C. W. N. 57

157. ———— *Revision, High Court's power of, without application—Property, management of, by Court.* Under the terms of s 622, Civil Procedure Code, the High Court can deal with a case under that section without there being any application by any of the parties *Golam Mahommad v. Saroda Mohan Maitra, 4 C W. N. 695,* approved of. There is no law or procedure under which a Court can, on the mere application of the parties interested, take over the management of properties belonging to an estate, and pass such orders as would place them entirely beyond the reach of the judgment-creditors of the estate PURAN MAL *v.* JANKI PERSHAD SINGH (1901)

I. L. R. 28 Calc. 680 : s.c 6 C. W. N. 114

158. ———— *Criminal Procedure Code (Act V of 1898), ss 435, 439—Jurisdiction of High Court, under Criminal Procedure Code, to revise order according sanction which has been granted by a Civil Court.* The High Court has no jurisdiction, under ss. 435 and 439 of the Code of Criminal Procedure, to revise an order passed by any Court other than a Criminal Court under cl. (*b*) or (*c*) or sub-s (*1*) of s. 195 of the Code of Criminal Procedure, according sanction to institute a prosecution; or an order passed under sub-s. (*6*) of s. 195 revoking or refusing to revoke a sanction which has been given, or granting a sanction which has been refused It may be open to the the High Court, under s. 622 of the Code of Civil Procedure, to revise such proceedings of a Civil Court, in cases which come within the terms of that section *In re* CHENNANAGOUD (1902)

I. L. R 26 Mad. 139

159 ———— Religious Endowments Act (XX of 1863), s. 5—*Vacancy in office of manager—Appointment by Civil Court—Jurisdiction of High Court to entertain petition to revise order appointing manager* An order made by a Civil Court under the powers conferred by s 5 of the Religious Endowments Act is a judicial adjudication in the matter before it, and it is competent to the High Court to entertain a civil revision petition against such an order. GOPALA AYYAR *v* ARUNACHALLAM CHETTY (1902) . I. L. R. 26 Mad 85

160. ———— s. 18—*Leave to sue granted on*

[illegible]

and a civil revision petition lies from the order granting it. Omission to give notice of such an application to the person whom it is intended to sue does not of itself render the leave, if granted, irregular *Venkatappayya v Venkatapathi, I L. R 24 Mad. 687,* approved. AMDOO MIYAN *v.* MUHAMMAD DAOUD KHAN (1901)

I. L. R. 24 Mad. 685

161. ———— Restriction on High Court's jurisdiction. The High Court cannot

[illegible]

... Calc. 6, referred to. KALI CHARAN SIRDAR *v* SARAT CHUNDER CHOWDHRY (1903) I. L. R. 30 Calc. 397

s.c. 7 C. W. N. 545

SUPERINTENDENCE OF HIGH COURT—*contd.*

4. CIVIL PROCEDURE CODE, 1882, S. 622 —*contd.*

162. ———— **Right of vakil to appear on Original side**—*Rule IV A, Part I, Chap II, of the rules of the High Court—Rule 71, Belchambers' Rules and Orders (2nd Ed)—Revisional powers of the High Court in its Original jurisdiction—Appellate jurisdiction—Right of vakil to appear on the original side* A vakil has no right to appear on the Original side, in an application under s. 622 of the Civil Procedure Code, to move against any order of the Presidency Small Cause Court. Such revisional powers, when exercised by the Original side of this Court, fall within and form a part of its ordinary Original civil jurisdiction *Re* APPLICATION OF A VAKIL OF THE APPELLATE SIDE (1903)

7 C. W. N. 843

163. ———— **Small Cause Court**—*Jurisdiction—High Court, Power of, to review orders passed without jurisdiction in the Presidency Small Cause Court—Bench consisting of the Chief Justice and another Judge—Charter Act (24 & 25 Vict, c 104), ss 14, 15—Registrar—Presidency Small Cause Court, jurisdiction of—Ex parte decree for default—Rules 63, 70, 92, 94 (framed by the High Court) under s 9 of the Presidency Small Cause Courts Act (I of 1895)* By virtue of the power conferred under s 14 under s 14 of the Charter Act (24 & 25 Vict, c. 104), the Chief Justice, by constituting a Division Court consisting of himself and any other Judge of the High Court, can deal with applications against an order made by the Presidency Small Cause Court. *Shamsher Mundul v Ganendra Narain Mitter, I L R. 29 Calc 498,* explained The Registrar of the Presidency Small Cause Court has no jurisdiction to entertain an application for new trial to set aside an *ex parte* decree made by him for default HALADHAR MAITI *v* CHOYTONNA MAITI (1903)

I. L. R. 30 Calc. 588 ; s c. 7 C. W. N 547

164. ———— **Succession**—*Succession (Property Protection) Act (XIX of 1841), ss 3, 5, 8—Appointment of curator—Omission to take evidence before making order—Want of jurisdiction—Material irregularity* On an application, under Act XIX of 1841, to recover possession of the properties of a deceased zamindar by summary [illegible] a report from the Collector under s 8, and on receipt thereof, made an order under s 5 appointing a curator. *Held* (SUBRAMANIA AYYAR, J., dissenting), that order must be set aside, under s. 622 of the Code of Civil Procedure. The Judge was bound to hold an enquiry under s. 3 before appointing a curator under s. 5. The provisions of s. 3 are mandatory, and not merely directory.

SUPERINTENDENCE OF HIGH COURT—*concld.*

4. CIVIL PROCEDURE CODE, 1882, S. 622 —*concld.*

Per SIR ARNOLD WHITE, *C.J.*—The Judge acted without jurisdiction, or with material irregularity *Per* SHEPHARD, *J.*—The Judge acted within his jurisdiction, but with material irregularity KRISHNASAMI PANNIKONDAR *v.* MUTHUKRISHNA PANNIKONDAR (1901) **I. L. R. 24 Mad. 364**

165. ———— **Order directing prosecution, made by a Munsif**—*Revision—Jurisdiction of the Criminal Bench to interfere—Civil Procedure Code (Act XIV of 1882), s 622.* The Criminal Bench of the High Court has no authority to interfere under s. 439, with the proceedings of a Munsif taken under s. 476 The Civil Bench should be moved under s 622 of the Civil Procedure Code *Eranholi Athan v King-Emperor, I. L. R 26 Mad 98 ; In re Chennangoud, I L R. 26 Mad 198,* followed. KALI PROSAD CHATTERJEE *v.* BHUBAN MOHINI DASI (1904)

8 C. W. N. 73

166. ————. **Order passed without jurisdiction**—*Execution of decree—Order—Appeal—Grounds for non-interference in extraordinary jurisdiction* Where the order of the lower Appellate Court was passed without jurisdiction, the High Court declined to interfere under the extraordinary jurisdiction (s. 622 of the Civil Procedure Code, Act XIV of 1882) on the ground that the plaintiff, to whom relief was granted by the lower Appellate Court, would, if the application were allowed, be obliged to bring a suit to establish the right which he claimed to his property in dispute, after [illegible] which

[illegible] YARAM

I. L. R. 28 [illegible] 458

SUPERIOR LANDLORD.

———— **Sub-tenant**—*Bengal Tenancy Act (VIII of 1885), s. 85.* As long as the interest of the tenant from year to year is not put an end to, the superior landlord has no right to eject the sub-lessee, who is not his raiyat; and the sub-lessee can maintain a suit for possession of the land, from which he is dispossessed by the superior landlord and a tenant of his, who is not the lessor of the plaintiff. S. 85 of the Bengal Tenancy Act interpreted. *Gopal Mandal v Eshan Chunder Banerjee, I. L. R. 29 Calc. 148,* and *Madan Chandra Kapali v. Jaki Karilar, 6 C. W. N. 377,* explained and followed. *Srikant Mundul v. Saroda Kant Mundul, I. L. R 26 Calc. 46 · Fazel Sheikh v. Keramuddi, 6 C W. N. 916 ; Ramgatti Mundul v. Shyama Charan Dutt, C. W. N. 919,* and *Basarutulla Mundul v. Kamrunnessa Bibi, 11 C. W. N. 190,* held inapplicable. TAMIJUDDI *v.* ASGAR HOWLADAR (1908)

I. L. R. 36 Calc. 256

SUPERSTITIOUS USES.

———— bequest for—

See WILL—CONSTRUCTION. 2 Hyde 65
5 B. L. R. 433
2 B. L. R. O. C 148
I. L. R. 15 Mad. 424

———— statute of—

See ENGLISH LAW—SUPERSTITIOUS USES, STATUTE OF . 1 Bom. Ap. 4
12 Bom. 214

SUPPLEMENTAL DECREE.

See LIMITATION. I. L. R. 34 Calc. 672

SUPPLEMENTAL SUIT.

See COSTS—SPECIAL CASES—PARTITION
I. L. R. 21 Calc. 904

———— **Suit in Zillah Court simultaneous with suit in Supreme Court.** The mere pendency of a suit in the Supreme Court does not operate as a bar to the prosecution of a suit in a Zillah Court intended to be simply in furtherance of, and supplemental to, the suit in the Supreme Court. NAZIR ALI KHAN *v.* OJOODHYARAM KHAN
5 W. R. P. C. 83 : 10 Moo. I. A. 540

SUPPLEMENTARY JUDGMENT.

See JUDGMENT OF APPELLATE COURT
I. L. R. 35 Calc. 138

SUPREME COURT, BOMBAY.

See JURISDICTION—ADMIRALTY AND VICE ADMIRALTY JURISDICTION.
5 Moo I. A. 137

See JURISDICTION—MATRIMONIAL JURISDICTION . . 4 W. R. P. C 91
5 Moo I. A. 348

1. ———— Charter of Supreme Court —*Construction of statute—Statute limiting prerogative of the Crown—Power to grant leave to appeal in criminal case* Under the Bombay Charter of the Supreme Court, 8th December 1823, that Court was invested with full and absolute powers to allow or deny an appeal in criminal cases, and no power was reserved to the Crown by such Charter to grant leave to appeal in such cases, such power being only reserved as to civil cases The case of *Christian* v. *Cowan, 1 P. W. 329*, observed on QUEEN *v* STEPHENSON 3 Moo. I. A. 488

QUEEN *v* EDULJEE BYRAMJEE
3 Moo. I. A. 468

EDULJEE BYRAMJEE 3 Moo. I. A. 468

2. ———— *Construction of Charter—Law of limitation—English law* The Charter of 8th December 1823, which created the Supreme Court at Bombay, provided by s. 29 that " in cases of Mahomedans or Gentoos their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, should be determined, in cases of Mahomedans, by the laws and usages of the Mahomedans ; and where the parties are Gentoos, by the laws and usages of the Gentoos, or by such laws and usages as the same would have been determined by if the suit had been brought in a native Court," and the 37th section directs that " the Court shall frame such process, and make such rules and orders for the execution of the same, in all suits, civil and criminal, to be commenced, sued, or prosecuted, within their jurisdiction, as shall be necessary for the due execution of all or any of the persons thereby committed thereto, with an especial attention

and the Supreme Court at Bombay had power to frame its procedure different from the native Courts, the Court was right in allowing the plea of the English statute of limitations in an action between Hindus upon a Hindu contract, as the

of the fact to raise an objection to the cause being decided by the English law of limitations. RUCKMABOYE *v* LULLOOBHOY MOTTICHAND
5 Moo I. A. 234

3 ———— **Jurisdiction**—*Admission of attorneys* The Supreme Court, Bombay, had no jurisdiction to admit persons as attorneys and solicitors to practise in the Courts there, except such as were qualified in the manner pointed out

4. ———— *Suit for partition of property out of jurisdiction.* The late Supreme Court (Bombay) had no power to decree a partition of ancestral property situate beyond the limits of its jurisdiction. RAMCHANDRA DADA NAIK *v.* DADA MAHADEV NAIK
1 Bom Ap. 76

5. ———— *Suit concerning revenue—Government quit rent—Suit against Collector of Revenue for distraint* By the Charter

SUPREME COURT, BOMBAY—*concld.*

or any act done in the collection thereof. In an action of trespass brought against the Collector of Revenue at Bombay for distraining for arrears of Government "quit-rent":—*Held*, reversing the judgment of the Bombay Court, that the "quit-rent" was part of the revenue of the Company at Bombay, and the Court therefore had no jurisdiction SPOONER *v* JUDDOW

4 Moo. I. A 353

SUPREME COURT, CALCUTTA.

——— **Charter of 1726—**

See SLANDER. **I. L. R 28 Calc 452**

——— **rules, 1883, order 26—**

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s 373

I. L. R 31 Calc. 965

1. ——— **Carrying on business.** An inhabitant of Benares, trading at Calcutta and having a house of business there, held to be subject to the jurisdiction of the Supreme Court JANOKEY DOSS *v* BINDABUN DOSS

3 Moo. I. A. 175

2. ——— **Jurisdiction of Criminal Court**—*Party privy to misdemeanour committed within jurisdiction.* Under the general jurisdiction of the Supreme Court at Calcutta, a person, though resident at Benares, was liable to its jurisdiction, if privy to, and co-operating in, a misdemeanour committed within it. Where, therefore, a party resident at Benares was indicted with others before the Supreme Court for a conspiracy in procuring the prosecutor to be arrested in a fictitious action at law, and the instructions for the arrest were proved to the satisfaction of the jury to have originated with the appellant, it was *held* by the Judicial Committee that the offence having been completed within the jurisdiction of the Supreme Court at Calcutta, that Court had rightly assumed jurisdiction over the parties privy to it, though from the slight nature of the evidence they directed a new trial JANNOKEE DOSS *v* KING

I Moo I. A. 67

SUPREME COURT, MADRAS

See HIGH COURT, JURISDICTION OF—MADRAS—CIVIL **I. L. R. 8 Mad. 24**

1. ——— **Jurisdiction**—*Order allowing Registrar to institute suit on behalf of infants—Officer of Court entitled to commission—Personal interest in conduct of suit—Stat 2 & 3 Will IV, c. 34* An order was made on the equity side of the Supreme Court at Madras by which the Registrar, an officer who under the practice of the Court was entitled to a commission of 5 per cent. on all sums of money paid into Court, was allowed by consent of the Court or a Judge to institute proceedings for the benefit of infants where it appeared their property was unprotected *Held*, in a case in which he was allowed to file a bill on behalf of certain such infants, that the order being made under the general jurisdiction of the Supreme Court, and not under

SUPREME COURT, MADRAS—*concld.*

the Stat. 2 & 3 Vict, c. 34, was void, it being [illegible] officer of the Court [illegible]

SERLE . . . . . [illegible] Moo. [illegible]

2. ——— *Equitable jurisdiction in suits relating to charitable funds* The Supreme Court, Madras (established by the Madras Charter, 1800), had an equitable jurisdiction similar to, and corresponding with, the equitable jurisdiction exercised by the Court of Chancery in England over charities. ATTORNEY GENERAL *v.* BRODIE . . . . **4 Moo. I. A. 190**

SUPREME COURTS' OFFICERS ACT (XV OF 1843) SS 1, 2.

See OFFICIAL ASSIGNEE. **I. L. R. 36 Calc. 990**

SURBORAKARI TENURE.

See LAND TENURE IN ORISSA **I. L. R. 11 Calc. 699**

SURCHARGE AND FALSIFICATION.

See PARTNERSHIP, ACCOUNT OF **11 C. W. N. 776**

SURETY.

See ADMINISTRATION BOND **I. L R. 33 Calc. 713**
10 C. W. N. 673

See CIVIL PROCEDURE CODE, 1882, s 253. **I. L. R. 29 Bom 29**

See CONTRACT ACT (IX OF 1872), ss 124—147

See EXECUTION OF DECREE—MODE OF EXECUTION—PRINCIPAL AND SURETY **I L. R. 4 Calc. 331**
I. L. R. 19 Bom. 578
10 C W. N. 830

See ESTOPPEL **I. L. R. 6 Mad. 406**

See GUARANTEE **I. L. R. 10 All. 531**
22 W. R. 209

See HINDU LAW—DEBTS. **I. L. R. 11 Mad. 373**
I. L. R. 23 Bom. 454
I. L. R. 28 Bom. 408

See LIMITATION ACT, 1877, SCH II, ART. 179, EXPL. 1 . **I. L R 31 Bom. 60**

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION . . **1 Bom 135**

See PRINCIPAL AND SURETY.

See PROBATE AND ADMINISTRATION ACT (V OF 1881), s 78 **I. L. R. 28 Mad 161**

SURETY—*contd*

See PROBATE AND ADMINISTRATION ACT, s. 78 . . I. L. R. 31 All. 56

See RECOGNIZANCE TO APPEAR.

See RECOGNIZANCE TO KEEP PEACE.

See SECURITY FOR GOOD BEHAVIOUR.

——— agreement to become, on deposit of security.

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—GENERALLY
I. L. R. 1 All 751

——— bond—

See PRINCIPAL AND SURETY, PRINCIPAL AND AGENT I. L. R. 31 Calc. 242

——— discharge of—

See ABATEMENT OF SUIT
I. L. R. 25 All. 206

See BILL OF EXCHANGE
I. L. R. 3 Calc. 174

See MINOR—BOMBAY MINORS ACT (XX OF 1864) . I. L. R. 19 Bom. 245

See PRINCIPAL AND SURETY —DISCHARGE OF SURETY

See RES JUDICATA—CAUSES OF ACTION—CONTINUING GUARANTEE
I. L. R. 27 Bom. 418

——— execution against—

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION.
I. L. R. 26 Mad. 258

——— fitness of—

See SECURITY FOR GOOD BEHAVIOUR
13 C. W. N. 80

——— liability of—

See BAIL-BOND, FORFEITURE OF.
I. L. R. 36 Calc. 749

See BOND . . 9 B. L. R. 364
14 Moo I. A. 86

See CIVIL PROCEDURE CODE, 1882, s 253.
I. L. R. 31 Bom. 128

See GUARANTEE. I. L. R. 28 Calc. 597

See PARTNERSHIP—SUITS RESPECTING PARTNERSHIPS.
I. L. R. 25 Bom. 606

See PRINCIPAL AND SURETY.
I. L. R. 30 Mad. 167
I. L. R. 36 Calc. 626

See SURETY-BOND
I. L. R. 36 Calc 562

——— of defaulting tenant, suit against—

See RES JUDICATA—PARTIES—PRO FORMA DEFENDANTS . 3 B. L. R. Ap. 37

——— position of legal practitioner becoming—

See MOOKTEAR . . 7 C. W. N. 281

SURETY—*contd.*

——— suit by, against principal for money paid on his account—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CONTRIBUTION
B. L. R. Sup. Vol. 691

1. LIABILITY OF SURETY.

1. ——— Duration and extent of liability. A surety must be taken to have entered into his contract only for the time during which the relation created by the instrument of suretyship exists, and with reference only to the person to whom he made himself responsible. MOHIP NARAIN *v.* SHAW . . . 25 W. R. 250

2. ——— *Security, bond for restitution of property taken under decree—Liabil-*

of the Court of Regular, but also of that of the Court of Special Appeal. NARAYAN DEV *v.* GAJANAN DIKSHIT . . . . 10 Bom. 1

3. ——— *Liability of guarantor for gomashta—Death of surety.* Where a party engaged to be surety for a gomashta and to make good all defalcations proved to have been made by him, the engagement was *held* to refer to defalcations shown to have been made by the gomashta during the period of the guarantor's life, and not to apply to a time after guarantor's death, when all power of advising or controlling the gomashta had ceased. LYALL & Co *v.* AMORABUTTY DOSSEE . 20 W. R. 12

4 ——— *Civil Procedure Code, 1859, s 338—Remand of case and final decree on remand* A decree-holder having taken out execution of a decree held by him, and the

the case being remanded by the High Court in special appeal. SHIVLAL KHUBCHAND *v.* APAJI BHIVRAV . . . I. L. R. 2 Bom 654.

upon the case being remanded by the High Court in special appeal. APPAJI BHIVRAV *v.* SHIVLAL KHUBCHAND . . I. L. R. 3 Bom. 204

SURETY—*contd.*

1. LIABILITY OF SURETY—*contd*

5. ———— Extent of liability—*Security* [illegible]

Committee required security to the extent of R100 from Sheikh Akbur Ali, mohurrir in the Octroi Department, for the honest and faithful discharge of his duties to Government, went on to say that the defendant of his own free will and pleasure pledged a certain dwelling house in lieu of security for the mohurrir, and to promise that, if any sort of embezzlement or misappropriation was proved against the mohurrir in Court, the property might be seized There was a proviso that, if he deposited R100, the money, and not the property, would be liable, if he failed to deposit the money, the property was to be liable for the payment of the amount of the security. The mohurrir fraudulently allowed certain goods to pass the choonghee without payment of duty, whereby, he caused the Municipality a loss of R8 He was convicted under s 161 of the Penal Code The plaintiff sued to recover the amount of the security *Held*, that the defendant could only be liable under the bond for sums shown to have been misappropriated, and that he could not be held liable for losses which accrued to the Municipality from misconduct on the part of the mohurrir other than misappropriation, and that in any case he could only be liable for the actual damage sustained by the Municipality. TORAB ALI *v* PRESIDENT OF THE MUNICIPAL COMMITTEE OF ALLAHABAD . 6 N. W 170

6. ———— *Withdrawal of security placed with sureties to indemnify co-sureties* Where a surety, without taking precautions to see to its proper application, permits the party for whom he is surety to get possession of money, which by an arrangement with that party and the co-sureties had been placed in his (the surety's) hands for the purpose of indemnifying the co-sureties, he loses his remedy against the co-sureties to the extent of the security thus allowed to be withdrawn Where money is permitted to remain in the hands of sureties in order to its being applied to the purpose to secure which they become sureties, it is the duty of each as between himself and co-sureties to see that the money is not misapplied. WOON CHIT POE *v.* WEE CHANG 15 W. R. 185

7. ———— *Suit against surety of Nazir by party whose property has been* [illegible]

to make good any loss sustained by such person. BOCHA GOPE CHOWDHRY *v.* BRAJAGABIND DAS 9 B. L. R. Ap. 26 : 18 W. R. 259

8. ———— *Civil Procedure Code, 1882, s. 336—Execution-proceedings.* The liability of a surety under s. 336 of the Civil Procedure Code ceases when the proceeding taken in execution of a decree wherein the security was furnished comes to an end. LALJI SAHOY *v* ODOYA SUNDERI MITRA I. L R 14 Calc. 757

9. ———— *Judgment debtor applying to be declared an insolvent—Civil Procedure Code, ss. 336, 344.* S on the 16th January 1886 obtained a decree for a certain sum of money against C. In execution of that decree C was arrested on the 28th January, and upon his being brought before the Court he expressed his intention of applying to be declared an insolvent under the provisions of Ch. XX of the Code of Civil Procedure, and he was thereupon released upon furnishing security, under the provisions of s. 336 of the Code. K became surety for C and executed a bond undertaking to produce C at any time when the Court should direct him so to do, and in default of so producing him to pay the amount of the decree, and standing security for C's applying to be declared insolvent. On the 19th February C filed his petition to be declared an insolvent before the District Judge under s 344 of the Code, and on the 14th May 1886 his petition was dismissed owing to his non-appearance S thereupon applied for execution of the decree against K. *Held*, that K was released from his obligation under the bond executed. KOYLASH CHANDRA SHAHA *v.* CHRISTOPHORIDI I L R. 15 Calc. 171

10. ———— *Civil Procedure* [illegible] *applying to be* [illegible] g a [illegible] tor [illegible] to [illegible] the [illegible] r's applying to be declared insolvent, is releas[illegible] om [illegible] the bond when the judgment-[illegible] o be declared [illegible] *Christopho-* [illegible] RAMZAN *v.* [illegible] GERARD . . . I. L R. 13 All. 100

11. ———— *Civil Procedure Code, 1882, s. 336—Bond for production of insolvent judgment-debtor—Conditions in bond unprovided for by s. 336.* Where in a bond under s. 336 of the Code of Civil Procedure, besides the usual covenants to produce the judgment-debtor before the Court, and that the judgment debtor would apply to be declared an insolvent, further stipulations were contained as to what should [illegible] application was *held* [illegible] h as were [illegible] enforced [illegible] PARTAB [illegible] 6 All. 37

SURETY—*contd.*

1. LIABILITY OF SURETY—*contd.*

12. ——————— *Civil Procedure Code, 1882, s. 336—Judgment debtor's application to be declared an insolvent—Release of the surety* A person standing surety for a judgment-debtor under s. 336 of the Civil Procedure Code (Act XIV of 1882) is released from his obligation when the judgment debtor has applied to be declared an insolvent. *Koylash Chandra Shaha v Christophoridi, I L R 15 Calc, 171*, and *Ramzan v Gerard, I L R 13 All, 100*, followed. DWARKADAS PARSHOTAMDAS v ISABHAI DAUDKHAN . . I. L. R. 19 Bom. 210

13. ——————— *Surety for minor—Contract Act (IX of 1872), s 128.* A surety to a bond passed by a minor for moneys borrowed for purposes of litigation not found to be necessary is liable to be sued on it, whether the contract of the minor is considered to be void or voidable. KASHIBA v SHRIPAT NARSHIV . . I L. R. 19 Bom 697

ment-debtor before the expiration of that time—Release of surety—Execution of decree as against

debtor. Appeal by the surety to the High Court treated as a revision petition. KRISHNAN NAYAR v. ITTINAN NAYAR (1901) I. L. R. 24 Mad. 637

15. ——————— Insolvency—*Civil Procedure Code (Act XIV of 1882), s. 336—Surety undertaking*

16. ——————— Production of judgment-

for the non-production of the judgment-debtor

I. L. R. 23 Mad 560

2. ENFORCEMENT OF SECURITY.

1. ——————— Mode of enforcement—*Act XXIII of 1861, s 8—Surety-bond—Execution* A surety-bond taken by the Court under s. 8 of

2. ——————— *Execution of decree against surety—Surety-bond for payment of costs under s. 342.* A bond given as security for costs under s. 342 of Act VIII of 1859 could be enforced in a summary way by proceedings in execution. CHUTTERDHAREE LALL v. RAMBELASHEE KOER I. L R. 3 Calc. 318: 1 C. L. R. 347

3. ——————— *Civil Procedure Code, 1859, s 204—Execution of decree against surety—Stay of execution on security being given* Where a sale in execution of a decree

4 B. L. R. Ap. 27: 13 W. R. 35

4. ——————— *Civil Procedure Code, 1859, s 204—Sureties under Civil Procedure Code, 1859, ss 76, 83—Sureties after decree.* S. 204, Act VIII of 1859, applied to cases such as that of parties who became sureties under s. 76 or s 83, but not to parties who became securities after a decree was passed RAM KISSEN DOSS v. HURKHOO SINGH . . . 7 W R 329

Rejecting a review in HURKHOO SINGH v RAM KISHEN . . . . 6 W. R. Mis. 44

5. ——————— *Civil Procedure Code, 1859, s 204—Compromise embodied in decree—Execution against surety* A compromise embodied in a decree was to the effect that defendant should pay to plaintiff the principal sum within a specified period and that if he (defendant)

paid the principal, but was afterwards arrested, and *M H* became surety for his production and for the payment of the interest, if the order of the Munsif releasing the judgment-debtor were set aside on appeal. *Held* (by MARKBY, J.), that the decree on the compromise was not one upon which execution could be carried out, at any rate for

SURETY—*contd.*

2. ENFORCEMENT OF SECURITY—*contd.*

the sum which was only conditionally due, as the inquiry relative to the fulfilment of the condition could only be made in a regular suit; and that execution could not be taken out against *M H*,

HOSSEIN KHAN . . . 14 W. R. 63

6. ——— *Civil Procedure Code, 1859, s 204—Surety for performance of decree—Suit on surety-bond* When a person has become liable as security for the performance of a decree, s 204 of Act VIII of 1859 gives a remedy to the decree-holder against the surety in addition to any remedy which he may have on the surety-bond. It does not prevent the decree-holder from bringing a suit on the surety-bond to enforce the

7. ——— *Civil Procedure Code, 1859, s. 204—Surety executing bond for payment of decree by instalments—Alteration of terms of decree.* Where, by an arrangement sanctioned by the proper Court, the terms of a decree were varied, and provision was made for its payment by instalments, for the payment of a portion of which instalment a surety executed a bond hypothecating his property: *Held*, that the terms of s 204 of the Civil Procedure Code were not application to such an arrangement CHUNDEE DEEN *v.* HUSSUN ALI 3 N. W. 88

8. ——— *Civil Procedure Code, 1877, ss 210, 253—Execution of decree against surety—Payment of decree by instalments.* A judgment-debtor, whose property was about to be sold, appeared before the officer appointed to conduct the sale, and applied for its postponement, producing a surety and a bond, in which such surety promised to pay the amount of the decree

who had made the decree and ordered the sale of the property. The Munsif made no order regarding the security, but merely made an order that the amount of the decree should be paid by instalments within one year. The judgment-debtor did

SURETY—*contd.*

2. ENFORCEMENT OF SECURITY—*contd.*

agreed to pay the amount of the decree by instalments, the provisions of s. 210 of Act X of 1877

KUAR *v.* TIRKHA RAM . I. L. R. 3 All. 809

9. ——— *Civil Procedure Code, 1882, s. 253—Surety for execution of appellate decree, remedy against.* In 1874 the execu-

on his behalf. *Held*, that the judgment creditor could not proceed summarily against the surety under the provisions of s. 253 of the Code of Civil Procedure, 1882. BALAJI *v.* RAMASAMI I. L. R. 7 Mad. 284

10 ——— *Civil Procedure Code, 1882, s. 253—Execution of decree against surety* A surety entered into a bond, undertaking

execution. NARAYANAMMA *v.* RAMAYYA CHETTI I. L. R. 22 Mad. 268

11. ——— **Right to enforce security—** *Civil Procedure Code, 1859, s 204—Order cancelling security bond.* Where a person became a

afterwards the defendant's appeal was on application restored, and a decree passed against the cation restored, and a decree passed against the

7 B. L. R. 81: 15 W. R. 533

12. ——— *Security for restitution of property taken in execution—Reversal*

SURETY—*contd.*

2. ENFORCEMENT OF SECURITY—*contd*

of decree—Execution against surety—Civil Procedure Code, 1882, ss 253, 545, 546 S 253 of the Civil Procedure Code contemplates a suit pending at the time security is given for performance of the decree, and does not apply to a case where the litigation in the Courts of first instance and of first appeal has ended, and no second appeal had been

gave a bond by which he undertook to refund the amount to the judgment-debtor in the event of the latter succeeding in appeal to the High Court and of the decree-holder failing to repay him The judgment-debtor subsequently filed an appeal to the High Court and was successful, and he then applied in the execution department to recover the amount from the surety *Held*, that the Court executing the High Court's decree had no jurisdiction to execute it against the surety HARDEO DAS *v* ZAMAN KHAN **I. L. R. 8 All. 639**

s.c. NUFFER CHUNDER PAUL CHOWDHRY *v.* SOORENDRO NATH ROY . . **14 W. R. 410**

14. ——— *Execution of decree against surety—Civil Procedure Code, 1859, s 204*

15. ——— *Civil Procedure Code, 1877, s. 253—Execution of decree against surety—Execution of decree of Privy Council—Security for costs of respondent—Civil Procedure Code, 1877, s. 610.* An appeal was preferred to Her Majesty in Council from a final decree passed on appeal by the High Court, and *B* and certain other persons on behalf of the appellant gave secu-

SURETY—*contd.*

2. ENFORCEMENT OF SECURITY—*contd.*

executed against the sureties. *Per* SPANKIE, J., and STRAIGHT, J. (*Contra*). BANS BAHADUR SINGH *v.* MUGHLA BEGAM . . **I. L. R. 2 All. 604**

16. ——— *Appeal to Privy Council—Security for costs of respondent—Execution of decree against surety—Civil Procedure Code (Act XIV of 1882), ss. 253, 602, 603, 610* A plaintiff, having preferred an appeal to Her Majesty in Council, was called upon to furnish security. Thereupon *A*, on behalf of the appellant,

not be enforced in execution of the decree of Her Majesty in Council *Bans Bahadur Singh v. Mughla Begam, I. L. R. 2 All. 601*, dissented from. RADHA PERSHAD SINGH *v.* PHULJURI KOER **I. L. R. 12 Calc. 402**

17.

appellant for the costs of an appeal under s. 549 of the Code, cannot be summarily enforced against the surety in the execution-proceeding the remedy is by separate suit *Bans Bahadur Singh v Mughla Begam, I. L R. 2 All 601*, dissented from. *Radha Pershad Singh v Phuljuri Koer, I L. R. 12 Calc. 402*, followed. KALI CHARUN SINGH *v* BALGOBIND SINGH . . . **I. L. R. 15 Calc. 497**

18. ——— *Surety for amount of decree pending appeal—Execution of decree—Separate suit—Civil Procedure Code, 1882, ss. 214, 253, and 545.* Where a surety has become security for the appellant in an Appellate Court under

19. ——— *Civil Procedure Code, 1882, ss 253, 545, 582, and 583—Execution of decree—Security for performance of decree of Appellate Court—Method of enforcing such security.* Where in an appeal security has been given to the

SURETY—*contd.*

2. ENFORCEMENT OF SECURITY—*contd.*

Appellate Court for the due performance of such decree as it may pass, the decree-holder may enforce such security in the manner provided for by s 253 of the Code of Civil Procedure. *Bans Bahadur Singh* v. *Mughla Begam, I. L R. 2 All. 604,* followed *Thirumalai* v *Ramayyar, I. L. R. 13 Mad 1,* and *Venkapa Naik* v. *Baslingapa, I. L. R 12 Bom 411,* approved. *Kali Charun Singh* v *Balgobind Singh, I L R. 15 Calc. 497,* and *Tokhan Singh* v. *Udwant Singh, I. L. R. 22 Calc. 25,* dissented from. JANKI KUAR *v.* SARUP RANI . . . . . I L. R. 17 All 99

20. ——— *Execution of decree against surety—Security for due performance of appellate decree, enforcement of—Civil Procedure Code (1882, as amended by Act VII of 1888), s. 546.* A security bond given by a third party for the due performance of the decree of the

Singh, I. L R. 15 Calc. 497, and *Tokhan Singh* v. *Udwant Singh, I. L. R 22 Calc. 25,* followed in principle. *Venkapa Naik* v. *Baslingapa, I. L R. 12 Bom. 411,* dissented from. *Thirumalai* v. *Ramayyar, I. L. R. 13 Mad 1,* and *Arunachellam* v. *Arunachellam, I. L. R. 15 Mad. 203,* referred to. SURJOO DAS *v.* BALMAKUND DAS

I. L. R. 23 Calc. 212

21. ——— *Civil Procedure Code, ss. 253 and 583—Stay of execution of decree appealed against on giving security—Surety for fulfilment of appellate decree—His liability—Mode of enforcing it—Execution-proceedings—Separate suit.* Under Act VIII of 1859 and the supplemental Act XXIII of 1861, the ordinary mode of enforcing payment by a surety was by summary process in execution, not by means of a separate suit. This was so equally whether the security had been taken in the course of the original suit or of the appeal. The present Code of Civil Procedure (Act XIV of 1882) makes no alteration in the law on this subject Reading s 253 with s. 583 of Act XIV of 1882, it is clear that the Court has the power to proceed against a person who has become a surety under s. 546, for the fulfilment of the decree in appeal, in the same way as against a surety who has become liable under s. 253 to satisfy a decree of a Court of first instance. The words "in an original suit" in s. 253 may be treated as a superfluous expression. VENKAPA NAIK *v.* BASLINGAPA . I. L. R. 12 Bom. 411

22. ——— *Civil Procedure Code, 1882, ss. 253, 546, 583—Surety for the due performance of appellate decree—Mode of enforcing liability of such surety—Execution of decree.* When security had been given on behalf of the respondent to an appeal under s. 546 of the Code of Civil Procedure for the due performance of the decree of the Appellate Court and the appeal had been successful:—*Held,* that, under the provisions of ss 253, 583, the decree of the Appellate Court could be enforced against the sureties in execution-proceedings. *Venkapa Naik* v. *Baslingapa, I. L. R. 12 Bom. 411,* approved. THIRUMALAI *v.* RAMAYYAR . . . I. L R. 13 Mad. 1

23. ——— *Security for costs—Security-bond, enforcement of, by execution—Civil Procedure Code (Act XIV of 1882), s 549—Act VII of 1888, s. 46—General Clauses Act (I of 1868), s. 6.* On the 9th June 1888 a decree-holder applied for leave to execute his decree (which was one for costs) against a person who had become security for the costs of an appeal which had been dismissed with costs; this application ... it then ... ior, the ... lar suit ... passing of Act VII of 1888 the decree-holder made a fresh application for such execution under s 46 of that Act. The Court, after referring to s. 6 of the General Clauses Act, rejected the application, on the ground that proceedings against the surety had been commenced before Act VII of 1888 had come into force. *Held,* on appeal, that the application should have been allowed. ABDUL WAHAB *v* FAREEDOONNISSA . I. L R. 16 Calc. 323

24. ——— *Execution of decree—Surety.* A suit was instituted by *C* against *H S* in the Hooghly Court, and was dismissed with costs. On appeal by the plaintiff, the defendants ... *C* to ... on ... usa ... ent ... osts ... ion ... der ... sale ... on. ... 17

25. ——— *Civil Procedure Code, 1889, s 336—Surety, liability of—Execution-* ... under s 336 ... pro- ... n the ... *D,* a ... e 8th ... 36 of ... n the the Civil Procedure Code, to be released ... On the 16th of November 1884 *B* and *C* stood security for him under the provisions of s. 336 of the Civil Procedure Code that he would appear when called on, and that he would within one month apply under s. 344 to be declared an insolvent, and *D* was thereupon released. Instead of applying under s. 344 to be declared an insolvent, he applied to have the decree, which has been obtained *ex parte,* set aside. This application was disallowed, and the decree-holder was directed to take further steps. On the 21st of February 1885 the application for

SURETY—*contd.*

2. ENFORCEMENT OF SECURITY—*contd.*

execution of the decree was struck off. The decree-holder on the 20th of July made a fresh application to execute the decree against the sureties, unless [illegible]

I. L. R. 14 Calc. 757

26. ———— *Right of sureties to appeal—Extent of their liability—Attachment before judgment—Security under s 484 of Civil Procedure Code (Act XIV of 1882)—Decree—Stay of execution by Appellate Court—Fresh security under s. 545 of Civil Procedure Code (Act XIV of 1882)—Liability of original sureties.* A surety against whom a decree is sought to be enforced under s. 253 of the Code of the Civil Procedure (Act XIV [illegible]

[illegible] to the District Court. In that Court the defend- [illegible]

[illegible] accordingly gave fresh security. The Appellate Court passed a decree in plaintiff's favour for R600 and costs. Thereupon the decree-holder [illegible]

[illegible] of the sureties could not properly be extended beyond the amount, including costs, awarded to the plaintiff by the Court of first instance. That [illegible]

[illegible] decree of the Court of first instance was made, the liability of the securities was fully incurred, and they were severally bound to place at the disposal of the said Court, when required, the property specified in their bond, or, in default, to pay such sum as the said Court should adjudge against the defendant. This liability, having been incurred was not extinguished by the fact that an appeal had been brought against the decree If the amount adjudged by the decree was reduced in appeal, their liability would be diminished to a like extent; or, if the decree was reversed, their liability did not cease, because the decree of the first Court merged in that of the appellate Court. SULEMAN *v.* SHIVRAM BHIKAJI

I. L. R. 12 Bom. 71

27. ———— *Surety after passing of decree—Mode of realization of security—Civil Procedure Code, s. 253—Jurisdiction of Revenue Court.* Where, after the passing of a decree for arrears of rent, a friend of the judgment-debtor entered into a security-bond whereby he rendered himself personally liable and hypotheca- [illegible]

[illegible] of the hypothecated property BEHARI LAL *v* JAGNANDAN SINGH . I. L. R. 19 All. 247

28. ———— *Surety under Civil Procedure Code, 1882, s. 349—Surety for insolvent judgment-debtor—Default of principal—Liability of surety—Mode of enforcing liability of surety* The Civil Procedure Code (Act XIV of 1882) provides no means for enforcing in execution a surety-bond passed under s. 349 The proper course of the plaintiff is to obtain an assignment of the bond with a view to suing on it. MINGALE ANTONE KANE *v.* RAMCHANDRA BAJE

I. L. R. 19 Bom. 694

29. ———— *Liability of surety after decree passed in original suit—Civil Procedure Code (Act XIV of 1882), s 253—Execution of decree against surety.* An *ex parte* decree was set aside on condition that the defendant should find a surety who would be responsible for any amount that might be found due from the defendant by any decree to be subsequently made in the suit. On an application to execute the decree, which [illegible]

[illegible] execution against the surety. SONATUN SHAHA *v.* DINO NATH SHAHA I. L. R. 26 Calc. 222
3 C. W. N. 228

30. ———— Mode of enforcement—*Liability, mode of enforcing—Civil Procedure Code (Act XIV of 1882), ss. 545-546.* The mode of enforcing payment by a surety who has rendered

SURETY—*contd*

2. ENFORCEMENT OF SECURITY—*concld.*

himself liable under s 545 (c) or s. 546 of the Civil Procedure Code (Act XIV of 1882) is by a summary process in execution, and not by means of a separate suit. JAMSEDJI *v.* BAWABHAI (1900) **I. L. R. 25 Bom. 409**

31. ———— *Execution of decree—Security bond—Mortgage—Sale of mortgaged property—Civil Procedure Code (Act XIV of 1882), s 545—Transfer of Property Act (IV of 1882), s 67 and s 99.* The relationship between a decree-holder and a judgment-debtor who has executed a security-bond under s. 545, cl. (c), of the Civil Procedure Code, mortgaging certain properties for the due performance of the decree or order that may ultimately be passed by the Appellate Court, is not that of mortgagee and mortgagor; and, in the event of the appeal being dismissed, the decree-holder is entitled to realise his decretal money by sale of the properties given in security, without instituting a suit under s 67 of the Transfer of Property Act SHYAM SUNDAR LAL *v.* BAJPAI JAINARAYAN (1903) **I. L. R. 30 Calc. 1060 s c. 7 C. W. N. 914**

3. DISCHARGE OF SURETY.

1. ———— **Appearance of debtor**—*Act XXIII of 1861, s 8—Discharge of defendant on bail* Where a Court during the pending of an inquiry under Act XXIII of 1861, s. 8, allowed the defendant to be at large upon security for his appearance when called upon, and when the Court had concluded the inquiry t was found that the defendant had appeared, the liability of the surety was *held* to be at an end BALMER, LAWRIE & Co. *v* HUREE NARAIN PODDAR **24 W. R. 292**

2. ———— **Change in circumstances under which security was given**—*Guarantee for good conduct of gomashta—Transfer of property guaranteed* Where two parties executed a surety-bond addressed to *J, R,* and *M,* owners of certain property, binding themselves to be answerable for the good conduct and proper discharge of duties of their gomashta, *B,* and the property was afterwards transferred to *R* alone, it was *held* that, when *J* and *M* ceased to have any interest in the property, there was such entire change in the nature of the service that the sureties' liability did not continue, and they were not liable to be sued upon their bond. RAJKRISTO MOOKERJEE *v.* ISSUR CHUNDER MOOKERJEE **23 W. R. 90**

[illegible]

duties to be appropriated by Government in case of loss to the State from his failure to perform them, and the Government, without his consent, alters his position and risk, such alteration relieves him from his engagement as surety. SHIB NARAIN BANERJEE *v.* GOVERNMENT **W. R. 1864, 138**

SURETY—*contd.*

3 DISCHARGE OF SURETY—*contd*

4. ———— **Surety for insolvent judgment-debtor filing petition**—*Civil Procedure Code, ss. 336, 344—Insolvency*—One *B M* became surety under s 336 of the Code of Civil Procedure on behalf of one *G R,* a judgment-debtor, to the effect that *G R* would appear before the Court when called on and would within one month file an application to be declared an insolvent *G R* did so apply, but on the surety's asking the Court to declare him discharged of his liability the Court refused to do so *Held,* that the surety's liability was discharged by the judgment-debtor applying to be made an insolvent. *Koylash Chandra Shaha v. Christophoridi, I. L. R 15 Calc 171,* referred to. BANNA MAL *v* JAMNA DAS **I. L. R. 15 All. 183**

5. ———— **Insolvency**—*Civil Procedure Code (Act XIV of 1882), s 336—Surety that judgment-debtor will apply to be declared insolvent —Due application by judgment-debtor.* Where a [illegible] judgment debtor [illegible]

Held, that the surety was discharged KRISHNA[illegible] *v.* KRISHNASAMY AYYAR (1902) **I. L. R. 26 Mad. 366**

6. ———— **Acceptance of further security**—*Security signed by surety—Security-bond* A security, voluntarily signed, existing upon the record, and even taken off the file, is a valid and subsisting [illegible] motives of the [illegible] ...ged by [illegible] accept- [illegible] not in- [illegible] ...curities [illegible] ...N ROY

5 W. R. P. C. 129: 2 Moo. I. A. 311

7. ———— **Notice of intention to cease to be surety**—*Security for payment of rent* A [illegible] by a third person [illegible] e notice to [illegible] ...een given. [illegible] **N. W. 77**

8. ———— **Administration**—*Probate and Administration Act (V of 1881), ss. 51 and 78—Surety-bond, Power of a District Court to take a second—Administratrix, mal-administration of the estate by—Contract Act (IX of 1872), s 130—Application by a surety, who is not a beneficiary, to be discharged from his suretyship.* Under the Probate and Administration Act (V of 1881), a District Court, after once having taken a bond with sureties, has jurisdiction to take a second bond with fresh sureties, if the necessity arises. A surety (who is not a beneficiary) for the administratrix of an estate can, so far as relates to the future, by giving notice, be released from his obligation as surety on account of mal-administration of the estate by the administratrix. S. 130 of the Con-

SURETY—*contd.*

3. DISCHARGE OF SURETY—*concld.*

tract Act (IX of 1872) applies to such a case. RAJ NARAIN MOOKERJEE *v.* FUL KUMARI DEBI (1901) . . . . . I. L. R. 29 Calc. 68 s.c. 6 C. W. N. 7

9. ——— Limitation—*Contract Act (IX of 1872), ss. 134 and 137—Creditor allowing remedy against principal debtor to become barred by limitation.* "Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him," as these words are used in s. 137 of the Indian Contract Act, 1872, indicate a forbearance, for a more or less limited period, to exercise a subsisting right. The section does not cover such forbearance as results in the remedy of the creditor against the principal debtor becoming barred by limitation. Hence, where a judgment-creditor allowed his judgment-debtor to enter into an agreement for the satisfaction of his decree by instalments, certain persons becoming sureties for the due payment of such instalments, and the judgment-debtor, having made default in payment of the instalments, delayed taking out execution of

I. L. R. 5 Bom. 647, dissented from. RANJIT SINGH *v.* NAUBAT (1902)

I. L. R. 24 All. 504

4. MISCELLANEOUS CASES.

1. ——— Surety of lessee afterwards becoming his partner—*Suit by surety for illegal ejectment of lessee—Suit for damages.* Where a person became surety for the due performance by the lessee of the obligations contained in a lease for a term of years, and afterwards became a partner with the lessee, and the lessor evicted the lessee before the expiration of the lease:—*Held,* that a suit would lie by the surety for damages arising from the illegal ejectment, although the surety was not a party to the original contract with the lessor. BURRODAKANT ROY *v.* RAM TUNNOO BOSE . . . 7 W. R. P. C. 15 s.c. BURDAKANTH ROY *v.* ALUK MUNJOOREE DASIAH . . . . . 4 Moo. I. A. 321

2. ——— Suit by surety after satisfaction of bond—*Cause of action—Limitation.* The plaintiff executed a bond jointly with a servant of the defendants on 10th July 1861. The

SURETY—*concld.*

4. MISCELLANEOUS CASES—*concld.*

barred by the law of limitation. BHAGIRATH ADHIKARI *v.* TARINI CHANDRA PAKRASI

7 B. L. R. 35; 15 W. R. 413

Reversing on appeal s.c. BHOGEERUTH ADHIKAREE *v.* TARINEE CHUNDER PAKRASEE

14 W. R. 174

3. ——— Suit on bond to recover money of which a third party has in fact had the benefit—*Limitation Act (XV of 1877), Sch. II, Arts. 61, 83—Limitation—Compromise of suit by heirs of obligor—Suit to recover money paid under compromise.* U. S. borrowed money on a bond from U. R. The sole obligor of the bond was U. S. but the money was in fact borrowed for the use of, and was paid to, one M. From time to time the original bond was renewed, and ultimately U. R. sued upon the last bond and obtained a decree for a large sum of money against the heirs of U. S. The defendants appealed to the High Court, but, pending the appeal, entered into a

surety for M, but the principal debtor, although the money was borrowed for M's benefit; that the payment made on the 5th of November 1902, in pursuance of the compromise referred to above, was not gratuitous, and that the heirs of U. S

referred to by KNOX, A. C. J. GIRRAJ SINGH *v.* MUL CHAND (1907) . I. L. R. 29 All. 627

SURETY BOND.

——— *Liability of surety on forfeiture of bond by principal—Recovery of amounts of bonds from both principal and surety—Criminal Procedure Code (Act V of 1908), s. 514, and Sch. V, Form XI.* Upon the forfeiture of a bond by a person to keep the peace for a term, the

to. SALIGRAM SINGH *v.* EMPEROR (1909)

I. L. R. 38 Calc. 562

SURPLUS SALE-PROCEEDS.

See SALE FOR ARREARS OF RENT.

I. L. R. 34 Calc. 724

SURRENDER.

——— by raiyat—

See BENGAL TENANCY ACT, s. 171.
13 C. W. N. 97

——— doctrine of—

See HINDU LAW—WIDOW.
13 C. W. N. 544

——— of lease—

See TRANSFER OF PROPERTY ACT, s. 118.
6 C. W. N. 905

——— of tenancy—

See BENGAL TENANCY ACT, 1885, s. 86.
I. L. R. 28 Calc. 256

See LANDLORD AND TENANT—ABANDONMENT, RELINQUISHMENT OR SURRENDER, OF TENANCY

See LANDLORD AND TENANT—LIABILITY FOR RENT . I. L. R. 19 Calc. 790

See LANDLORD AND TENANT—PAYMENT OF RENT—NON-PAYMENT
I. L. R. 18 Bom. 250

SURVEY.

1. ——— **Survey proceedings, power** of Collector to re-open. Where a person is ...

ANUND MOYEE GOOPTA . . . [illegible] W. R. 10

2. ——— **Excess lands founds after survey**—*Presumption.* Where the admitted *mileek lands* of a raiyat were found by survey to be somewhat in excess of the land re-leased to him by resumption proceedings based on a former survey, it was *held* that the excess could not be assumed as a matter of course to be *mâl* lands. DINOBUNDHOO SUHAYE *v.* COURT OF WARDS
11 W. R. 347

SURVEY ACT.

See BENGAL SURVEY ACT.

SURVEY ACT (BOMBAY).

See BOMBAY SURVEY AND SETTLEMENT ACT (I OF 1865).

SURVEY AWARD.

See ACT XIII, OF 1848

See LIMITATION ACT, 1877, SCH. II, ARTS. 45, 46 (1859, s. 1, CL. 6).

1. ——— **Requisites for survey award**—*Decision on bond fide contention.* To constitute a survey award, there must be a decision on a *bond fide* contention between the parties *after* a proper investigation into the points of issue between them NUBO KISHEN ROY *v.* GOBIND CHUNDER SEIN
6 W. R. 317

SURVEY AWARD—*contd.*

2. ——— **Decision on fact not disputed**—*Beng. Reg. VII of 1822—Summary award.* The *finding* of a Survey Deputy Collector that a party has been in possession of certain land for more th[illegible] where the fact is not disputed, *is not a* [illegible] of 1822 [illegible] SINGH . . . . [illegible]

3 ——— **Striking off complaint in Survey Department.** On a complaint being made in the Survey Department as to a demarcation of land, the Deputy Collector, instead of investigating the circumstances, ordered a local inquiry by an Ameen, and on the plaintiff omitting to deposit the Ameen's fees, struck the case off his file. *Held*, that the decision was not an award on which a cause of action could be based KRISTO CHUNDER DOSS *v.* SOUDAMONEE DOSSEE
12 W. R. 174

4. ——— **Order of settlement-officer without inquiry**—An entry made in the settlement papers was objected to on the merits The objection was disallowed summarily without inquiry, on the ground that the papers had been drawn out more than a year before the objection was taken *Held*, that such an order was not "an award," inasmuch as it did not adjudicate on the rights of the parties or on the question of possession and therefore that it was not an order on which a [illegible] rejecting the suit [illegible] upon the [illegible] SINGH [illegible] 1873, 77

5. ——— **Act XIII of 1848, operation of**—*Effect of award.*—Act XIII of 1848 operates in certain cases to give to a survey award the full [illegible] decree of a Civil Court, by taking away any suit [illegible] after a [illegible] SWAS *v.* [illegible] R. 173

6. ——— **Sanction by Collector**—*Acceptance of proceedings as correct*—To make a survey demarcation effective, it is not absolutely necessary that there should be any more special sanction by the collector than a general acceptance of the survey proceedings as correct. HANOOMAN CHOWBAY *v.* BINDOO TORABA . 10 W. R. 338

7. ——— **Right to benefit under award**—*Person representing party to award.*—The representatives of a party to a survey award are entitled to the benefits thereof RAJMOHAN MITTER *v.* COMMISSIONER OF THE SUNDERBUNS 1 W. R. 344

ALI ASHRUF *v.* CHONGA GOBIND ROY.
5 W. R. 220

8. ——— **Effect of award**—*Act IV of 1840, award under*—*Evidence of title.*—An award under Act IV of 1840 between a intervenor and a party other than the plaintiff, was no evidence against the plaintiff. AMEEROONISSA KHATOON *v.* JUGGUR NATH ROY . . . 11 W. R. 113

SURVEY AWARD—*contd*

9. ——— *Effect of survey award on purchaser—Evidence of title.*—A purchaser is bound by a survey award passed against the persons from whom the derived his title. ALLYA ALLYAT *v.* JUGGUT CHUNDER ROY 5 W. R. 242

10. ——— *Act IV of 1840, award under Semble* Where a zamindar let his estate in farm for a term of years, and so delegated the whole of his rights, privileges, and immunities to another person, he was *held* to become himself bound by an adverse decision under Act IV of 1840, to which the former was a party. LEKHRAJ ROY *v.* COURT OF WARDS . . 14 W. R. 395

11. ——— *Act IV of 1840, award under, failure to set aside. Held*, that the plaintiff having failed to set aside an award made under Act IV of 1840 within the period of limitation, could not claim in opposition to the award GOPAL NATH *v.* ABDUL GHANEE . 1 Agra 120

12. ——— *Notice of survey proceedings—Joint proprietors.*—A co-proprietor of a joint undivided estate was *held* to be bound by a survey award and compromise to which the other joint proprietors were parties when notice of the survey proceedings was served on the proprietors jointly, and not on him individually. HUR LAL ROY *v.* SOORAJ NARAIN ROY . . 3 W. R. 7

13. ——— *Proceedings under Act IV of 1840—Evidence of possession*—Proceedings under Act IV of 1840, to which both litigants have been parties, was *held* to be properly treated as evidence between them on the question of possession. RADHA CHURN DASS GOSSAMEE *v.* AKRANEKHOOTIA. . . . 20 W. R. 420

KASHI KISHORE ROY *v.* BAMA SOONDAREE DEBIA . . . . . 23 W. R. 27

14. ——— *Effect as against decree for possession*—A survey award cannot override the decree of a competent Court awarding possession. HURO NATH ROY *v.* ANUND CHUNDER ROY . . . . . . 1 W. R. 329

[illegible]

16. ——— *Proof of possession—Suit to set aside survey award.*—In a case for [illegible]

[illegible]

joint possession, for he must first have fixed what by the intervenor separately, for the loss suffered by each party by diluvion ; and after that how

SURVEY AWARD—*concld*

much, and what, of the remainder is entitled to be held jointly.

TARINEE KANT LAHOOREE *v.* HANEE MUNDUL 7 W. R 203

17. ——— *Award by superintendent of survey—Evidence of title*—An award by the superintendent of survey is not conclusive evidence of a contested right in a regular suit. KOYLASH CHUNDER GHOSE *v.* RAJ CHUNDER BANERJEE . . . . 12 W. R. 180

18. ——— *Decision on Act VI of 1840—Evidence of title*—A decision in an Act IV of 1840 case was no evidence of title one way or the other GUDADHUR KOONDOO *v.* RAMKOOMAR BOSE . . . . 6 W. R. 155

19. ——— *Award under Act IV of 1840—Proof of title.* An award under Act IV of 1840 was not *sufficient* proof of title when the person in whose favour it was given did not maintain his possession under the award before the survey authorities, and allowed his adversary to take actual possession. JOOGAL KISHORE SHAHA *v.* RAJ KISHEN SURMAH . 3 W. R 129

20. [illegible]

disturbing the award of a competent authority, and that resumption proceedings instituted by Government, which declared only that the lands [illegible]

DHRANEE ; GREESH CHUNDER CHOWDHRY *v.* BHUGRUTTEE DABEA CHOWDHRANEE . 1 Hay 495

21. ——— *Award under Beng Reg. VII of 1822, s. 33—Power of Court to set aside award Held*, that an order of arbitrators under s. 33, Regulation VII of 1822, could not be set aside by the Courts of Judicature FURZUND ALI *v.* AHMED HOSSEIN . . . 1 Agra 267

22. ——— *Award for more than amount of land claimed*—A survey award, if given for more than is claimed, is not binding as to the excess. It is not conclusive as to title. LULEET NARAIN *v.* NARAIN SINGH . . 1 W. R. 333

SURVEY MAP.

See POSSESSION . 12 C. W. N. 273

——— *Documentary Evidence* [illegible]

SURVEY OFFICER.

See KHOTI SETTLEMENT ACT.

See SETTLEMENT OFFICER.

SURVEY OFFICER—*concld.*

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL
I. L. R. 21 Calc. 935

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, 1882, s. 622.
I. L. R. 21 Calc. 935

SURVEY AND SETTLEMENT MANUAL.

——— part iii, chap. xvi, rule 7—

See REVENUE SALE LAW, s. 2
13 C. W. N. 633

SURVEYORS.

——— opinion of—

——— *Objections to surveyors' reports—Land Acquisition Act (I of 1894), s. 18—Compensation—Mode of valuation when no recent sales—Market value.* *Held,* that in addition to the evidence of sales the Court can be guided by the opinions of surveyors. It is necessary, however, to distinguish opinion from argument. The practice which has grown up in reference [illegible]

SURVIVING DEFENDANT AND PLAINTIFFS.

——— agreement between—

See LEGAL REPRESENTATIVE.
I. L. R. 36 Calc. 418

SURVIVORSHIP.

See ATTACHMENT—ATTACHMENT BEFORE JUDGMENT I. L. R. 17 Mad. 144

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE
I. L. R. 19 Bom. 338
I. L. R. 17 All. 578
I. L. R. 23 Calc. 912
I. L. R. 22 Mad. 380

See CONVERTS . I. L. R. 10 Mad. 69

See COURT FEES ACT, 1870, s. 19D.
I. L. R. 23 Calc. 980

See GRANT—POWER OF ALIENATION BY GRANTEE . I. L. R. 11 Calc. 1

See HINDU LAW—INHERITANCE.
I. L. R. 34 Calc. 642; 920

See HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY . 6 Mad. 93
I. L. R. 4 Mad. 250
I. L. R. 19 Mad. 451
L. R. 23 I. A. 128

See HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP.

SURVIVORSHIP—*concld.*

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—DAUGHTERS.
I. L. R. 6 Bom. 85
15 B. L. R. 10
L. R. 2 I. A. 113

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—AFFILIATED SON
I. L. R. 17 Mad. 48

See HINDU LAW—INHERITANCE—SPECIAL LAWS—NIHANGS.
I. L. R. 16 All. 191
L. R. 21 I. A. 17

See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS—OTHER MEMBERS . 3 B. L. R. F. B. 31
6 B. L. R. 555
I. L. R. 1 Calc. 226
L. R. 3 I. A. 7
I. L. R. 18 Calc. 157
L. R. 17 I. A. 194
I. L. R. 21 Bom. 797

See HINDU LAW—MITAKSHARA.
I. L. R. 33 Calc. 676

See HINDU LAW—PARTITION—REQUISITES FOR PARTITION.
I. L. R. 19 Mad. 345

See HINDU LAW—PARTITION—SHARES ON PARTITION—GENERAL MODE OF DIVISION . . . I. L. R. 5 Calc. 142

See HINDU LAW—WILL—CONSTRUCTION—SURVIVORSHIP. I. L. R. 15 Bom. 443
I. L. R. 23 Calc. 563
L. R. 23 I. A. 18

See HUSBAND AND WIFE.
I. L. R. 16 Bom. 630

See REPRESENTATIVE OF DECEASED PERSON . I. L. R. 19 Mad. 345

See WILL—CONSTRUCTION.
I. L. R. 5 Calc. 59

——— Joint tenancy—*Joint speculation on improving land—Real and personal property* A joint speculation in improving land on a hazard of profit and loss is treated in equity as in the nature of merchandise and *jus accrescendi* not allowed. The survivorship in the case of joint tenancy is not an incident to it in the case of leasehold property and personal estate WEBBE v. LESTER . . 2 Bom. 55; 2nd Ed. 52

SUSPENSION.

See ADVOCATE.
I. L. R. 29 All. 95. L. R. 34 I. A. 41

——— of rent—

See LANDLORD AND TENANT.
13 C. W. N. 703

"SWARAJ"

See SEDITION . I. L. R. 34 Calc. 991

SWINGING.

—— —— by hooks—

See RASH AND NEGLIGENT ACT.
5 C. W. N. 376

SWORD-STICK.

—— —— —— "*Arms," meaning of—License, Necessity of—Indian Arms Act (XI of 1878), ss. 4, 13 and 19 (e).* A sword-stick is a "sword" within the meaning of the term in s. 4 of the Indian Arms Act. Neither the length, breadth, or the form of the blade of a weapon, nor the handle, afford any certain test of its classification as "arms." Whatever can be used as an in- [illegible]

(1907) . . . I. L. R. 34 Calc. 749

SYMPTOM OF DEATH.

—— —— from epilepsy or homicide—

See MEDICAL JURISPRUDENCE.
13 C. W. N. 622

T

TACKING.

See MORTGAGE—TACKING.

TAHSILDAR.

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY, OR OTHERWISE . . I. L. R. 24 Mad. 121

See TEHSILDAR.

TALABANA.

See APPEAL . I. L. R. 35 Calc. 535

TALAB-I-ISHTASH-HAD.

See MAHOMEDAN LAW—PRE-EMPTION
I. L. R. 32 Calc. 982
9 C. W. N. 826

TALABI MOWASHIBAT, TALABI ISTISHAD.

See MAHOMEDAN LAW—PRE-EMPTION.
I. L. R. 35 Calc. 402

TALAK.

See MAHOMEDAN LAW.
I. L. R. 36 Calc. 184

TALUKH.

—— —— meaning of—

See GRANT—CONSTRUCTION OF GRANT.
18 W. R. 469
23 W. R. 326

See LEASE—CONSTRUCTION
8 W. R. 391
22 W. R. 326

TALUKH—*concld.*

—— —— succession to—

See OUDH ESTATES ACT.

See PRIVY COUNCIL, PRACTICE OF—REVIVOR OF APPEAL.
I. L. R. 21 Calc. 997
L. R. 21 I. A. 163

TALUKHDAR.

See BOMBAY ACT, VI OF 1862, s. 12
I. L. R. 11 Bom. 78; 551

See CHARTER-PARTY.
I. L. R. 28 Bom. 573

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS . I. L. R. 11 Bom. 551
L. R. 14 I. A. 89

See GUJARAT TALUKDARS ACT (BOM. ACT VI OF 1888)
I. L. R. 16 Bom. 408
I. L. R. 22 Bom. 884
I. L. R. 26 Bom. 757
I. L. R. 28 Bom. 209

See OUDH ESTATES ACT.

See OUDH ESTATES ACT, ss. 2, 10, 13, 14, 15 AND 22 I. L. R. 26 All. 110; 393
8 C. W. N. 699

See OUDH TALUKHDARS RELIEF ACT.

—— —— conduct of, as indicating his successor.

See OUDH ESTATES ACT, 1869, s. 22
I. L. R. 3 Calc. 626
L. R. 4 I. A. 228

—— —— registered interest of—

See OUDH ESTATES ACT, 1869
I. L. R. 3 Calc. 522
L. R. 4 I. A. 178

—— —— right of, to eject lessee—

See OUDH SUB-SETTLEMENT ACT (XXVI OF 1866) . . I. L. R. 31 All. 394

TALUKHDARI TENURE.

See SALE FOR ARREARS OF REVENUE.
9 C. W. N. 852

TANJORE CUSTOM.

—— —— —— *Free occupation of manaikats belonging to mirasidars by artisans—Conditional, on rendering services.* There is a prac- [illegible]

TANK.

See LAND ACQUISITION ACT (I OF 1894), s. 23 . I. L. R. 28 Calc. 152

TANK—*concld.*

——— damage by overflow of—

See ZAMINDAR, DUTY OF.
14 B. L. R. 209
L. R. 1 I. A. 364

——— order as to—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODES . 1 B. L. R. S. N. 27
10 W. R. Cr. 51

——— repairs of—

See CONTRACT ACT, s. 70
I. L. R. 18 Mad. 88

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY. . I. L. R. 6 Mad. 229
I. L. R. 12 Mad. 241
L. R. 16 I. A. 48

See ZAMINDAR, DUTY OF
14 B. L. R. 209
L. R. 1 I. A. 364

——— *Revenue Court—Rent of tank, suit for—"Land"—Fishery, Right of.* A suit for recovery of arrears of rent of a tank, which is not a part of an agricultural holding, but is used for rearing and preserving firsh is not maintainable in a Revenue Court, the provision of Act X of 1859 not being applicable to such a suit. The term "land" in s. 6 of Act X of 1859 means cultivated [illegible]

Bose v. *Nistarini Dossee, 21 W. R. 386;* and *Durga Soonduree Dossee* v. *Oomdutoonissa, 18 W. R. 235,* referred to. *Semble:* Where the grant is merely of a right of fishery, the lessee acquires no interest in the sub-soil nor is entitled to retain possession, when the water dries up *Duke of Somerset* v. *Fogwell, 5 B. & C. 875; 26 W. R. 449; Suroop Chunder Mozoomdar* v. *Jardine Skinner & Co., Marsh 334; Bessen Lal Dass* v. *Khyrunissa* [illegible]

TARAI REGULATION (IV OF 1876)

See JURISDICTION—SUITS FOR LAND—PROPERTY IN DIFFERENT DISTRICTS.
I. L. R. 17 All. 483

TARIFF ACT (VIII OF 1894).

——— s. 10.

See CONTRACT—CONSTRUCTION OF CONTRACTS . I. L. R. 21 Bom. 628

TARWAD

See MALABAR LAW.
I. L. R. 27 Mad. 375

TAX.

——— drawback on—

See BOMBAY MUNICIPAL ACT, 1888, s. 158.
I. L. R. 17 Bom. 394

——— legality of—

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s. 21 . I. L. R. 21 Bom. 630

See MADRAS DISTRICT MUNICIPALITIES ACT, s. 63 . I. L. R. 24 Mad. 195

See N.-W. P. AND OUDH MUNICIPALITIES ACT, 1883, s. 29
I. L. R. 21 All. 348

——— liability of Government to—

See MADRAS CITY MUNICIPAL ACT, s. 341
I. L. R. 25 Mad. 457

——— liability to—

See BENGAL MUNICIPAL ACT, 1884, ss. 113, 116 . I. L. R. 21 Calc 319.

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, ss. 11 AND 84
I. L. R. 20 Bom. 732
I. L. R. 23 Bom. 446

See BOMBAY MUNICIPAL ACT, 1865, s. 2
9 Bom. 217

See BOMBAY MUNICIPAL ACT, 1888, s. 143
I. L. R. 16 Bom. 217

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, 1888, s. 87
I. L. R. 23 Calc. 581
I. L. R. 25 Calc. 483

See MADRAS DISTRICT MUNICIPALITIES ACT, 1884, ss. 47, 53, 55
I. L. R. 18 Mad. 310
I. L. R. 17 Mad. 100; 453
I. L. R. 18 Mad. 183
I. L. R. 21 Mad. 5
I. L. R. 22 Mad. 145

See MADRAS DISTRICT MUNICIPALITIES ACT—

s. 53 AND SCH. A, PROVISO 4;
I. L. R. 24 Mad. 644

s. 63 . . I. L. R. 25 Mad. 627

SCH. A . I. L. R. 25 Mad. 747

See MADRAS MUNICIPAL ACT, 1878, s. 103.
I. L. R. 8 Mad. 429

See MADRAS MUNICIPAL ACT, 1884, s. 103
I. L. R. 14 Mad. 140
I. L. R. 17 Mad. 453
I. L. R. 22 Mad. 145
I. L. R. 23 Mad. 529

See MADRAS MUNICIPAL ACT, 1884, SCH. A
I. L. R. 11 Mad. 238

See MADRAS MUNICIPAL ACT, 1884, SCH. B.
I. L. R. 19 Mad. 83

TAX—*contd.*

——— liability to—*concld.*

See MADRAS TOWNS IMPROVEMENT ACT, 1871, ss. 51, 58, 62, 64, AND SCH C
7 Mad. 332
I. L. R. 3 Mad. 129
I. L. R. 5 Mad. 269
I. L. R. 7 Mad. 74
I. L. R. 8 Mad. 327
I. L. R. 9 Mad. 38
I. L. R. 14 Mad. 467

——— non-payment of—

See BOMBAY DISTRICT MUNICIPAL ACT, 1884, s. 49 . I. L. R. 18 Bom. 400

——— objections to valuation for assessment of—

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s 21 . . I. L. R 7 Bom. 399
I. L. R. 9 Bom. 51

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES . . 3 C. W. N. 73
I. L. R 27 Calc. 849
I. L. R. 23 Bom. 446

——— order for payment of—

See FINE . . 8 W. R. Cr. 17

——— proceedings to recover—

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s. 84 . . I. L. R. 17 Bom. 731

See MADRAS DISTRICT MUNICIPAL ACT, 1884, s 103 . I. L. R. 9 Mad. 429
I. L. R. 13 Mad. 518
I. L. R. 14 Mad. 467

——— right to levy—

See MADRAS MUNICIPAL ACT, 1878, ss 119, 120, 123, AND 192
I. L. R. 6 Mad. 287
I. L. R. 7 Mad. 63
I. L. R. 10 Mad. 38
I. L. R. 2 Mad. 362

——— suit for—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MUNICIPAL TAX.
I. L. R. 9 Mad. 110
I. L. R. 23 Calc. 835

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—TAX
I. L. R 22 Calc. 680

——— suit for injunction to restrain levy of—

See BOMBAY DISTRICT MUNICIPAL ACT (BOM. ACT III OF 1901), ss 82 (c) AND 86 . I. L. R. 27 Bom. 403

TAX—*contd.*

——— suit to recover, illegally levied—

See BENGAL MUNICIPAL ACT, 1884, s 85.
2 C. W. N. 689

See ESTOPPEL—ESTOPPEL BY CONDUCT.
I. L. R. 17 Bom. 510

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES . I. L. R 2 Mad. 37

See MADRAS DISTRICT MUNICIPALITIES ACT, 1884, s. 53 . I. L. R. 13 Mad. 78
I. L. R. 15 Mad. 153

See MADRAS DISTRICT MUNICIPALITIES ACT, ss 53 AND 262
I. L. R. 24 Mad. 205

See MADRAS DISTRICT MUNICIPALITIES ACT, 1884, s. 63.
I. L. R. 21 Mad. 367

See MADRAS DISTRICT MUNICIPALITIES ACT, 1884, s 71
I. L. R. 23 Mad. 523

See MADRAS DISTRICT MUNICIPALITIES ACT, 1884, s 262
I. L. R. 19 Mad. 10

See MADRAS LOCAL BOARDS ACT, ss. 57, 64 AND 149 . I. L. R. 24 Mad. 114

See MADRAS TOWNS IMPROVEMENT ACT, 1871, ss 38 AND 85 . 7 Mad 249
I. L. R. 1 Mad. 158

See PENSIONS ACT, s 4
I. L. R. 14 Bom. 573

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MUNICIPAL TAX.
I. L. R. 13 Mad. 78

See STATUTES, CONSTRUCTION OF.
I. L. R. 1 Mad. 158
8 Bom. A. C. 213

1. ——— **Certificate tax**—*Neglect to take out certificate—Fine* The fine imposed under [illegible]

2 B. L. R. Ap. 40
11 W. R. Cr. 13

2. ——— **Complaint for neglecting to take out certificate**—*Collector also Magistrate* Where it is [illegible]

Magistrate. ANONYMOUS . . 4 Mad. Ap. 62

3. ——— **Magistrate, powers of.** A Magistrate was *held* to have acted rightly in dismissing complaint under s 17 of Act IX of 1868, because there was no evidence [illegible]

TAX—*concld.*

[illegible]

11 W. R. Cr. 50

4. ——— **Muhtarafa**—*Trade tax, zamindar's right to collect—Mad. Reg. XXV of 1802, s. 4—Mad Reg. XXV of 1832* The right of collecting the *muhtarafa* of trade tax from artizans in his zamindari has not been delegated by Government to the zamindar of Karvaitnagar, and cannot be legally exercised by his assignees. *Quære:* Whether it was competent for Government to delegate the collection of the *muhtarafa* to zamindars for their own use. VEDANTA *v* KANNIYAPPA
I. L. R. 9 Mad. 14

5. ——— **House-valuation by—Municipality**—*Levy of house-tax—Fair selling value—Absence of malâ fides, perversity or manifest error—Civil Courts—Jurisdiction* In the absence of proof of *malâ fides*, perversity or manifest error, Civil Courts ought not to interfere with the house valuation made by a Municipality for the purpose of taxation, unless there is a breach of the rules prescribed by law for making the valuation. KASANDAS RAGHUNATHDAS *v* ANKLESHVAR MUNICIPALITY (1901) . **I. L. R. 26 Bom. 294**

TAXATION OF ATTORNEY'S BILLS.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s 2 . **12 C. W. N. 1102**

TAXATION OF PLEADER'S FEES.

See PRACTICE . **I. L. R. 33 Bom. 256**

TAXATION OF COSTS.

See ATTORNEY AND CLIENT.
I. L. R. 3 Calc. 473
I. L. R. 33 Bom. 667

See COMMISSION—CIVIL CASES.
I. L. R. 15 Bom. 209

See COSTS—TAXATION OF COSTS.

See LIMITATION ACT, 1877, SCH. II, ART. 84 (1871, ART. 85) **I. L. R. 1 Bom. 253**
I. L. R. 7 Mad. 1
I. L. R. 22 Calc. 943; 952 note

See RULES OF HIGH COURT, BOMBAY—RULE No. 183 . **I. L. R. 16 Bom. 152**
I. L. R. 17 Bom. 514

——— **order for—**

See HIGH COURT RULES
I. L. R. 32 Bom. 428

——— **summons for—**

See COSTS—TAXATION OF COSTS
7 B. L. R. Ap. 50

See LIMITATION ACT, 1877, s. 4
I. L. R. 20 Calc. 899

1. ——— **Excessive fee to Counsel**—*Practice—Attorney and client's costs payable out of estate—Disallowance on taxation—Bel-*

TAXATION OF COSTS—*concld.*

chambers' Rules and Orders, 780, 785. Where on a motion for discharge of guardians the Court ordered the guardian's cost of opposing the application to be taxed as between attorney and client and paid out of the estate. *Held*, that the Taxing officer was right in disallowing as against the estate an excessive fee paid to counsel for appearing on the application, and should only allow the excess even as against the client, when it was manifestly shown that the client knew that the fee was excessive and that he might be called upon personally for the excess. The duties of a Taxing Master explained. *In the matter of* THAKUR DASSEE DASSEE (1906).
I. L. R. 33 Calc. 827

2. ——— **Work not ordinarily falling upon Solicitors**—*Solicitor's costs—Work of meritorious character.* *K* was the Solicitor for the defendant in a suit brought to obtain probate of the will of one Damji Lakhmichand. The defence set up was that the will was a forgery. Being unable to procure the services of an expert, *K*, after special study for the purpose, himself carefully studied every letter of the alleged will and despite counsel's opinion that he had no chance of succeeding, he eventually succeeded in satisfying the trying Judge that the will was a forgery. In his bill for attorney and client's costs, *K* claimed extra payment for the additional and unusual work incurred by him: *Held*, in review of taxation, that *K* was entitled to be separately remunerated for the special work done by him, as it was in fact a charge for work done which would not ordinarily fall upon a solicitor in the preparation of the brief. DAHIBAI *v* SOONDERJI (1907)
I. L. R. 31 Bom. 430

TAXING OFFICER.

——— **decision of—**

See COURT FEES ACT, s. 5.
I. L. R. 12 All. 129
I. L. R. 20 Mad. 398
I. L. R. 21 Mad. 269

See HIGH COURT RULES (BOMBAY)
I. L. R. 32 Bom. 262

See HIGH COURT RULES (BOMBAY), s. 544
I. L. R. 33 Bom. 667

——— **discretion of—**

See COSTS—TAXATION OF COSTS
I. L. R. 24 Calc. 891

——— **mistake of—**

See COURT FEES ACT, 1870, s. 5
I. L. R. 15 All. 117

——— **power of—**

See COSTS—TAXATION OF COSTS
I. L. R. 15 Mad. 405

TEHSILDAR.

See TAHSILDAR.

See LIMITATION ACT, 1877, ART 7 (1859, s 1, CL. 2).
1 B. L. R. S N. 20; 10 W. R. 260

TENANTS-IN-COMMON.

——— **Adverse Possession**—*Exclusive receipt of profits by one tenant continuously for a long time—Presumption as to actual ouster of other tenants-in-common* To constitute an adverse possession as between tenants-in common there must be an exclusion or an ouster. Sole possession by one tenant-in-common continuously for a long period without any claim or demand by any person claiming under the other tenant-in-common is evidence from which an actual ouster of the other tenants-in-common may be presumed. GUNGADHAR *v.* PARASHRAM (1905) . . . . **I. L. R. 29 Bom 300**

TENDER.

See BENGAL RENT ACT, 1869, s. 46.
1 B. L. R. S. N. 7 : 10 W. R. 101
16 W. R. 79
2 W. R., Act X, 88

See CONTRACT ACT (IX OF 1872), s. 51.
I. L. R. 30 Calc. 865

See INTEREST . **I. L. R. 35 Calc. 34**

See LEGAL TENDER.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—IMMOVEABLE PROPERTY . **I. L. R. 17 Mad. 216**

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 82. **I. L. R. 32 Bom. 521**

See TRANSFER OF PROPERTY ACT, s 83.
I. L. R. 17 Mad. 267

See TRANSFER OF PROPERTY ACT, s 135.
I. L. R. 22 Calc. 792
2 C. W. N. 147

——— **by money order—**

See EXECUTION OF DECREE—MODE OF EXECUTION—INSTALMENTS.
I. L. R. 24 All. 85

——— **of patta—**

See MADRAS RENT RECOVERY ACT—

ss 3 AND 80 **I. L. R. 26 Mad. 589**
s. 4 . . **I. L. R. 26 Mad. 383**
s. 10 . . **I. L. R. 25 Mad. 613**
s. 11 . . **I. L. R. 26 Mad. 456**

——— **of rent—**

See INTEREST.
11 C. W. N. 983 : I. L. R. 34 Calc. 34

1. ——— **Validity of tender**—*Contract Act, s. 38—Tender of interest on mortgage-debt.* Under a mortgage-deed taken to secure the repayment within three years of a sum of R16,000 advanced by the plaintiff, with interest at 15 per cent from the 2nd July 1874, the date of the mortgage, it was stipulated that interest should be paid every six months, but that, if a year's interest should be unpaid, then the whole amount due for principal and interest should become payable at

TENDER—*contd.*

once ; and also that the mortgagor might after pay-

[illegible]

of the mortgage to the date of the suit and subsequent interest. *Held*, that the tender made by

[illegible] according to Eng-

[illegible]

and unconditional offer, in case of payment, to pay unconditionally at a proper place, made by a person in a position to pay. KANYE LALL KHAN *v.* KHETTERMONEY DOSSEE . **5 C. L. R. 105**

2. ——— *Offer by letter to pay debt.* A mere offer by a debtor by letter to pay an amount cannot be treated as a tender either in law or in equity. In order to stop interest, a strict tender should be proved. KAMAYA NAIK *v.* DEVAPA RUDRA NAIK . **I. L. R. 22 Bom. 440**

3 ——— *Unconditional tender—Costs.* In a suit to recover R1,323-15-6, the balance of the price of goods sold, on which an account had been come to between the parties, it appeared that the defendant had tendered before suit a sum of R1,043-5, stating in the letter of tender that the sum so tendered was the only sum due At the trial the plaintiff obtained a decree for the full amount claimed by him. *Held*, both in the Court below and on appeal, that the tender was bad, and therefore the plaintiffs were entitled to their costs. *Held, per* KENNEDY, J, that the [illegible] of part of an entire [illegible] J, con- [illegible] as the [illegible] tendered [illegible] claim. [illegible] CHUNDER CAUNT MOOKERJEE *v.* JUDOONATH KHAN . **I. L. R. 3 Calc. 468 : 1 C. L. R. 470**

4. ——— *Tender of part of debt, rule as to—Plea of tender—Payment into Court.* The rule laid down in *Dixon* v. *Clark*, 5 *C. B.*, *365*, that the tender of only a part of a debt must be treated as if it had never been made, [illegible] the party making the tender [illegible] ed A plea [illegible] mpanied by a [illegible] herwise the [illegible] AN *v.* NOOR MAHOMED . . . **I. L. R. [illegible] Bom. 141**

5. ——— *Agent—Cheque in payment of debt for rent—Suit for rent—Costs.* [illegible] his agent sent in [illegible] re the agent [illegible] the amount [illegible] amount of [illegible] agent, who

TENDER—*concld.*

tendered it to the landlord's attorney, who refused to accept, and the money was returned to the lessee's attorney. *Held*, in a suit for the rent, that, under the circumstances, the tender amounted to payment. *Held*, further, that although, as a general rule, the amount of a tender not accepted ought to be paid into Court in order to entitle the defendant to costs, yet that, as the tender in this case amounted to payment, the defendant was entitled to have the suit dismissed with costs. BOLYE CHUND SINGH v. MOULARD
I. L. R. 4 Calc. 572

TENURE.

See LANDLORD AND TENANT.
I. L. R. 33 Calc. 566

See MOKURARI ISTEMRARI TENURE.

———— condition in lease for—

See BENGAL RENT ACT, 1869, s. 52 (ACT X OF 1859, s. 78)
10 W. R. 156
11 W. R. 201
6 N. W. 326
4 C. L. R. 469
12 B. L. R. 439
B. L. R. Sup. Vol. 972
I. L. R. 9 Calc. 88; 808

———— created under Court of Wards.

See COURT OF WARDS . 15 B. L. R. 343

———— forfeiture of—

See LANDLORD AND TENANT—ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE.

See LANDLORD AND TENANT—FORFEITURE.

———— incidents of—

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT. . 7 C. W. N. 203

———— interest on arrears of rent of—

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT.
I. L. R. 29 Calc. 674

———— relief against—

See LANDLORD AND TENANT—FORFEITURE.

———— service—

See GHATWALI TENURE.

See SERVICE TENURE.

———— tenure and raiyati holding, distinction between—

See BENGAL CESS ACT, s. 4
5 C. W. N. 535

———— transfer of—

See BENGAL REGULATION VIII OF 1819
3 B. L. R. P. C. 48
I. L. R. 17 Calc. 162

TENURE—*contd.*

———— transfer of—*concld.*

See BENGAL TENANCY ACT, s. 12.
I. L. R. 16 Calc. 642
I. L. R. 19 Calc. 17; 774

See BENGAL TENANCY ACT, ss. 65 AND 188
I. L. R. 29 Calc. 219

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.
I. L. R. 14 Mad. 98

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS
I. L. R. 17 Calc. 826

See LANDLORD AND TENANT—FORFEITURE—TRANSFER OF TENANCY.
I. L. R. 20 Calc. 590

See LANDLORD AND TENANT—TRANSFER BY LANDLORD

See LANDLORD AND TENANT—TRANSFER BY TENANT

See LEASE—CONSTRUCTION.
I. L. R. 17 Calc. 826

See ONUS OF PROOF—LANDLORD AND TANANT . I. L. R. 13 Mad. 60

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

See STAMP ACT, 1862, s. 14.
3 B. L. R. Ap. 30

———— what constitutes—

See BENGAL TENANCY ACT (VIII OF 1885), s. 5 (5) . . . 6 C. W. N. 825

1. ———— Grant for purpose of living on the land. *Per* PEACOCK, C. J. If one man

Upholding, on appeal, KEMP, J., in BANEE MADHUB BANERJEE v. JOY KISHEN MOOKERJEE
11 W. R. 354

2. ———— *Homestead land—Transferability under the law before the Transfer*

used for residential purposes, having regard to the law as it then stood. S. 108, cl. (j), of the Transfer of Property Act (IV of 1882), does not apply to transfers which took place before the Act. *Beni Madhub Banerjee v. Jai Krishna Mookerjee, 7 B. L. R. 152*, followed HARI NATH KARMAKAR v. RAJ CHANDRA KARMAKAR . 2 C. W. N. 122

NABU MONDUL v. CHOLIM MULLICK.
I. L. R. 25 Calc. 896

TENURE—*concld.*

3. ———— **Mokurari tenure.** It is necessary that a tenure should be mokurari in order to be transferable HUROMOHUN MOOKERJEE v. LALUNMONEE DASSEE . . . 1 W. R. 5

4. ———— **Surburakari tenure in Cuttack**—*Consent of zamindar.* The alienation of surburakari tenure in Cuttack is not practicable without the consent of the zamindar. DOORJODHUN DOSS v. CHOOYA DAYE . 1 W. R. 322

5. ———— **Raiyatwari tenure**—*Consent of zamindar or talukhdar Quære* Whether a transfer of a raiyatwari tenure can be effected without the consent of the zamindar or talukhdar, as the case might be, the immediate successor in estate. SHIBESSUREE DEBIA v MOTHOORANATH ACHARJEE 13 W. R. P. C. 18: 13 Moo. I. A. 270

6. ———— **Mukaddami tenure**—*Landholder and tenant—Nature of Mukaddami tenure considered* In the absence of any special evidence to the contrary, the fact of a person holding land under what is known as a "*mukaddami*" tenure does not imply that the *mukaddam* has any heritable or transferable interest in the tenement. BHAGWATI PRASAD v HANUMAN PRASAD SINGH (1900) . . . . . I. L. R. 23 All. 67

TENURE-HOLDER

See BABUANA GRANT. . 13 C. W. N 118

TERM OF YEAR

See ENGLISH LAW—PERSONALTY, LAW RELATING TO . I. L. R. 24 Calc. 216

TERRITORIAL JURISDICTION.

———— **effect of cession on—**

See CESSION OF BRITISH TERRITORY IN INDIA . . I. L R. 1 Bom. 367
L. R. 3 I. A. 102
10 Bom. 37

TERRITORIAL LAW OF BRITISH INDIA.

———— **Nature of territorial law**—*English law.* The territorial law of British India is a modified form of English law. SECRETARY OF STATE v ADMINISTRATOR-GENERAL OF BENGAL. 1 B. L. R. O. C. 87

TERRITORY, TRANSFER OF—

———— **District of Kanara**—*16 & 17 Vict., c 95; 21 & 22 Vict, c. 106—Indian Councils Act, 24 & 25 Vict., c. 67.* The power given by 16 [illegible]

TERRITORY, TRANSFER OF—*concld.*

[illegible]

and not being qualified or controlled by the proviso [illegible]

TEST CASE.

See PRACTICE—CIVIL CASES—TEST CASE.

TESTAMENTARY CAPACITY.

See WILL . 13 C. W. N. 1128
See WILL—EXECUTION.

TESTATOR.

See COSTS—SPECIAL CASES—ATTORNEY AND CLIENT . 6 C. W. N. 306

See HINDU LAW—WILL

See MAHOMEDAN LAW—WILL.

See WILL.

———— **acknowledgment of signature by—**

See WILL—ATTESTATION.
I. L. R. 1 Bom. 547

———— **creditor of—**

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.
I. L. R. 2 Calc. 208
I. L. R. 6 Calc. 429; 460
I. L. R. 10 Calc. 19, 413
L. R. 10 I. A. 80
I. L. R. 19 Calc. 48
I. L. R. 17 Mad. 373

———— **debts of Hindu—**

See VENDOR AND PURCHASER—NOTICE
I. L. R. 4 Calc. 897

———— **power of—**

See HINDU LAW—WILL—POWER OF DISPOSITION.
See MAHOMEDAN LAW—WILL.

———— **signature of—**

See WILL—EXECUTION.

TEXTS.

———— **construction of**—*Hindu law—Marriage—Asura form—Brahma form.* It is a principle enunciated by Vijnaneshvara that where all *smritis* are of equal importance and where there is a conflict between two or more writers, the Court is free to choose any it likes. CHUNILAL v SURAJRAM (1909) . I. L. R. 33 Bom. 433

TEZI-MANDI CHITTIS

See CONTRACT—WAGERING CONTRACTS.
4 Moo. I. A. 339
5 Moo I. A. 109
6 Moo. I. A. 251

——— **Principal and agent**—*Gambling Act (XXI of 1848)* Where the plaintiff had expended money at the request of the defendant in the purchase or settlement of tezi-mandi chittis :—*Held*, he was entitled to recover notwithstanding Act XXI of 1848 KANAYALAL *v.* CHAGMAL BATTIA . . 8 B. L. R. 412
BHAIRABNATH KHETTRI *v.* JUMANRAM DHANDARIA . . 8 B. L. R. 415 note

THAKBUST AWARD.

See ACT XIII OF 1848
2 B. L. R. P. C. 111: 12 W. R. P. C. 6

THAK MAP.

1. ——— **Thak and Revenue-Survey Maps, evidentiary value of**—*Statement recorded in the presence of parties, effect of.* In a dispute, whether certain land belonged to the estate of the plaintiff or to that of the defendant, the plaintiff produced *thakbust* as also survey maps of the year 1852-53 , the *thakbust* map contained a statement, which supported the plaintiff's case The predecessor of the appellant defendant had full notice of the *thak* proceedings, and he objected to the boundary lines as laid between his and the plaintiff's estate, but the objection was disallowed. The defendant produced a survey map of 1855-56 of the district, which contained his estate, in support of his case, but he did not produce any *thakbust* map of the same year, and there was no evidence to support the accuracy of the survey map *Held*, that the evidentiary value of the *thakbust* map, and the survey map produced on behalf of the plaintiff, was greater than that of the survey map produced on behalf of the defendant. *Jagadindra Nath Roy v. Secretary of State for India, I. L. R 30 Calc 291, L R 30 I. A. 44; Syama Sundri Dassya v Jagobundhu Sooter, I. L. R 16 Calc. 186*, and *Nobo Coomer Dass v. Gobind Chunder Roy, 9. C. L. R 305*, referred to DUNNE *v.* DHARANI KANTA LAHIRI (1908)
I. L. R. 35 Calc. 621

2. ——— *Estate—Lands* Because certain lands are shown in the *thak* map as comprised in a certain estate that ought not to be taken as conclusive evidence that the lands are a part of that estate GOPAL CHANDRA DAS *v* HARA SUNDARI DASI (1905) . 9 C. W. N. 383

THEATRE.

See BOMBAY CITY MUNICIPAL ACT, s. 249.
I. L. R. 30 Bom. 392

——— **Place of public resort**—*City of Bombay Municipal Act (Bombay Act III of 1888), s 249* A theatre is a place of public resort and as such falls within the purview of s. 144 of the City of Bombay Municipal Act (Bombay Act III of 1888) EMPEROR *v* DWARKADAS (1905) . . . I. L. R. 30 Bom. 392

THEFT.

See CATTLE TRESPASS ACT, s 22
I. L. R. 22 Calc. 139

See CHARGE—ALTERATION, OR AMENDMENT OF CHARGE
I. L R. 17 Bom. 369
I. L. R. 27 Calc. 660; 990

See PENAL CODE, ss 378 TO 382.

See POST OFFICE ACT, s. 48
I. L. R. 14 Mad. 229

See STOLEN PROPERTY.

——— **committed outside jurisdiction.**

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—RECEIVING STOLEN PROPERTY

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—THEFT.

——— **damages for—**

See HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE, ETC
I. L R 24 Calc. 672

——— **if continuing offence—**

See RESCUE FROM LAWFUL CUSTODY.
I. L R. 35 Calc. 381

——— **suspicion of—**

See FOREST ACT, ss 52, 73
I. L. R. 15 Bom. 229

1. ——— **Penal Code, s. 378—Definition of theft** As to what constitutes theft as defined in the Penal Code. QUEEN *v.* MADAREE
3 W. R. Cr. 2

2. ——— *Moving property and severing it* The moving by the same act which effects the severance may constitute a theft. ANONYMOUS . . . . . . 5 Mad. Ap. 38

3 ——— *Removal of property against wish of ostensible purchaser thereof—Apparent title or colour of right to property.* To constitute theft, it is sufficient if property is removed against his wish from the custody of a person who has ar
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followed.

4. ——— **Giving up right of possession in property by owner.** A conviction for theft under the Penal Code is illegal if the owner has given up all property in and all possession of the subject of the alleged theft. ANONYMOUS
4 Mad. Ap. 30

THEFT—*contd.*

5. ———— **Making away with property lawfully possessed.** The making away with property of which a person has been put in lawful possession by superior authority is not theft, but criminal breach of trust. QUEEN *v.* BHARUT CHUNDER . . . 1 W. R. Cr. 2

6. ———— **Unexplained possession of rice**—*Meaning of corpus delicti* Where a prisoner was found in possession of rice not thrashed in the usual way, and having no paddy land of his own he failed to account satisfactorily for his possession of the rice —*Held*, that he could not be convicted of theft without more evidence. The meaning of the term "*corpus delicti*" explained. ANONYMOUS . . . . . 7 Mad. Ap 19

7. ———— **Dishonest taking, omission of allegation of** The prisoner was convicted of theft on his own confession The charge to which the prisoner pleaded did not allege the taking out of the possession of some person dishonestly and there was no evidence of such taking *Held*, that the conviction was bad ANONYMOUS 5 Mad. Ap. 37

8. ———— **Theft of joint property by co-parcener.** Theft of joint property may be committed by a co-parcener if he takes it from joint possession and converts such possession into separate possession. QUEEN-EMPRESS *v* PONNURANGAM . . I. L. R. 10 Mad. 186

9. ———— *Abetment of theft —Receiving stolen property—Joint undivided Hindu family* A Hindu, intending to separate himself from his family, emigrated to Demerara as a coolie. After an absence of thirty years, he returned to his family, bringing with him money and other moveable property which he had acquired in Demerara by manual labour as a coolie On his return to his family, he lived in commensality with it, but he did not treat such prop...

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perly be convicted of theft in respect of it It is irregular to convict and punish a person for abetment of theft, and at the same time to convict and punish him for receiving the stolen property. EMPRESS *v* SITA RAM RAI . I. L. R. 3 All. 181

10. ———— **Bonâ fide belief as to title**—*Dispute as to possession of land—Cutting and carrying away crops sown by another—Facts constituting theft—Dishonest intention—Code of Criminal Procedure (Act V of 1898), ss 429 and 439* An accused person alleged and claimed that certain paddy was grown upon his jote, and that he cut and removed it as a matter of right and in an assertion of a *bonâ fide* claim to the land. It was admitted by the ...

... application for revision and to set aside the conviction :—*Held per* PRINSEP, J., declining to interfere, that, if the complainant's bargadars had grown the crops as found and nevertheless the accused cut and carried them off, there could be no *bonâ fide* belief that he was entitled to do so, to justify his action in regard to the complainant. With the fact found that possession was with the complainant by the growing by him of the crops cut by the accused, the accused was without justification in thus taking the law into his hands, even if he was entitled to hold the lands, because he was not in actual possession of them *Per* STEVENS, J, —The findings of the lower Court taken as a whole amounted to a finding that the accused acted *mala fides*, and the mere fact that he brought some witnesses to speak to his long possession of the land, and the cultivation of the crops by him, could not be taken as showing that a *bonâ fide* dispute as to title existed between the complainant and himself. To constitute theft, it is sufficient if property is removed against his wish from the custody of a person who has an apparent title or even a colour of right to such property. In the present case the complainant had an apparent title as tenant of the land, together with long possession, and he had on the strength of that apparent title and long possession raised the crops which the accused removed. The application should be dismissed. *Queen-Empress* v. *Gangaram Santram, I. L. R. 9 Bom. 135,* referred to. *Per* STANLEY, J.,(*contra*).—That the evidence as well for the prosecution as for the defence conclusively established that there was a *bonâ fide* dispute as to the title to the land upon which the paddy was sown. Once this was sown, the criminal charge failed. The ... sown by

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The conviction and sentence should be set aside PANDITA *alias* RAHMATULLA PRAMANIK *v* RAHIMULLA AKUNDO . . I. L. R. 27 Calc 501 4 C. W. N. 480

11. ———— *Cutting and re- ... to the ... of— ... body ... the ... ant ...*

could to have been sown by ... which the ... was ...

legal claim of the accused in respect of the ... on which the paddy was sown, and they had never claimed the crop as belonging to them, they did not

THEFT—*contd.*

act in good faith believing the crop to be their own property, and were therefore guilty of the offences under ss. 143 and 379 *Abdool Biswas v Khator Mondal, 3 C W. N 332,* distinguished JAGAT CHANDRA ROY *v* RAKHAL CHANDRA ROY . . . . . 4 C. W. N. 190

12. ——— **Taking property of husband by a Mahomedan married woman**—*Husband and wife.* A Mahomedan married woman may be convicted of theft, or abetment of theft, in respect of the property of her husband REG *v* KHATABAI . . . . 6 Bom. Cr. 9

13. ——— **Hindu woman removing stridhan from possession of her husband** A Hindu woman who removes from the possession of her husband, and without his consent, her *palla* or stridhan, cannot be convicted of theft, nor can any person who joins her in removing it be convicted of that offence REG *v.* NATHA KALYAN 8 Bom. Cr. 11

14. ——— **Removal by a wife her husband's property left in her custody.** There is no presumption of law that a wife and husband constitute one person in India for the purposes of Criminal law. If the wife, removing her husband's property, from his house, does so with dishonest intention, she is guilty of theft. QUEEN-EMPRESS *v.* BUTCHI . . . . I. L. R. 17 Mad. 401

15 ——— **Removal of family jewels by wife and persons coming to commit adultery with her.** Two persons were committed for trial, the first prisoner for adultery, enticing away a married woman, and theft, and the second prisoner for abetment of the enticing away and theft. The first prisoner was acquitted of the charges of adultery and enticing away. The case for the prosecution was that the prosecutor's wife left her husband's house in company with the first prisoner, and that previous to her departure she, by means of false keys, supplied to her by the second prisoner, opened the room where the family jewels and money were kept and removed them. The jewels were deposited with the second prisoner for safe custody. Part of the money was handed

16 ——— **and s. 114—Forcibly carrying off crop**—*Want of consent of owner* Where a Court finds that parties came with a number

the substantive offence under s 378. QUEEN *v* SHIB CHUNDER MUNDLE . . 8 W. R. Cr. 59

17. ——— **Removal of crop under attachment**—*Dishonest intention—Madras Rent Recovery Act, s 8—Notice of distraint.* Certain crops which had been distrained for arrears of revenue were harvested and removed by the owners and occupiers of the land, who were thereupon charged with theft The accused were not the defaulters, the demand having been made upon certain other persons in whose names the pottahs stood as the registered proprietors The accused were acquitted *Held,* that the acquittal was wrong in the absence of a finding whether or not the accused were aware of the distraint, and dis-

QUEEN-EMPRESS *v* RAMASAMI
I. L. R. 16 Mad. 364

18. ——— **Person acting under ill-founded claim of right.** A person acting under a claim of right (however ill-founded such claim may be) is not guilty of theft by asserting it. QUEEN *v.* RAM CHURN SINGH . 7 W. R. Cr. 57

19 ——— **Removing a thing with the object of causing trouble to the owner**—*Wrongful loss* The accused, who was charged by his master with having committed theft of a box, stated that he had removed the box and left it

view of the law It cannot be said that removing a thing to put the owner to trouble is necessarily and in every case causing "wrongful loss" NABI BAKSH *v* QUEEN-EMPRESS
I. L. R. 25 Calc. 416
2 C. W. N. 347

20. ——— **Dishonest intention**—*Wrongful gain—Wrongful loss* A charge of theft will lie under s 378 of the Penal Code (Act XLV of 1860) even where there is no intention to assume entire dominion over the property taken, or to retain it permanently. When a person takes another man's property, believing under a mistake

THEFT—*contd.*

5 ———— **Making away with property lawfully possessed.** The making away with property of which a person has been put in lawful possession by superior authority is not theft, but criminal breach of trust. QUEEN *v.* BHARUT CHUNDER . . . **1 W. R. Cr. 2**

6. ———— **Unexplained possession of rice**—*Meaning of corpus delicti.* Where a prisoner was found in possession of rice not thrashed in the usual way, and having no paddy land of his own ...
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ANONYMOUS . . . . **7 Mad. Ap 19**

7. — ——— **Dishonest taking, omission of allegation of** The prisoner was convicted of theft on his own confession The charge to which the prisoner pleaded did not allege the taking out of the possession of some person dishonestly and there was no evidence of such taking. *Held,* that the conviction was bad ANONYMOUS **5 Mad. Ap. 37**

8. ———— **Theft of joint property by co-parcener.** Theft of joint property may be committed by a co-parcener if he takes it from joint possession and converts such possession into separate possession QUEEN-EMPRESS *v.* PONNURANGAM . . **I. L. R. 10 Mad. 186**

9. ———————— *Abetment of theft —Receiving stolen property—Joint undivided Hindu family* A Hindu, intending to separate himself from his family, emigrated to Demerara as a coolie. After an absence of thirty years, he returned to his family, bringing with him money and other moveable property which he had acquired in Demerara by manual labour as a coolie. On his return to his family, he lived in commensality ...

10. ———— **Bonâ fide belief as to title**—*Dispute as to possession of land—Cutting and carrying away crops sown by another—Facts constituting theft—Dishonest intention—Code of Criminal Procedure (Act V of 1898), ss. 429 and 439* ...

admitted by the complainant who also claimed the paddy and the land, that there had been a boundary dispute between his landlord and the landlord of the accused. The accused was convicted in a summary trial of the theft of the paddy. In an application for revision and to set aside the conviction :—*Held per* PRINSEP, J., declining to interfere, that, if the complainant's bargadars had grown the crops as found and nevertheless the accused cut and carried them off, there could be no *bonâ fide* belief that he was entitled to do so, to justify his action in regard to the complainant. ...

not in actual possession of them. *Per* STEVENS, J, —The findings of the lower Court taken as a whole amounted to a finding that the accused acted *malâ fides,* and the mere fact that he brought some witnesses to speak to his long possession of the land, and the cultivation of the crops by him, could not be taken as showing that a *bonâ fide* dispute as to title existed between the complainant ...

even a colour of right to such property In the present case the complainant had an apparent title as tenant of the land, together with long possession, and he had on the strength of that apparent title and long possession raised the crops which the accused removed. The application should be dismissed. *Queen-Empress* v. *Gangaram Santram, I. L. R. 9 Bom 135,* referred to *Per* STANLEY, ...

it was an act of trespass on the part of the complainant and to sow it with paddy, and the complainant had no right to complain if the accused resented his act of aggression by cutting and removing the crop A dishonest intent is a necessary ingredient in the offence of theft. No such intention has been found on the part of the accused. The conviction and sentence should be set aside PANDITA *alias* RAHMATULLA PRAMANIK *v.* RAHIMULLA AKUNDO . . **I. L. R. 27 Calc 501**
4 C. W. N. 480

11. ———————— *Cutting and removing crops under claim not to the crop, but to the land on which it was grown—Charge, framing of—Penal Code, ss. 143, 379.* The accused in a body cut and took away certain paddy found by the Court to have been sown by the complainant. ...

against some of the accused was then ... whatever might be the ... he land ... never ... did not

THEFT—*contd*

act in good faith believing the crop to be their own property, and were therefore guilty of the offences under ss. 143 and 379 *Abdool Biswas v Khalor Mondal, 3 C W N. 332,* distinguished JAGAT CHANDRA ROY *v* RAKHAL CHANDRA ROY . . 4 C. W. N. 100

12. ——— **Taking property of husband by a Mahomedan married woman**—*Husband and wife.* A Mahomedan married woman may be convicted of theft, or abetment of theft, in respect of the property of her husband REG *v* KHATABAI . . . 6 Bom. Cr. 9

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15 ——— **Removal of family jewels by wife and persons coming to commit adultery with her.** Two persons were committed for trial, the first prisoner for adultery, enticing away a married woman, and theft, and the second prisoner for abetment of the enticing away and theft The first prisoner was ...

... departure she, by means of false keys, supplied to her by the second prisoner, opened the room where the family jewels and money were kept and removed them The jewels were deposited with the second prisoner for safe custody. Part of the money was handed to the first prisoner. *Held*, that notwithstanding the acquittal, the prisoners were not entitled to be discharged without trial on the charge of theft ANONYMOUS . . . . 5 Mad. Ap. 23

16 ——— **and s. 114—Forcibly carrying off crop**—*Want of consent of owner.* Where a Court finds that parties came with a number of armed men, and carried off a crop the finding ... off without ... ey took no ... h reference ... guilty of ... QUEEN *v.* ... CHUNDER MUNDLE . . 8 W. R. Cr. 59

17. ——— **Removal of crop under attachment**—*Dishonest intention—Madras Rent Recovery Act, s 8—Notice of distraint.* Certain crops which had been distrained for arrears of revenue were harvested and removed by the owners and occupiers of the land, who were thereupon charged with theft. The accused were not the defaulters, the demand having been made upon certain other ... stood as the ... were acquitte... wrong in the ... of a finding whether or not the accused ... honestly rem... on the groun... Recovery Act ... distraint which had not been served on them. QUEEN-EMPRESS *v* RAMASAMI I. L. R. 16 Mad 364

18. ——— **Person acting under ill-founded claim of right** A person acting under a claim of right (however ill-founded such claim may be) is not guilty of theft by asserting it. QUEEN *v* RAM CHURN SINGH . 7 W. R. Cr. 57

19 ——— **Removing a thing with the object of causing trouble to the ...** ...

... a lesson to his master The Sessions Judge in his charge to the jury said: "If the jury find that the accused removed the box to put the owner to trouble that is causing ... is th... find... putt... char... on an erroneous view of the law It cannot be said that removing a thing to put the owner to trouble is necessarily and in every case causing "wrongful loss." NABI BAKSH *v.* QUEEN-EMPRESS I. L. R. 25 Calc. 416 2 C. W. N. 347

20. ——— **Dishonest intention**—*Wrongful gain—Wrongful loss* A charge of theft will lie under s. 378 of the Penal Code (Act XLV of 1860) even where there is no intention to assume entire ... may cause wrongful loss within the meaning of the Penal Code The accused was the brother of a farmer or contractor of a public ferry on the Tadri river. He seized a boat belonging to the complainant while conveying passengers across the creek which flows into the river at a point within three miles from the public ferry. His intention was apparently to compel persons who had to cross the creek to ... the ferry in the ... and thereb... from fees ... creek The... that he was justified in seizing the ...

THEFT—*contd.*

that the accused was guilty of theft, though it was not his intention to convert the boat to his own use, or deprive the complainant permanently of its possession. QUEEN-EMPRESS *v* NAGAPPA I. L. R 15 Bom. 344

21. ——— ——— ——— *Absence of dishonest intent—Cutting paddy under claim of right.* The accused cut and removed paddy from certain land alleging that the land and paddy belonged to his uncle. He cited witnesses in support of his story, and also produced a deed of compromise in support of title. The Magistrate disbelieved the defence witnesses, and found that the land and paddy belonged to the complainant, and that the [illegible] it was necessary that the taking away of the paddy should have been done dishonestly, *i e*, with the knowledge that it belonged to the complainant and not to his uncle. ABDOOL BISWAS *v* KHATER MONDAL . . . . 3 C W. N. 332

22. ——— **and s. 143—Unlawful assembly and theft**—*Property in crop grown on another's land on contract to pay latter a certain sum for the crop when grown—Removal of such crop by owner of land.* An indigo planter agreed with some cultivators that the former would grow rice on their land at his own expense and take the whole crop paying them R16 for each bigha The owners of the land cut and carried away the crop so grown. *Held*, that on the agreement the crop remained the property of the owners of the land which the factory merely agreed to purchase, and that a removal of the crop did not constitute theft, but merely a breach of contract remediable in damages As the acts did not amount to theft, which was said to be the common object of the accused, conviction for being members of an unlawful assembly could not stand PARMESHWAR SINGH *v.* EMPRESS . . . . . 4 C. W. N. 345

23. ——— **Removal of debtor's property by the creditor**—*Penal Code as drafted in 1837, s. 363.* With a view to coerce the complainant to pay a sum of R14, which he owed to the accused, three head of cattle worth R60 were removed from the complainant's homestead under the order of the accused. *Held*, that the offence of theft was not committed by the accused. The illustration of s 378 of the Penal Code indicate that it was the intention of the Legislature that, in order to have committed theft within the meaning of the section, the taker must have taken the thing with intention of keeping it himself, or disposing of it [illegible] by unlawful means " means " to gain the thing moved for the use of the gainer," and not "the gaining possession of it for a time for a temporary purpose " S. 163 of the Penal Code as drafted in 1837 discussed PROSONNO KUMAR PATRA *v.* UDOY SANT . . I. L. R. 22 Calc. 669

24. ——— *Removal of debtor's property by creditor to enforce payment of debt—Wrongful gain—Wrongful loss* A creditor, by taking any moveable property of his debtor from the debtor's possession or without his consent, with the intention of coercing him to pay his debt, commits the offence of theft as defined in s. 378 of the Penal Code. Ss. 23 and 24 of the Penal Code discussed and explained *Prosonno Kumar Patra v. Udoy Sant, I. L. R 22 Calc. 669*, overruled. QUEEN-EMPRESS *v.* SRI CHURN CHUNGO . . . I. L. R. 23 Calc. 1017

25. ——— *Removal by creditor of his debtor's property with a view to obtaining payment of his debt. Held*, that the removal by a creditor against the will of his debtor of property belonging to such debtor, with the view of compelling such debtor to discharge his debt, [illegible] s. 379 of [illegible] *v* AGHA MUHAMMAD YUSUF . . I. L. R. 18 All. 88

26. ——— **Assertion of right by accused**—*Defence to charge of theft.* A bare assertion by an accused charged with committing theft of a proprietary right in the alleged stolen property is no reason for a Magistrate to refuse to entertain a charge of theft. QUEEN *v* KALICHARAN MISSER . . 7 B. L R. Ap. 55

s. c. RUNNOO SINGH *v.* KALI CHURN MISSER 16 W. R. Cr. 18

See KHETTER NATH DUTT *v.* INDRO JALIA 16 W. R. Cr. 78

HURIS CHUNDRA DAS *v.* BOLAI AUDHICAREE. 16 W. R. Cr. 75

27. ——— *Plunder of crops—Assertion of right to crops* The mere assertion of a fair claim of property or right, or the mere existence of a doubt as to right, is not sufficient to justify an acquittal in a case of plunder of crops. The claim to the property must be proved by evidence to be fair and good. NASSIB CHOWDRY *v* NANNOO CHOWDHRY . . 15 W. R Cr. 47

28. ——— **and s. 442—Boat—Moveable property.** A boat may be the subject of theft. Although, under s. 422 of the Penal Code, it is for certain purposes classed with houses, it does not cease to be moveable property under s. 378. QUEEN *v.* MEHAR DOWALIA 16 W. R. Cr 63

29. ——— *Intention to convert to his own use, want of—Temporary use.* When an accused charged with murder was alleged to have taken a boat from the place where it had

THEFT—*contd.*

been secured by its owner, and after proceeding some distance in it had abandoned it, and when he was charged with the theft of the boat :—*Held*, that the charge was unsustainable, inasmuch as it was evidently not his intention to convert it to his own use, and make it permanently his own property, but merely to make use of it for the purpose of aiding him in escaping. ADU SHIKDAR *v.* QUEEN-EMPRESS . . . I. L. R. 11 Calc. 635

30. ——— Property removed with criminal intent, but with consent of owner. *A* sought the aid of *B* with the intention of committing a theft of the property of *B's* master. *B* with the knowledge and consent of his master,

31. ——— Possession of wood by Forest Inspector—*Removal of wood without payment of fees.* Possession of wood by a Forest Inspector, who is a servant of Government, is possession of the Government itself; and a dishonest removal of it, without payment of the necessary fees, from his possession, albeit with his actual consent, constitutes theft within the meaning of s. 378 of the Penal Code, if that consent was unauthorised or fraudulent. REG. *v.* HANMANTA I. L. R. 1 Bom. 610

32. ——— Earth—Moveable property. Earth, that is, soil, and all the component parts of the soil, inclusive of stones and minerals when severed from the earth or land to which it was attached, is moveable property capable of being the subject of theft. Whoever dishonesty severs such earth from the earth commits theft. Where a person dishonestly carried away 100 cart-loads of earth from the complainant's land :—*Held*, that he was guilty of theft. *Queen-Empress v. Kotayya, I. L. R. 10 Mad. 255*, dissented from. QUEEN-EMPRESS *v.* SHIVRAM I. L. R. 15 Bom. 702

33. ——— *Moveable property.* *A* dug up and immediately carried away without any authority or right several cart-loads of earth, part of unassessed lands of a village. Held, that *A* was not guilty of theft. QUEEN-EMPRESS *v.* KOTAYYA . I. L. R. 10 Mad. 255

34. ——— and s. 95—Valueless produce—*Property almost valueless.* Conviction and sentence by a Magistrate reversed, as the act of which the accused was convicted—taking pods (almost valueless) from a tree standing upon Government waste ground—came within the meaning of s. 95 of the Penal Code, and did not therefore amount to theft. REG. *v.* KASYA BIN RAVJI . . . . . 5 Bom. Cr. 35

35. ——— Retaining possession of nets of poachers. The prisoner, acting *bonâ fide* in the interest of his employers and finding a party of fishermen poaching on his master's fisheries, took charge of the nets, and retained possession of them, pending the orders of his employers. *Held*, that the prisoner was not guilty of theft. QUEEN *v.* NOBIN CHUNDER HOLDAR 6 W. R. Cr. 79

36. ——— Taking fish in navigable river. The taking fish in that portion of a navigable river over which a right of julkur exists in another person does not fall within s. 378 of the Penal Code. HURI MOTI MODDOCK *v.* DENO NATH MALO . . . 19 W. R. Cr. 47

BHUSUN PARUI *v.* DENONATH BANERJEE 20 W. R. Cr. 15

37. ——— Taking fish from creek. The wrongful taking of fish from a creek is not theft. QUEEN *v.* REVU POTHADU I. L. R. 5 Mad. 390

38. ——— Fishery right, infringement of—*Fishing in tank connected with a running stream—Criminal trespass.* Accused were charged with having taken fish from a tank belonging to the complainant, and convicted of theft and criminal trespass under ss. 379 and 447 of the Penal Code. It was found that the tank in question was not enclosed on all sides, and was dependent on the overflow of a neighbouring channel which was connected with flowing streams for its supply of fish; that

KATANI . . . I. L. R. 15 Calc. 402

39. ——— and ss. 143, 404, 426 and 447—*Infringement of exclusive right of fishery in public river—Criminal misappropriation—Mischief—Criminal trespass—Unlawful assembly.* Fish in a public river cannot be said to be property in the

the Government to the complainant, and the lower

In the matter of the petition of MADHAB HARI I. L. R. 15 Calc. 398 note

THEFT—*contd.*

(*Contra*) MADHOO MUNDLE *v.* UMESH PARNI.
I. L. R. 15 Calc. 392 note

40. ——— s. 379—*Possession—Fish in an enclosed tank* Where the accused were found fishing without permission in an enclosed tank belonging to the Municipality of the town of Sirsi, it was *held* that they could be convicted of theft, as the tank from which the fish were taken was apparently an enclosed tank, and the fish were therefore restrained of their natural liberty, and liable to be taken at any time according to the pleasure of the owner, and were therefore subjects of theft *Bhusun Parui* v. *Denonath Banerjee, 20 W. R Cr 15* and *Queen* v *Revu Pothadu, I L R. 5 Mad. 390*, distinguished. QUEEN-EMPRESS *v* ADAM valad SHAIK FARID
I. L. R. 10 Bom. 193

41. ——— and ss. 206, 403, 424—**Harvesting crops under attachment.** A judgment-debtor whose standing crops were attached harvest

appropriation within the meaning of Indian Penal Code, s. 403. QUEEN-EMPRESS *v* OBAYYA
I. L. R. 22 Mad. 151

42. ——— and ss. 403, 425—**Brahmini bull** *Criminal misappropriation—Mischief—Theft*

meaning of ss 378 and 403, or "property" within the meaning of s 425 of the Penal Code, and could not therefore be the subject of theft, criminal misappropriation, or mischief The fact that such a bull receives some attention from the cowherd of the persons who set it at liberty and is daily fed by him by direction of his employers, and is not used for breeding purposes without their permission being asked, is not inconsistent with a total surrender by those who set it at liberty of all their rights as proprietors. *Queen-Empress* v. *Bandhu, I. L R 8 All 51*, followed *Queen-Empress* v. *Nalla, I. L R 11 Mad 45*, referred to and commented on. ROMESH CHUNDER SANNYAL *v.* HIRU MONDAL I. L. R. 17 Calc. 852

43. ——— **Illegal seizure and impounding of cattle** The illegal seizure and impounding of cattle is not theft within the meaning of the Penal Code, even if effected with the malicious intent of subjecting the owners to additional expense, inconvenience, and annoyance. ABADHUN MUNDUL *v* MYAN KHAN TAKADGEER
24 W. R. Cr. 7

44. ——— **Removal of salt naturally formed**—*Bombay Salt Acts (XXVII of 1837 and XXXI of 1850)* Dishonest removal of salt naturally formed in a creek which was under the supervision of an officer belonging to the Customs

THEFT—*contd.*

Department constitutes theft, the salt having been legally appropriated by such officer. *Per* BAYLE, and WEST, *JJ.*—But removal for one's own use from a creek of such salt not legally appropriated

45. ——— *Taking salt from swamp surrounded by police—Possession* A swamp, the property of Government, having been surrounded with police guards by Government to prevent salt being removed:—*Held*, that the taking against the will of Government, and with the intention of obtaining an unlawful gain, of salt which had been spontaneously produced on the swamp was theft. QUEEN *v* TAMMA GHANTAYA . . . . I. L. R. 4 Mad. 228

46. ——— and s. 204—**Secreting document produced before arbitrator**—*Intention—Remoteness of object.* Where the plaintiff in a suit referred to arbitration by consent, with a view to prevent a witness from referring to an endorsement on a bond (which tended to show that defendant had paid more than it was alleged had been paid by him), snatched up the bond which was lying beside the arbitrator, ran away, and refused to produce it :—*Held*, that the offence committed was not theft, but secreting a document under s 204 of the Penal Code SUBRAMANIA GHANAPATI *v* QUEEN I. L. R. 3 Mad. 261

47. ——— s. 380—**Theft in a building**—*Requisites for offence* All that is necessary in order to constitute the offence of theft in a building is that the property should be under the protection of the building: it is not necessary to show unlawful entrance into the building QUEEN *v* ISHREE PERSHAD . . 24 W. R. Cr. 46

48. ——— and s. 409—**Constables taking property from house under their charge** Theft by constables of property from the house they were employed to gaurd is punishable under s 380, and not s 409, Penal Code QUEEN *v* BOIDNATH SINGH . . . . 3 W. R. Cr. 29

49. ——— s. 381—**Theft by hired boatman**—*Theft by servant*—A hired boatman does not come within the definition of a clerk or servant under s. 381 of the Penal Code Theft by such a person on board a boat comes under s 380 QUEEN *v* BAWOOL MANJEE
8 W. R. Cr. 33

50. ——— ss. 381, 409—**Stealing money in accused's charge**—*Criminal breach of trust.* The prisoners were charged with having stolen a sum of money shut up in a box and placed in the police treasury buildings, over which they, as burkundauzes, were placed on guard. *Held*, that the charge should have been made under s. 381 of the Penal Code (theft by servant in possession of property), and not under s. 409 (criminal breach of trust by public servant) QUEEN *v* JUGGURNATH SINGH . . . . 2 W. R. Cr. 55

THEFT—*contd*

51. —— s 401—**Belonging to a gang of persons associated for the purpose of** [illegible]

character or reputation of the accused is inadmissible for the purpose of proving the commission of that offence Where it was proved that certain persons were found together at some distance from their houses, that they were all intimately connected with one another and were in the habit of visiting melas together, that one of them was arrested in the act of picking a pocket, and that when they were arrested many of them gave false names and false addresses :—*Held*, that they could not be convicted under s. 401 of the Penal Code, there being no proof that they belonged to a gang of persons associated for the purpose of habitually committing theft. MANKURA PASI *v* QUEEN-EMPRESS . . . **I. L R. 27 Calc 139**

DWARKA BUNIA *v*. EMPRESS . **4 C. W. N. 97**

52. ———— **Corpse**—*Penal Code (Act XLV of 1860), s. 378—Human body not capable of being the subject of theft. Held*, that a human body, whether living or dead (except, perhaps, bodies, or portions thereof, or mummies, preserved in museums or scientific institutions), cannot be the subject of theft, as defined in s 378 of the Indian Penal Code. EMPEROR *v* RAMADHIN (1902) . . . . **I. L. R. 25 All. 129**

53. ———— **Fish**—*Penal Code (Act XLV of 1860), 379 s. —Removal of a fish from an ordinary irrigation tank—Charge of theft—Maintainability of charge.* Fish in an ordinary irrigation tank are not in the possession of any person, so as to be capable of being the subject of theft. Nor does the removal of such fish constitute any other offence, *Queen* v. *Revu Pothadu, I. L R 5 Mad. 391n* and *Bhagiram Dome* v. *Abar Dome, I. L. R 15 Calc. 388,* referred to. SUBBA REDDI *v*. MUNSHOOB ALI SAHEB (1900) . **I. L. R 24 Mad 81**

[illegible]

The property missed was not found, but, hidden under a heap of clothing belonging to the four coolies, were discovered 10 *thans* of cloth, which, on investigation, were ascertained to have been abstracted from the next van *Held*, that none of the four coolies travelling in the van where the 10 *thans* of stolen property were found could be [illegible]

I. L. R. 23 All. 308

THEFT—*concld.*

55. ———— **Cutting embankment of channel and diverting running water**—*Mischief—Penal Code (Act XLV of 1860), ss. 379, 430* Where the accused cut the embankment of a *pyne* and drew the water to their own lands and were convicted of theft and mischief under ss 379 and 430 of the Penal Code [illegible]

O'Brien, 11 Q B. D. 21, distinguished EMPEROR *v* SHEIK ARIF (1908) **I. L. R. 35 Calc. 437**

56. ———— **Entrustment of land with standing crops—Cutting and disposing of the Crops**—*Criminal Breach of Trust—Moveable or Immoveable Property—Penal Code (Act XLV of 1860), ss 379, 405.* Where certain land on which there was a standing crop of paddy was entrusted to the accused to take care of and watch till the paddy was ripe when they were to give notice to the factory people who would reap it :—*Held*, that by cutting the crops themselves and disposing of the same, the accused were guilty of theft if not of criminal breach of trust. [illegible]

I. L. R. 36 Calc. 758

THEKADAR.

See TICCADAR.

1.———— **Meaning of term.** The term "thekadar" is properly applicable to hereditary cultivators only when they have also a theka or lease of a share in, or the whole of, the profits of an estate. BAIJ NATH *v*. MUNGLEE . **2 N. W. 411**

2. ———— **Mode of creation of thekadar's interest**—*Effect of accepting theka.* A thekadar is ordinarily a person who holds a theka or lease of the whole of a zamindar's interest in a village There is nothing in the law which renders a writing necessary to the creation of such an interest. It is not to be inferred from the mere circumstance that persons accepted a theka that they forewent their existing right. LEELA DHUR *v*. BHUGWUNT . . . . . **3 N. W. 39**

THEORY.

———— **of prosecution started before collection of evidence—**

See EVIDENCE **13 C. W. N. 622**

THIRD APPEAL.

See AGRA TENANCY ACT (II of 1901) **I. L. R. 29 All. 69**

THIRD CLASS MAGISTRATE.

See WITNESS **I. L. R. 35 Calc. 1093**

TITLE—*contd.*

See SALE IN EXECUTION OF DECREE. I. L. R. 32 Calc. 296

See SALE IN EXECUTION OF DECREE—PURCHASERS TITLE OF.

See VENDOR AND PURCHASER—TITLE.

——— abstract of, not corresponding with original—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS—RECOVERY OF PURCHASE-MONEY . I. L. R. 30 Calc. 468

——— acknowledgment of—

See LIMITATION ACT, 1877, s. 19 (1871, ART. 148)—ACKNOWLEDGMENT OF OTHER RIGHTS.

——— approval of, by solicitor.

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER. I. L. R. 17 Calc. 919

——— decision of Revenue Court as to—

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

——— declaration of suit for—

See DECLARATORY DECREE, SUIT FOR.
See ONUS OF PROOF—DECLARATION OF TITLE.

——— denial of—

See CO-SHARER—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY I. L. R. 28 Calc. 223

See ESTOPPEL—DENIAL OF TITLE

See LANDLORD AND TENANT I. L. R. 36 Calc. 927

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.
I. L. R. 12 Bom. 678
I. L. R. 15 Bom. 407; 414 note, 415 note
I. L. R. 17 Bom. 631
I. L. R. 18 Bom. 110
I. L R. 17 All. 45
I. L R. 20 Bom. 759
I. L R. 24 Bom. 426
I. L. R. 34 Calc. 922

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE

——— evidence of—

See POSSESSION—EVIDENCE OF TITLE.

——— extinction of—

See LIMITATION ACT, 1877, s 28 .
See RELINQUISHMENT OF TENURE I. L. R 1 Bom. 91; 208

——— inquiry into—

See BENGAL PRIVATE FISHERIES PROTECTION ACT . . 6 C. W. N. 113

TITLE—*contd.*

——— notice of—

See VENDOR AND PURCHASER—NOTICE

——— proof of—

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R. 28 Calc. 738

See ONUS OF PROOF—POSSESSION, AND PROOF OF TITLE.

See POSSESSION—EVIDENCE OF POSSESSION.

See POSSESSION—EVIDENCE OF TITLE

——— question of—

See APPEAL—NORTH-WEST PROVINCES ACTS . . I. L. R. 1 All. 366
I. L R. 3 All. 63
I. L R. 4 All. 237
I. L. R. 9 All 445
I. L. R. 11 All. 328
I. L. R. 13 All 364
I. L. R. 14 All. 500
I. L. R. 18 All. 210

See BENGAL RENT ACT, 1869, s 27.
I. L. R. 8 Calc 365
I. L. R. 9 Calc. 280; 423
9 C L R. 253
I. L. R. 12 Calc. 606
I. L. R. 14 Calc. 624

See BENGAL RENT ACT, 1869, s 102

See BENGAL TENANCY ACT, s 140
I. L. R. 17 Calc 829
I. L. R. 14 Calc. 537

See BENGAL TENANCY ACT, SCH. III, ART 3 . . I. L R. 16 Calc. 741

See CERTIFICATE OF ADMINISTRATION—PROCEDURE . I. L. R. 3 Calc. 616
I. L. R. 6 Calc 303
I. L. R. 15 Calc. 574
I. L. R. 17 Mad. 477
I. L. R. 23 Calc. 431

See DEKKAN AGRICULTURISTS' RELIEF ACT, s. 3 I. L. R. 16 Bom. 128

See INSOLVENCY ACT, s 26.
I. L. R. 3 Calc 434

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.
I. L. R 13 All. 309

See JURISDICTION OF REVENUE COURT—BOMBAY REGULATIONS AND ACTS
I. L. R. 1 Bom. 624

See JURISDICTION OF REVENUE COURT—MADRAS REGULATIONS AND ACTS
I. L. R. 15 Mad. 223
I. L. R. 17 Mad. 140

See JURISDICTION OF REVENUE COURT—N.-W. P. RENT AND REVENUE CASE.
W. R. 1864, Act X, 116
1 W. R. 38
2 Agra Rev. 9
3 N W. 141
I. L. R. 9 Calc. 925

TITLE—*contd.*

——— question of—*concld.*

See LETTERS OF ADMINISTRATION. I. L. R. 21 Calc. 344

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION. I. L. R. 14 Calc. 169

See REGISTRAR OF HIGH COURT—SALE BY REGISTRAR . 5 C. W. N. 593

See RES JUDICATA—

ESTOPPEL BY JUDGMENT 6 C. W. N. 66

COMPETENT COURT:—

SMALL CAUSE COURT CASES

REVENUE COURTS

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE. I. L. R. 14 Bom. 627

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—TITLE, QUESTION OF.

See SMALL CAUSE COURT PRESIDENCY TOWNS—JURISDICTION—IMMOVEABLE PROPERTY

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURTS SUITS—TITLE, QUESTION OF.

——— slander of—

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE. I. L. R. 1 Mad. 65

——— warranty of—

See SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF—GENERALLY. 4 Bom. A. C. 111; 6 Bom. A. C. 258; 12 W. R. 41; I. L. R. 2 All. 108; 828

See VENDOR AND PURCHASER.

1. EVIDENCE AND PROOF OF TITLE.

(a) GENERALLY.

1. ——— Evidence of title—*Oral evi-*

documentary evidence was not admissible to establish a man's title to landed property," the High Court on appeal reversed his decision, and

2. ——— *Documentary evidence in India* The presumption in favour of the genuineness of documents offered in evidence in

TITLE—*contd.*

1. EVIDENCE AND PROOF OF TITLE—*contd.*

(a) GENERALLY—*contd.*

India is very weak, but it must not be held that the presumption is in favour of forgery, and when

possession existing at the time of the commencement of the respondent's title by purchase in 1883, the evidence of extrinsic improbability should be very strong indeed to counterbalance the weight of such testimony. WISE *v.* BHOOBUN MOYEE DEBIA . 3 W. R. P C. 5; 10 Moo. I. A. 165

1 Moo. I. A. 305

4. ——— *Forged documents.* If a party put in evidence in support of his title documents proved to be forged, but the other evidence adduced by him is not impeached, the Court, in rejecting the forged documents, will take the unimpeached evidence into consideration, and, if satisfied, adjudicate thereon. SEVVAJI VIJAYA RAGHUNADHA VALOJI KRISHNAN GOPALAR *v.* CHINNA NAYANA CHETTI 15 Moo. I. A. 151

5. ——— *Suit for possession* In a suit to recover possession of land which both the plaintiff and defendant claimed to have

ascertain possession, to entitle him to a decree GOLAM REZA CHOWDHRY *v* CHANDOO MEAH LUSHKUR . . . . . 15 W. R. 45

6. ——— *Possession—Pre-*

of the side that had possession was true than that of the party out of possession. RUNJEET RAM PANDAY *v.* GOBERDHUN RAM PANDAY 20 W. R. P. C. 25

7. ——— *Possession—Limitation Act (XV of 1877), Arts 143, 144—Conflicting evidence of possession—Presumption of title* Where two adverse parties are each trying to make out a possession of twelve years, and the evidence is conflicting and not conclusive on either

TITLE—*contd.*

1. EVIDENCE AND PROOF OF TITLE—*contd.*

(*a*) GENERALLY—*contd.*

side:—*Held,* that the presumption that possession goes with the title must prevail. DHARM SINGH *v* HUR PERSHAD SINGH . I. L. R. 12 Calc. 38

8. ——— It is only when the evidence of possession is strong on both [illegible]

[illegible]

sides. *Dharm Singh* v. *Hurpershad Singh, I. L. R. 12 Calc 38,* explained THAKUR SINGH *v.* BHOGERAJ SINGH . . . I. L. R. 27 Calc. 25

9. ——— *Possession, presumption of—Waste lands.* In disputes as to the right to the possession of jungle lands, it is only in cases where neither party has exercised any acts of ownership over the lands in question that the Court may resort to evidence of title, and presume that the party proved to have the title has also possession. RAM BANDHU *v* KUSU BHATTU 5 C. L. R. 481

10. ——— *Suit for possession—Possession of title-deeds and receipts for rent.* In a case involving the alternative question of fact whether certain land belonged to *R* or *C*, neither the one [illegible] venturing to st[illegible] testimonoy of [illegible] ubtful.—*Held,* [illegible] the title-deeds and of the receipts of rent, ought to succeed, unless there was something on the record to countervail such strong evidence KODA BUKSH KHAN *v.* CHOA . . . 19 W. R. 162

11. ———*Suit for declaration of title—Onus probandi—Production of title-deeds.* The plaintiff sued for declation of her title to property of which the defendant was in possession, but of which she produced the title-deeds in favour of herself. *Held,* that the onus was on the defendant to disprove the plaintiff's title, and the defendant was not allowed to raise certain fresh issues, but the plaintiff was, under the circumstances of the case, entitled to rely on the title given her by the production of the title-deeds in her favour. SWARNAMAYI RAUR *v.* SRINIBASH KOYAL 6 B. L. R. 144

12. ——— *Possession—Uninterrupted and undisputed possession.* Uninterrupted and undisputed possession for a long time constitutes sufficient *primâ facie* evidence of title; but if this possession is admitted to be under an adoption, it will avail nothing if the adoption fails HAIMUNCHULL SINGH *v* GUNSHEAM SINGH 5 W. R. P. C. 69

13 ——— *Suit for possession* Where, in a suit to recover possession of land, the plaintiff succeeded in proving that he had been in possession up to a recent date, and that he had been forcibly disposed by the defendant, the lower Appellate Court threw upon the defendant the burden of proving his title, and, on his failing to do so, decreed the case: *Held,* that this was a fair inference of title and of a right to be replaced in possession without going further into the title, that is, to the mode of its acquisition TRILOCHUN GHOSE *v.* KAILAS NATH SIDHANTO BHOWMIK BHUTTACHARJI 3 B. L. R. A. C. 298: 12 W. R. 175

14. ——— *Proof of title—Suit for possession* In a suit to recover possession [illegible] had been illegally [illegible] nd- [illegible] had [illegible] or [illegible] dar or farmer in possession. The judge found that the estate was really let out in ijara to the plaintiff by the defendant, who had recovered rents and granted him receipts on account of the ijara mehal:—*Held,* that this was a complete finding in favour of the plaintiff's title, and that it was not necessary for him to sue for the pottah which had been wrongfully denied him by defendant. JOHEEROODDEEN MAHOMED *v.* DABEE PERSHAD SINGH . . . . . 13 W. R. 21

15. ——— *Proof of title—Evidence of possession* In a suit to establish title, evidence of plaintiff's possession prior to the summary award under s. 15, Act XIV of 1859, under which he was dispossessed, may be good evidence of his title, and must be considered. BULLUBEE KANT BHUTTACHARJEE *v.* DOORJO DHUN SIRDAR 7 W. R. 89

16. ——— *Possession—Evidence Act, s. 110—Specific Relief Act, 1877, s 9.* In a suit for possession, where the plaintiff proved [illegible] possession of the lands in dis- [illegible] nd- [illegible] her [illegible] *Held,* [illegible] sion [illegible] tle, [illegible] pos- [illegible] ept session are in themselves no evidence of title in a possessory suit under the Specific Relief Act (I of 1877) S. 110 of the Evidence Act applies only to actual and present possession, and does no declare generally that possession shall always be *primâ facie* evidence of title. KAWA MANJI *v* KHOWAZ NUSSIO. . . . 5 C. L. R. 278

17. ——— *Possession—Lands attached by Government as being disputed lands.* Disputes respecting the boundaries of the zamindaris of Yettiapooram and Ramnad in the district of Madura having led to acts of violence by the raiyats, the Government, in the year 1836, to preserve the public peace, attached the disputed lands and took possession for the benefit of the party to whom the lands should be judicially

TITLE—*contd*

1. EVIDENCE AND PROOF OF TITLE—*contd.*

(a) GENERALLY—*contd.*

awarded. At and before the time of the Government taking such possession, the zamindar of Yettiapooram was in possession of certain lands adjacent to, and taken as a party of the ... disput... by Gov... no step... year 1... brough... and the... of the... the me... in the possession of the Government. Although no clear title in this suit was proved by either zamindar ...

10 Moo. I. A. 47

18. ———— *Proof of possession—Suit for possession.* In a suit to recover possession of two plots as parcels of ... ancestral ja... found that... fied that th... late Court a... found that... sion to sho... jammai:—*Held,* reversing the decision of Field, J., that on second appeal the High Court was not entitled to question the sufficiency of that evidence; and, further, that one plot having been found to be parcel of the jammai, it was sufficient to give evidence of possession and ownership to prove that the other plot was also parcel. *Dadabhai Narsidas v Sub-Collector of Broach, 7 Bom., A. C.* 82, distinguished. BARODA KANTO BEEPARI *v.* JODHISTEER NATH 10 C. L. R. 93

19. ———— *Registration after proclamation—Evidence of assertion of title.* The act of registration after a proclamation under s. 20, Regulation ...

... 1 Moo. I. A. 19

20. ———— *Proof of title—Registration in Collector's books.* Registration in the Collector's books is not of itself a proof of title. GOBIND NATH SEIN *v.* GOBIND CHUNDER SEIN 10 W. R. 393

AMEEROONISSA BIBEE *v.* WOOMAROODDEEN MAHOMED CHOWDHRY . . . . 14 W. R. 49

21. ———— *Entry in Collector's books—Proof of title.* The Collector's book is kept for purposes of revenue, not for purposes of title, and the fact of a person's name being entered in the Collector's book as occupant of land does not necessarily of itself establish that person's title, or defeat the title of any other person. FATMA KOM NURI SAHEB *v.* DARYA SAHEB 10 Bom. 187

COLLECTOR OF POONA *v.* BHAVANRAV BALKRISHNA 10 Bom. 192

SANGAPA MALAPA *v.* BHIMANGOWDA MARIAPA 10 Bom. 194

22. ———— *Entry of name in Collector's b...* ... book is kept for purposes of revenue, not for purposes of title. *Fatma v. Darya Saheb, 10 Bom 187,* followed. BHAGOJI *v* BAPUJI I. L. R. 13 Bom. 75

23. ———— *Co-proprietors—Registration of shares in land.* Registration of land under Bengal Act VII of 1876 ... conclusive pr... question of tit... registration d... onus of proving his title to land claimed by him. RAM BHUSAN MAHTO *v* JEBLI MAHTO I. L. R. 8 Calc. 853

See also SARASWATI DASI *v.* DHANPUT SINGH I. L. R. 9 Calc. 431 ; 12 C. L. R. 12

24. ———— *Resumption chittas.* Government resumption chittas, in the absence of the resumption-proceedings, are not conclusive evidence of title as against third persons. *Ram Chunder Rao v. Bunsee Dhur Naik, I. L. R. 9 Calc. 741,* followed. DWARKA NATH MISSER *v* TARITA MOYI DABIA . I. L. R. 14 Calc. 120

25. ———— *Dispute as to ownership of property—Trespasser—Onus of proof.* A person sued as a trespasser cannot, without proof of his own right, oust an apparent owner by pointing out some defect in the title of the latter. TULJARAM *v.* BAMANJI KHARSEDJI. I. L. R. 19 Bom. 828

26 ———— *Possession—Alleged title by adverse possession for more than the period of limitation.* Land bordered by the estate of each of the ... title in either party, so that possession

TITLE—*contd.*

1. EVIDENCE AND PROOF OF TITLE—*contd.*

(*a*) GENERALLY—*contd.*

was all that could be resorted to as the ultimate test of right. The plaintiff relied on limitation. She asserted more than twelve years' adverse possession by having settled tenants on the disputed ground. To entitle her, it was necessary for her, the burden of proof being upon her, to prove that she had held a possession adequate in continuity, in publicity, and in extent of area. Upon all these points her case was deficient, and therefore her claim failed. It was also in evidence, which was the more substantial, that the defendant had occupied during that period a part of the land by tenants; and this, as proof of possession on his part, applied not only to the plots actually tenanted under him, but was contradictory to the whole theory of the plaintiffs' claim. RADHAMONI DEBI *v.* COLLECTOR OF KHULNA . . I. L. R. 27 Calc. 943
L. R 27 I. A. 136
4 C W. N. 597

27. ———— *Ownership, evidence of—Evidence of titles contested between rival purchasers—Benami transaction—Declaratory decree, suit for* Under the Land Registration Act (Bengal Act VII of 1876), registration of ownership was refused on the application of two rival purchasers of the same property, and a reference concerning them was made to the High Court under s 55 The one purchaser then sued the other claiming a decree declaratory of this title, under conveyances made to him in 1890 by a Mahomedan widow, since deceased, and by assignees and lessees from her of parts of her interest in the property. He alleged that a hiba-bilewaz, executed by her in 1858 to her son-in-law for no substantial consideration, was nothing more than a benami transfer, after which she had remained the owner with her former title On that hiba, however, the defence was founded, the defendant averring that it was a real conveyance by the widow, and that through the son-in-law, from whose sons the defendant had purchased the property, the latter had obtained a good title. No actual possession was established by either of the parties. The property had been let in parcels to different tenants Among other things disputed, it was the subject of conflicting evidence whether leases had been made in the past by the then real owner, or upon assumption of title by the adverse party. The Courts below differed in their conclusion as to

CHUNDER BANERJEE *v.* MAHOMED SIDDIK
I. L. R. 26 Calc. 11
L. R. 25 I. A. 225

28. ———— *Survey map—Suit for possession—Ejectment—Evidence of possession and title* In a suit for possession of certain land as appertaining to a certain estate and for ejectment of the defendant, brought by a purchaser

TITLE—*contd.*

1. EVIDENCE AND PROOF OF TITLE—*contd.*

(*b*) GENERALLY—*contd.*

at a revenue-sale, the only evidence adduced by the plaintiff was two survey maps of the years 1846-47 and 1865-66. The lower Court gave the plaintiff a decree for only a portion of the land claimed, such portion being included in both of the maps. The remainder of the land claimed was not included in the map of 1846-47. *Held*, that a survey map is evidence of possession at a particular time, *viz*, the time at which the survey was made, and may be evidence of title, but as to whether

twenty years between them—they might be sufficient evidence of title, and the decree of the lower Court was correct. *Mohesh Chundra Sen v. Juggut Chundra Sen, I. L. R. 5 Calc. 212,* discussed. SYAM LAL SAHU *v* LUCHMAN CHOWDHRY
I. L. R 15 Calc. 353

29. ———— *Transfer of property—Surrender of dar-mokurari lease—Formal deed unnecessary.* Where a mokurarıdar granted a dar-mokurari lease of part of his holding which was afterwards surrendered for good consideration, ikrarnamas to this effect were executed, but, not being registered, were not receivable in evidence:—*Held*, that to prove a formal deed of reconveyance was not necessary, the receipt of the money and the relinquishment of possession sufficiently showing what had become of the dar-mokurari interest. IMAMBANDI BEGUM *v.* KAMALESWARI PERSHAD. . . I. L. R. 14 Calc. 109
L. R. 13 I. A. 160

30. ———— *Hypothecation—*

decree—Defence based on sale-deed ... fraudulent—Plaintiff entitled to succeed on basis of his decree without further proof of title. An objection to the attachment and sale of a house which was advertised for sale in execution of a decree for enforcement of lien was allowed, upon the ground that the objector had purchased the house from the mortgagor, and his purchase was not a

ought a suit
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the defendant
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TITLE—*contd.*

I. EVIDENCE AND PROOF OF TITLE—*contd.*

(a) GENERALLY—*contd.*

been found to be a mere nullity, the plaintiff was entitled to succeed on the basis of the decree, which stood unimpeached, without being put to proof of the mortgage-deed as against the defendant. KADIR BAKHSH *v* SALIG RAM I. L. R. 9 All. 474

31. ———————— *Commission of partition* Under a commission of partition issued by the Supreme Court, land in Calcutta was apportioned among the members of a family, and the allotments were confirmed by final decree in 1825 In this suit, brought in 1884, the plaintiff claimed through one of the family, a parcel of land, by reference to one of the allotments so made. The defence, which was made by setting up a title, through the widow of him who received the allotment, was not proved; but the correctness of the area allotted was also in dispute, and the Appellate Court excluded part from the decree, made by the first Court for the whole It appeared to the Judicial Committee that there was no ground for assuming that the members of the family, who were parties to the partition suit, were under any mistake as to the family property, or that there was any error, or want of due care, on the part of the commissioners of partition, whose proceedings had been regular; nor had there been any adverse claim to any part of the allotted land. The first Court's decree was restored. SARODA PROSUNNO PAL *v* SHAM LAL PAL . . I. L. R. 19 Calc. 618
L. R. 19 I. A. 75

32 ———————— *Mirasi title—Payment of rent—Presumption* Continuous payment of rent for about a hundred years held to give rise to a presumption that the tenant held under a mirasi title BRAJANATH KUNDU CHOWDHRY *v.* LAKHI NARAYAN ADDI 7 B. L. R. 211

33. ———————— *Title confirmed by decree.* Where a proprietary title is affirmed by a decree, the property is not subsequently held under the decree alone, but under the original title. AMRIT KOER *v* ROOP KOER
2 N. W. 459 : Agra, F. B. Ed. 1874, 240

33a. ——— Evidence Act, 1874, s. 32 (5)(6)—*Title as reversionary heirs—Proof of pedigree—Admission of relationship—Actual reversioners not bound by acts of contingent reversioners. Held,* that the appellant had, in the absence of counter-evidence, sufficiently proved their title, as rever-

traced their descent. BAHADUR SINGH *v* MOHAR SINGH (1901) . . . I. L. R. 24 All. 94 :
L. R. 29 I. A. 1
s.c. 6 C. W. N. 169

(b) LONG POSSESSION.

34. ———————— *Title by long possession—Adverse possession—Limitation.* Twelve years' continuous possession of land by a wrong-doer not only bars the remedy and extinguishes the title of the rightful owner, but confers a good title upon the wrong-doer. *Semble.* Such title may be transferred to a third person whilst it is in course of acquisition, and before it has been perfected by possession. GOSSAIN DAS CHUNDER *v.* ISSUR CHUNDER NATH I. L. R. 3 Calc 224

See GOLUCK CHUNDER MASANTA *v.* NUNDO COOMER ROY
I. L. R. 4 Calc. 699 : 3 C. L. R. 450

35. ———————— *Title by long possession—Adverse possession—Limitation—Grant made by wife during absence of husband.* A wife

grantee was not that of a lessee, and that his

36. ———————— *Declaration of title—Adverse possession—Variation between pleading and proof.* A declaration of title may be made upon proof of twelve years' adverse possession. Such declaration cannot, however, be given on a title not distinctly stated in the plaint or in the issues SHIBO KUMRAI DEBI *v* GOVIND SHAW TANTI . . . . I. L. R. 2 Calc. 418

37. ———————— *Suit for declaration of title—Failure to prove stated title—Title by long possession* In a suit for a declaration of title to a share of landed estate, although the

JUGGUT CHUNDER *v.* BANEE MADHUB BANERJEE . . . 23 W. R. 205

TITLE—*contd.*

1. EVIDENCE AND PROOF OF TITLE—*contd.*

(*b*) LONG POSSESSION—*contd.*

38. ——————*Proof of title—Possession for period of limitation* Plaintiff, stating that he was obstructed in the cultivation of certain land which belonged to him, asked that the obstruction be removed and damages granted The damages were disallowed, but the Civil Judge made a *declaration of title in the plaintiff's favour*, basing that entitlement on the statute of limitation *Held*, that, where a man seeks a declaration of a title other than the possession which he has, mere possession for the period of the statute will not justify the declaration, which, allowing it to be made, ought to be based upon a finding of the title alleged by plaintiff, and not upon the existence of a possession for the period required by the statute to bar the action of another Accordingly, the lower Appellate Court was required to return a finding on the issue "whether the title asserted by plaintiff is proved" TIRUMALASAMI REDDI *v.* RAMA SAMI REDDI

6 Mad. 420

39. ——————*Presumption arising from possession—Issue as to identity of land re-formed on a site formerly submerged* In a suit for the possession of a chur formerly carried away and afterwards re-formed upon its former site, the issue was whether the land belonged to the plaintiffs or to the defendants. This issue was found in favour of the plaintiffs by the first Court; and the Appellate Court, finding that the plaintiffs had been in possession for more than twelve years, concluded that, at all events, they had a title by [illegible]

for judgment on this issue, whereupon the Appellate Court maintained the judgment of the first Court in favour of the plaintiffs, finding on the evidence that the land belonged to the plaintiffs. Upon a second appeal the High Court reversed the decree of the Appellate Court, and dismissed the suit, on the ground that there was an entire absence of evidence as to which party was entitled at the date to which the dispute related *Held*, that this was erroneous On a question of parcel or no parcel, [illegible]
period, [illegible]
of ante [illegible]
ANANGA [illegible]
DABI CHOWDHRANI [illegible]

L. R. 14 I. A. 101

40. ——————*Mokurari maurasi title, evidence of—Presumption of permanent tenure* A person claimed to hold a mokurari maurasi title to certain land which was acquired under the Land Acquisition Act, but could produce no pottah of evidence of title, other than certain rent receipts, which showed that he or his predecessors in title had held the land in question for nearly one hundred years at, presumably, a fixed rent, the nature of the tenure not being mentioned in such receipt. *Held*, that the presumption was, in the absence of any evidence to the contrary, that the claimant had a permanent and transferable interest in the tenure and not merely an interest in the nature of a tenancy at will; and that this presumption was strengthened by the fact that his superior landlord, the lakhirajdar had made no attempt to eject him or his predecessors in title during this long period. DUNNE *v.* NOBO KRISHNA MOOKERJEE

I. L. R. 17 Calc. 144

41. ——————*Suit to oust shebait from office—Tenure of office for a period greater than that provided by law of limitation.* The plaintiff, as shebait of a certain Hindu endowment, instituted a suit to set aside certain leases and alienations created by one who had formerly been shebait, but who, it was alleged, had relinquished and abandoned the office on the ground that such leases and alienation were void and not [illegible]

nected with the endowment for more than [illegible] years, on the nomination of the Hindu residents of the locality, the defendants put the plaintiff [illegible] The lower Courts [illegible]

having held the office for a period exceeding that provided by the law of limitation, he had acquired a complete title for the purposes of any litigation connected with the affairs of the endowment, and that the suit had been wrongly dismissed on the ground that the plaintiff had failed to prove his title JAGAN NATH DAS *v.* BIRBHADRA DAS

I. L. R. 19 Calc. 776

42. ——————*Presumption of title—Onus of proof—Madras Forest Act (Mad. Act V of 1882), s. 6.* Certain land was notified under the Madras Forest Act, 1882, to be constituted a reserved forest. A person, alleging that the jenm title had been in his family for six or seven centuries, claimed to be the owner of the land. His claim was contested by Government on the allegation that the land had belonged to another family and had been escheated The claimant [illegible] for six

TITLE—*contd*

I. EVIDENCE AND PROOF OF TITLE—*concld.*

(b) Long Possession—*concld.*

that the claim should be allowed Observations on the burden of proof and on the presumption of title arising out of possession SECRETARY OF STATE FOR INDIA v BAVOTTI HAJI

I. L. R. 15 Mad. 315

43. ——— Proof of title—*Suit for declaration of title—Adverse possession—Case made in plaint* Where a specific title has been alleged, but not proved, and the plaintiff endeavours to succeed in the first Court or second Court of appeal upon a title by twelve years' adverse possession, he must be prepared to show that this other title by twelve years' adverse possession was raised on the Court of first instance with sufficient clearness to enable his adversary to understand that he claimed to succeed as well by twelve years' adverse possession as by the specific title alleged. KRISHNA CHURN BAISACK v PROTAB CHUNDER SURMA

I. L. R. 7 Calc. 560

44. ——— *Adverse possession—Unregistered deed of sale.* On the 18th January 1876 plaintiff became purchaser at a Court's sale of the right, title, and interest of *G* and *N* in a shop, and, having been obstructed by defendant in obtaining possession of it, sued to recover it from him The plaint was filed on the 27th January 1877. Defendant answered that he purchased it from *G* under a deed of sale dated 5th January 1865, and that he had been in possession since that day The deed of sale was not admitted in evidence for want of registration, but it was found that defendant had been in possession as owner since 5th January 1865. *Held*, that, al- [illegible]

prior to the institution of the suit was adverse

SAMBHUBHAI KARSANDASS v SHIVLALDASS SADASHIVDASS . . I. L. R. 4 Bom. 89

45. ——— *Long possession—Liability to assessment of revenue.* A title to

2. MISCELLANEOUS CASES.

1. ——— Right to raise question of title—*Boundary dispute—Suit for possession* In a boundary dispute the title of the plaintiff is not, except under very peculiar circumstances, open to attack; but when the plaintiff sues for possession of property in the defendant's hands, not as forming part of another estate, but claiming a right

2. ——— *Suit for possession of land held under superior holders* The plaintiff sued to recover possession of certain lands said to have been included in a talukh pottah given him by the zamindars, alleging that the defendants were obstructing his possession. For the defence it was averred that these lands fell within a 9 annas share which belonged to one *D*, and that by process of sale they became the right of other parties under whom defendants held as lessees.

[illegible]

See DINOMONEE BANERJEE v. GYRUTOOLLAH KHAN 2 W. R. 138

3. ——— Onus probandi—*Proof of title—Suit for confirmation of title and declaratory decree.* When a plaintiff sues for confirmation of possession and seeks a declaratory decree, he must make out his title affirmatively. If the Indian Courts agree in holding that he has not done so, even though the High Court may not have attended to the depositions of material witnesses, the Judicial Committee will not disturb the decision of the High Court. TORAB ALI v. MAHOMMED TUKKEE . . 19 W. R. P. C. 1

4. ——— *Claim under particular title—Presumption.* Where a plaintiff claims not under any general right of inheritance, but expressly under a deed, he must prove that ... nts of what have ..., had there been such a deed. MOOAD MULLICK v. BELAT MULLICK . . . . . 9 W. R. 385

5. ——— *Possession—*

declared that "the whole of my estate, both real and personal, and the existing shop, you, *R*, are the proprietor of the whole" *R* was directed to furnish the expenses of the household and carry on the shop, and pay for religious observances, etc. The testator then left legacies to his daughters and others, but made no mention of his sons *B* and *T*. *R* applied for probate of the will, and a caveat was entered by *B*, but the opposition was withdrawn on a compromise, and the will was proved; the compromise, however, was never carried out. In August 1866 *R* died, leaving a

TITLE—*contd.*

2. MISCELLANEOUS CASES—*contd.*

son, *M*, and his two brothers, *B* and *T*, surviving

thirds share in the house to the defendant, and, on default in payment of the mortgage-debt, the defendant obtained a decree for payment or sale on 6th January 1868 On 17th August 1867 *T* mortgaged the whole house to the plaintiffs to secure payment of money borrowed to carry out *A's* will. The plaintiffs obtained a decree for foreclosure on 15th July 1869, and subsequently a decree for possession In a suit brought by the plaintiffs in possession alleging that the defendant's mortgage and decree threw a cloud on their title, and that they would be injured by the sale, the plaint prayed that the defendant might be restrained by injunction from proceeding to sale, and his mortgage be brought into Court and cancelled *Held*, that, to entitle them to relief, they must prove their title as well as their possession, and, on failure to do so, the suit must be dismissed ROOPLAL KHETTRY *v.* MOHENDRA NATH ROY

10 B. L. R. 271 note

8. ———— False deed set up in support of rightful claim A party is not precluded from succeeding upon a title established by a genuine deed, because he sets up a false deed which, if treated as a conveyance and not as a mere confirmation, may be inconsistent with that title PATTABHIRAMIER *v* VENCATAROW NAICKEN . **7 B. L. R. P. C. 136 : 15 W. R. 35 13 Moo I. A. 560**

7 ———— Transfer of property—*Relinquishment of dar-mokurari lease—Necessity for conveyance* Where a dar-mokurari has been granted and then relinquished for valuable consideration to the grantors, no formal reconveyance is necessary to revest the title in the latter. IMAMBANDI BEGUM *v* KUMLESWARI PERSHAD

I L R. 14 Calc. 109. L. R. 13 I. A. 160

8. ———— Suit for land—*Specific Relief Act (I of 1877), s 9—Suit for land, based on title—Claim of title set up in defence—Suit treated by Court partly as summary suit for possession under s 9 and partly as a suit based on title—Rights of parties to have question of title tried and decided—Practice.* Plaintiff sued to eject defendants from certain land, claiming title to it by purchase, and alleging that he had been forcibly dispossessed by defendants. The defendants denied both plaintiff's title and possession, and set up title in themselves, and alleged that they had long been in

applied, and declared plaintiff entitled to posses-

TITLE—*contd.*

2. MISCELLANEOUS CASES.—*contd.*

concerning title should have been tried The suit ought to have been treated partly as a suit under s 9 and partly as based on plaintiff's title *Ram Harak Rai* v. *Seodihal Joti, I. L. R. 15 All 384,* not followed. RAMSAMI CHETTI *v.* PARAMAN CHETTI (1901) . . **I. L. R. 25 Mad. 448**

9. ———— Occupancy rights—*Limitation Act (XV of 1877), Sch. II, Art. 139—Claim for more than twelve years by tenants from year to year of permanent occupancy rights, to knowledge of landlord—Determination of lease.* A person who has lawfully come into possession of land as tenant from year to year for a term of years, or as mortgagee, cannot, by setting up, during the continuance of such relation, any title adverse to that of the landlord or mortgagor, as the case may be, inconsistent with the real legal relation between them—and that however notoriously and to the knowledge of the other party—acquire, by the operation of the law of limitation, title as owner, or any other title inconsistent with that under which he was let into possession. In the case of a mortgage, the title of the mortgagor will be extinguished only at the expiration of the period prescribed for the redemption of the mortgage, and, in the case of a lease, the landlord's title can be extinguished only at the expiration of the period prescribed by Art. 139 of Sch. II to the Limitation Act, and under that article such period will commence to run only when the tenancy is determined. SESHAMMA SHETTATI *v.* CHICKAYA HEGADE (1902)

I. L. R. 25 Mad. 507

10. ———— Tiled hut—*Pre-*

Small Cause Court has jurisdiction to try the question of title in tiled-hut cases, and in executing a decree of another Court transferred to it has the same power as it possesses in regard to its own decrees All questions arising in execution of a decree under s 28 of the Presidency Small Cause Courts Act can be decided by the Small Cause Court. *Deno Nath Batabyal* v. *Nuffer Chunder Nundy, I. L R 26 Calc 778,* and *Deno Nath Batabyal* v. *Audhor Chunder Sett, 4 C. W. N. 470,* referred to GUNAPUTTY ROY AGARWALLA *v* THAKURDYE THAKURANI (1907)

I. L. R 34 Calc. 823

11. ———— Gift made orally—*Evidence of title—Gift made orally by proprietor of Betia Raj to his daughter at her marriage—Condition attached to gift—Subsequent deed with recitals confirming gift—Suit by successor in title of donor against husband of donee for possession of subject of gift—*

TITLE—*concld.*

2. MISCELLANEOUS CASES—*concld.*

Donee's power of alienation to prevent gift devolving on husband The question in this case was whether the appellant or the respondent was entitled by inheritance to a village the subject of a gift said to have been orally made by a predecessor in title of the respondent to his daughter on her marriage to the appellant in 1868, for possession of which the respondent sued. Her case was that the gift was subject to the condition that on the death of the donee without issue (which event had occurred) the village should revert to the donor and his heirs: and she relied on an *ekrarnama* executed by the donor in 1883, when the donee was separated from the appellant and was an inmate of her father's house, by which deed the alleged condition of the gift was recited and confirmed. The defence set up by the appellant was that the village had been given to him at the marriage for the benefit of himself and his wife, or, in the alternative, that if it was given to his wife, he took it as her heir The Subordinate Judge found on the evidence that the appellant and respondent both failed to prove any condition attached to the gift,

Judicial Committee, that the High Court was right in reversing that decision, because, if the gift of the village were absolute in favour of the daughter, she had, on the evidence in the case, by the subsequent deed of 1883, agreed it should at her death revert to her father and his heirs. SHAM SHIVENDAR SAHI *v.* JANKI KOER (1908)
I. L. R. 36 Calc. 311

TITLE-DEEDS.

See EXECUTION OF DECREE—MODE OF EXECUTION—POSSESSION.
I. L. R. 11 Bom. 485

See VENDOR AND PURCHASER—TITLE.
I. L. R. 15 Bom. 657

———— delivery of, for specific purpose

See ATTORNEY AND CLIENT.
15 B. L. R. Ap. 15

———— deposit of—

See DEPOSIT OF TITLE-DEEDS

See INSOLVENCY—VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR . . . 6 B. L. R. 701
I. L. R. 19 All. 76
L. R. 23 I. A. 106

See MORTGAGOR AND MORTGAGEE.
I. L. R. 33 Bom. 1

See NEGOTIABLE INSTRUMENTS ACT, s 13.
I. L. R. 17 Mad. 85

———— possession of—

See ARBITRATION—AWARDS—CONSTRUCTION AND EFFECT OF.
I. L. R. 29 Calc. 793

TITLE-DEEDS—*concld.*

———— possession of—*contd.*

See EVIDENCE—CIVIL CASES—MODE OF DEALING WITH EVIDENCE
2 W. R. P. C. 1
8 Moo. I. A. 467

See REGISTRATION ACT, 1877, s 50.
I. L. R. 18 Bom. 444

———— production of—

See INSPECTION OF DOCUMENTS.
5 Bom. O. C. 152
I. L. R. 10 Calc. 808

See ONUS OF PROOF—DECLARATION OF TITLE 8 B. L. R. 144

See TITLE—EVIDENCE AND PROOF OF TITLE—GENERALLY
6 B. L. R. 144
19 W. R. 162

———— refusal to produce—

See RIGHT OF WAY.
I. L. R. 15 All. 270

———— suit to recover—

See JURISDICTION—SUITS FOR LAND—GENERAL CASES.
I. L. R. 4 Calc. 322

See LIMITATION ACT, 1877, SCH. II, ART. 49 . I. L. R. 15 Mad. 157

TITLES OF HONOUR.

See PLAINT—FORM AND CONTENTS OF PLAINT—DEFENDANTS
12 B. L. R 443; 445 note

TODA GIRAS ALLOWANCE ACT (BOM. ACT VII OF 1887).

———— s. 5—*Toda Giras allowance—Attach-*

of it that is allowed by the Act to be attached The words "money likely to become due" in s 5 of the Act must be restricted to the case where, for instance, during the lifetime of the judgment-debtor, a sum of money

TODA GIRAS ALLOWANCE ACT (BOM. ACT VII OF 1887)—*concld.*

——— s. 5—*concld.*

is directed by the Collector to be paid to him on account of a *toda giras* allowance not immediately but on a date subsequent to the date of the order of direction, and the judgment-debtor dies before that date; and to other cases of a similar character Under what circumstances money is likely to become due on account of a *toda giras* allowance is a question which cannot be answered exhaustively and must depend on the facts of each case as it arises AMARSANG *v* JETHALAL (1909) . . I. L. R. 33 Bom. 258

TODA GIRAS HAQ.

See DUTIES
2 Bom. 253 : 2nd Ed. 239
7 Bom. A. C. 50

See LIMITATION ACT, 1877, SCH II, ART 144—IMMOVEABLE PROPERTY
13 B. L. R. 254
L. R. 1 I. A. 34

See PENSIONS ACT, 1871, SS 3 AND 4.
I. L. R. 1 Bom. 203
I. L. R. 4 Bom 443
I. L. R. 5 Bom. 408
L. R. 8 I. A. 77

See PENSIONS ACT, 1871, s. 11
I. L. R. 4 Bom. 432

TODDY.

See BOMBAY ABKARI ACT, 1878, SS 3, 14, AND 24 . . I. L. R. 6 Bom. 398
I. L. R. 9 Bom. 462
I. L. R. 18 Bom. 428

See BOMBAY REVENUE JURISDICTION ACT, 1876 . . I. L. R. 9 Bom. 462

TOLLS.

See SETTLEMENT—CONSTRUCTION
I. L. R 17 Calc. 458

——— lease of—

See BOMBAY TOLLS ACT, s 7.
I. L. R. 20 Bom. 668

——— non-liability to—

See MADRAS LOCAL BOARDS ACTS, s 87.
I. L. R. 20 Mad. 16

——— recovery of dues under lease of—

See MADRAS DISTRICT MUNICIPALITIES ACT, s. 269 . I. L. R 26 Mad. 475

——— suit for, paid in excess—

See BENGAL ACT IX OF 1871, s. 27.
I. L. R. 15 Calc. 259

1. ——— Lessee of tolls—*Act VIII of 1851* A lessee of tolls was *held* not to be a person employed in the management and collection of tolls within the meaning of Act VIII of 1851. *In the matter of* BANKA BIHARI GHOSE
2 B. L. R. A. Cr. 17 ; 11 W. R. 26

TOLLS—*concld.*

[illegible] Illegal collection of tolls—
[illegible]

meaning of s. 2 of the act. *In re* NARENDRA-NARAIN SINGH . . . 6 W. R. Cr. 48

3. ——— Illegal demand of toll—*Act VIII of 1851. s. 6—Summary offence.* [illegible] of toll under Act VIII [illegible] ummarily [illegible] ure Code, [illegible] Act VIII [illegible] Governor of Bengal, and is restricted to levying tolls only at the toll-bar: the establishment of a toll must be by some distinct resolution of the Government, notified in some way or other by the Government. The word "extortionately" in s 6 of Act VIII [illegible] sense as it is used [illegible] an unlawful [illegible] pressure, the [illegible] reise of the powers indicated in s. 3 of the Act by seizing the complainant's horses and carts and detaining them until the toll was paid UTTOM CHUNDER MOOKERJEE GANGOOLY *v.* ISSUR CHUNDER
22 W. R. Cr. 76

4. ——— Dispute concerning the right to collect market-tolls [illegible] the possession of the market land— [illegible] o-sharer for [illegible] urisdiction [illegible] (Act V of [illegible] Procedure [illegible] ing to the rights of co-shares to collect tolls in proportion to their respective shares in a *hat* and not to the possession of the *hat* itself. Where one of two co-sharers was entitled under an *ekrarnama* to collect the tolls of the whole market and to divide the profits with the other co-sharers at the end of the year, and the lessee of the latter attempted to collect his lessor's share independently:—*Held*, that the Magistrate had no jurisdiction to take proceedings under s 145 in such a case A Magistrate cannot under the section determine the method by which the possession of the parties is to be exercised or the agency by which the party in possession is to collect the profits of land. *Nritta Gopal Singh* v. *Chandi Charan Singh, 10 C. W. N. 1038*, followed. *Sri Mohan Thakur* v. *Narsing Mohan Thakur, I L R 27 Calc 259*, distinguished *Tarujan Bibee* v. *Asamuddi Bepari, 4 C. W. N. 426*, referred to. AKALOO CHANDRA DAS *v* MOHESH LAL (1909)
I. L. R. 36 Calc. 986

TOPOGRAPHICAL SURVEY MAP.

——— Evidence Act (I of 1872), s. 36—Topographical Survey map—Admissibility in evidence—Value as evidence—Presumption that entries are correct—Boundary dispute—Jungle land—Duty of Court to settle dispute—Jungle land—Duty of Court to settle

TOPOGRAPHICAL SURVEY MAP— *contd.*

boundary, when evidence insufficient—Second appeal—Civil Procedure Code (Act XIV of 1882), s. 584—Error of law. When the question was in which of two adjoining villages—the boundary line between which admittedly corresponded with the boundary line between two pergunnahs—the land in dispute was included :—*Held*, that a Topographical Survey map of 1869, in which the boundary line between the two pergunnahs was given, was admissible in evidence under s. 36 of the Evidence Act. When pergunnah boundaries are found entered in such map the presumption is that they were so entered in pursuance of instructions received. S 36 of the Evidence Act does not require that the authority under which a map is prepared must be authority given by Statute. Assuming that Topographical Survey maps were not prepared for revenue purposes they are official documents prepared by competent persons and with such publicity and notice to persons interested as to be admissible and valuable evidence of the state of things at the time they were made They are not conclusive and may be shown to be wrong, but in the absence of evidence to the contrary, they may be properly judicially received in evidence as correct when made *Jagadindra Nath Roy v. Secretary of State for India, 7 C. W. N. 193; I. L. R. 30 Calc. 291*, referred to In cases of boundary disputes, the fact that no satisfactory evidence as to possession is obtainable does not relieve the Court of the duty of settling the boundary line on the evidence before him. *Lukhi Narain Jagadar v. Jadu Nath Deo, I. L. R. 21 Calc. 504* followed. *Held*, on

GAJHOO DAMOR SINGH v. KOTWOR JAGATPAL SINGH (1906) . . . . . . 11 C. W. N. 230

TORT.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES — TORTS

See DAMAGES—SUITS FOR DAMAGES—TORTS

See ENCROACHMENT.
I. L. R. 17 Mad. 368

See LIMITATION I. L. R. 36 Calc 141

See MINOR—CUSTODY OF MINORS.
I. L. R. 25 Bom. 574

See MINOR—LIABILITY FOR TORTS
3 N. W. 191

See SCIENTER. I. L. R. 36 Calc. 1021

See SUIT . I. L. R. 31 Calc. 639

——— **action framed in—**

See MINOR—LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS.
I. L. R. 24 Calc. 265

TORT—*contd.*

——— **action framed in**—*contd.*

See RIGHT OF SUIT—SURVIVAL OF RIGHT.
I. L. R. 13 Bom. 677

See WRONGFUL DISTRAINT.
I. L. R. 25 Calc. 285

1. ——————— **Tort, committed by Government Official**—*Government, liability of—Principal and agent—Act XVIII of 1850—Second appeal—Suit of Small Cause Court nature—Small Cause Courts Act (IX of 1887), Sch II, Excs 2 and 3—Civil Procedure Code (Act XIV of 1882), s. 586* A suit brought to recover moneys alleged to have been wrongly made over by a Magistrate purporting to act under the provisions of s 517 of the Criminal Procedure Code, does not fall within the second or the third exception to the second schedule of the Provincial Small Cause Courts Act When the amount claimed fell short of R500, a second appeal was barred under s 586 of the Civil Procedure Code. In cases of torts committed by Government officials, the person to be sued is the person, who has actually done the alleged wrongful act, and he may or may not have a statutory or other defence. Where the act complained of was done by a Government official occupying such a position that for all practical purposes the Government had no control over him and the Government did not cause

referred to. MOTI LAL GHOSE v. SECRETARY OF STATE FOR INDIA (1905) . . 9 C. W. N. 495

2. ——— **Wrongful acts of servants, liability for**—*Tort—Master and servant—Malicious prosecution—Damages for—Implied authority in the servants—Acting in Master's interest—Zemindar and Naib.* The defendant No 1, who was a peon under defendant No 2, the Naib of defendant No. 3 prosecuted the plaintiff in the Criminal Court, but the plaintiff was found not guilty and acquitted. In a suit subsequently brought by the plaintiff against the defendants Nos. 1, 2, 3 to recover damages for malicious prosecution, it was found

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the prosecution of the criminal case were borne

cause. SARAT CHANDRA ROY CHAUDHURY v. DAWLAT SINGH (1905) . . 10 C. W. N. 723

TORT—*contd.*

3. ———————— **House-search by Magistrate**—*Tort—Trespass—Statutory jurisdiction—Arms Act (XI of 1878), s. 25—Arms, search for—Grounds of belief, recording of—Code of Criminal Procedure (V of 1898), ss. 94, 105 and 165—Magistrate as "Court"—Judicial Officers' Protection Act (XVIII of 1850), s. 1—Acts, judicial or executive—Malice—Bonâ fides—Damages, substantial, exemplary or nominal* Unless a Magistrate can justify his acts as having been done under the authority of law, he is liable in an action of trespass for acts done by him to the persons or property of others If a Magistrate seeks to justify his acts under the provisions of a Statute, he must bring himself strictly within the words thereof When a Magistrate holds a search of a house without first recording the grounds of his belief that the owner thereof has in his possession any arms, etc , for an unlawful purpose and that such owner cannot be left in possession of such arms, etc , without danger to public peace in the way provided for in s 25 of the Indian Arms Act (XI of 1878) he cannot justify the search under that Act. If there are no proceedings pending before him, a Magistrate cannot be said to be acting as a "Court" within the meaning of s 94 of the Code of Criminal Procedure (Act V of 1898), and cannot, therefore, direct a search to be made in his presence pursuant to s 105 of that Code S. 165 of the Code of Criminal Procedure ...

the obligations the law casts upon him · while, having regard to his *bonâ fides* his conduct may not be such that the damages to be awarded for trespass should be exemplary, yet they ought to be substantial and not purely nominal BRAJENDRA KISORE ROY CHAUDHURY *v* CLARKE (1908) **12 C. W. N. 973 : I. L. R. 36 Calc. 433**

[But see the judgment of the Privy Council, on appeal, in CLARKE *v.* BRAJENDRA KISHORE ROY CHOWDHURY. . . **I. L. R. 39 Calc. 953**]

4. ———— **Injury by dogs at a public recreation-ground**—*Tort—Dogs likely to bite without provocation—Liability of Owner of Dogs—Scienter* The defendant's dogs which to the knowledge of his servant having the charge of such dogs were likely to bite people without provocation, were taken by such servant to a public recreation-ground. The plaintiff, a child of seven years of age, became frightened at the dogs and cried whereupon the dogs attacked and bit him severely :—*Held*, that the defendant was liable in damages to the plaintiff. *Barnes* v. *Lucile, Ltd., 23 T. L. R 389*, distinguished. PRAKASH KUMAR MUKERJI *v.* HARVEY (1909)
I. L. R. 36 Calc. 1021
13 C. W. N. 1123

TORT—*concld.*

5. ———————— **Malicious prosecution—Amount of damages**—*Second Appeal.* In a suit for damages for malicious prosecution the question of the amount of damages is a question of fact and it is not open to the High Court to interfere in second appeal upon such a question. *Bane Madhab Chatterjee* v. *Bhola Nath Banerjee, 10 W. R. 164*, and *Jageswar Sarma* v. *Dina Ram Surma, 3 C. L. J. 340*, referred to. DHUMAN *v.* SYED ABDULLAH KHAN (1909)
I. L. R. 31 All. 333

6. ———— **Trespass on person**—*Tort—Trespass—Police officer—Master and servant—Loss of service.* If a police officer, in order to arrest suspected persons, enters into a building, his action would be *primâ facie* justifiable. In order to maintain an action for trespass to the person of a servant, it must be shown that the plaintiff was, by reason of defendant's conduct, deprived of the benefit of the servant's service. BRAJENDRA KISSORE ROY CHOWDHURI *v.* M. A LUFFEMAN (1909) . . . **13 C W. N. 485**

TORT-FEASORS.

See CONTRIBUTION, SUIT FOR—JOINT WRONG-DOERS.

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES
I. L. R. 14 Bom. 408

TORTURE.

See ABETMENT—TORTURE. **7 W. R. Cr. 3**
21 W. R. Cr. 11

See POLICE OFFICER . **7 W. R. Cr. 3**

TOTAL LOSS.

See INSURANCE—MARINE INSURANCE.
6 B. L. R. 218 : 7 B L. R. 347
3 Bom. A. C. 1
Bourke O. C. 17, 226

TOUT.

See LEGAL PRACTITIONERS' ACT, 1879.
s. 36 . . **6 C. W. N. 269**
I. L. R. 26 Mad. 596
12 C. W. N. 843, 843 note

TOWAGE, LIEN FOR

See BOTTOMRY BOND . **6 B. L. R. 323**

TOWAGE CONTRACT.

See ACTION IN REM **I. L. 10 Calc. 865**

TOWING, RULES FOR.

See STEAM TUGS . . **1 Hyde 29**
2 W. R. P. C. 51 : 8 Moo. I. A. 1033

TOWN-DUTIES, BOMBAY.

——— **Act XIX of 1844**—*Suit to levy a tax on cotton and cotton seeds purchased in, and exported from, Broach—Cess illegal—Agency—Trust* The plaintiff, manager and part proprietor of a Vallabhacharya temple at Broach, sued the defendant to establish the right of the temple to levy a cess on cotton and cotton seed purchased in Broach and exported from it. The defendant denied the plaintiff's right and contended (*inter alia*) that, even if the right existed until 1844, it was then abolished by Act XIX of that year, which "enacted that from the first day of October 1844 all town duties, kusubviras mohtarphas, baluti taxes, and cesses of every kind on trades and professions, under whatsoever name, levied within the Presidency of Bombay, and not forming a part of the land revenue, shall be abolished" *Held*, that Act XIX of 1844 applied to the cess claimed by the plaintiff. The expression "cesses of every kind" included the cess on cotton and cotton seeds, and absolutely put an end to the right, if any existed, of the Government or of any private individual of levying the same. *Held*, also, that the suit could not be regarded as a suit for money had and received by the defendant to the plaintiff's use, or as one to recover money received by the defendant as trustee or agent GOSVAMI SHRI PURUSHOTAMJI MAHARAJ v ROBB **I. L. R. 8 Bom. 398**

TRADE.

——— **contract in restraint of—**

See CONTRACT ACT (IX OF 1872), s 27.

TRADE-DESCRIPTION

See COLLECTOR OF CUSTOMS, POWER OF. **I. L. R. 34 Calc. 511**

TRADE LIBEL.

See LIBEL . **I. L. R. 36 Calc. 907**

TRADE MARK.

See APPEAL . **10 C. W. N. 7**

See CAUSE OF ACTION. **10 C. W. N. 107**

See CRIMINAL PROCEDURE CODE, ss 233-239 . . **I. L. R. 28 Bom. 449**

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS **I. L. R. 10 Bom. 617**

See INJUNCTION—SPECIAL CASES—TRADE MARK . . . **Cor. 160**
3 B. L. R. Ap. 4
I. L. R. 17 Bom. 584
8 C. W. N. 151

See PENAL CODE, ss 478, 480. **I. L. R. 29 Mad. 569**

1. ——— **Injunction to restrain use of trade-marks**—*Combination of figures.* The plaintiffs, from 1872, imported and sold an article described as 7½ lb grey shirtings, and marked as follows: "In the centre of each piece of cloth a stamp in blue colour of a turtle in a star, with the words 'trade mark;' underneath

TRADE MARK—*contd.*

in a semi-circular form, is the name 'Fleming, Galbraith & Co, Manchester,' and under this the number 39 within a star, and at the bottom of [illegible]

[illegible] a similar quality marked as follows: A stamp in blue colour of a rose in a square; underneath are the words 'Ralli and Mavrojani' arranged in a semi circular form, and under this the number 39 in a star, and at the bottom the number 2008" On the facts of the case the lower Court (MACKPHERSON, J.) granted an *interim* injunction to restrain the defendants from so marking their cloth, on the ground that it was a colourable imitation of the plaintiffs' mark and calculated to mislead the public; and on appeal the Court (GARTH, C J, and MARKBY, J.) upheld that decision so far as to continue the injunction. *Held per* [illegible] plaintiffs' [illegible] mber 2008 [illegible] to deceive [illegible] nts ought to be restrained from such use or imitation. Under the circumstances, the use of their marks by the defendants would be calculated to deceive the public into the belief that they were purchasing goods imported by the plaintiffs *Per* MARKBY, J.—The number 2008 was not part of the plaintiffs' trade mark proper, nor on the evidence was it so associated with the plaintiffs' name as to indicate to the public that the goods bearing that number came only from the plaintiffs' firm as importers; on the evidence it was merely a quality mark and therefore not calculated to mislead the public into the belief that they were purchasing the plaintiffs' goods, while in fact they were purchasing those imported by the defendants *Semble*: There may be a right to exclusive use of a trade mark by traders who are importers only RALLI v. FLEMING **I. L. R. 3 Calc. 417 : 2 C. L. R. 93**

2. ——— **Right to use of trade mark**—*Rival traders—Similarity of name.* No trader importing goods can lawfully adopt a trade mark which it calculated to cause his goods to bear in the market the same name as those of a rival trader. TAYLOR v VIRASAMI . **I. L. R. 6 Mad. 108**

3. ——— **Restraining use of trade mark**—*Evidence of fraud* The ground upon which a person is restrained from using another's trade mark is that he is gaining an advantage by the use of a particular trade mark which is the property of another. It is not necessary to prove intentional fraud, or to show that persons have been actually deceived. It is sufficient if the Court be satisfied that the resemblance is such as would be likely to cause the one mark to be mistaken for the other. EWING v. GRANT, SMITH & Co. . **2 Hyde 165**
BALFOUR & Co v. KILBURN & Co. **1 Hyde 270**

TRADE MARK—*contd.*

4. ———— **Possession and use of trade mark**—*User in foreign market—Abandonment—Estoppel by conduct* Such possession and use of a trade mark in one market as to constitute a right in it establishes in the owner thereof an exclusive right to that trade mark in other markets, although the owner may not have used it in such markets To constitute a mark, a trade mark, it must have been adopted as a symbol devised to distinguish a particular class of goods as the goods of that class manufactured or selected by a particular manufacturer or merchant Where the plaintiffs by their conduct let the defendant to believe that they claimed no right to a certain trade mark, and that it was open to the defendant to adopt it as his own, and the defendant did adopt it, and by his industry secured a wide popularity for it in the Indian market —*Held*, that the plaintiffs were estopped from denying the defendant's right to use the trade mark in the Indian market. LAVERGNE v HOOPER I. L. R. 8 Mad. 149

5. ———— **Right of exclusive user**—*Infringement—Combination of numerals as a trade mark—Injunction* The question of the right to the exclusive user of a trade mark or trade number is largely, if not entirely, a question of fact, and the question whether it exists in any given case must depend upon whether the evidence in that case is sufficient to show such an association or connection between the mark or the number and the firm which uses it as to indicate the ordinary purchasers in the market that the goods are the goods of that particular firm To show that a particular trade number has acquired a reputation in the market, and that purchasers buy the goods by that number and not from an examination of the nature or quality of the cloth is not sufficient to establish the right of exclusive user of that number There must be such an association between the number and the firm's name as to indicate in the understanding of the public that the goods bearing that number came from that particular firm. The right of exclusive user of a name or a number as a trade mark is not an absolute and unqualified right which would entitle the owner to prevent another person from using it under all circumstances It is only when the use

6. ———— **Offence of using false or**

were being sold marked with what was alleged to be a counterfeit trade mark, called upon the persons so selling to discontinue the use of the said alleged counterfeit trade mark and to render an account of sales. The right to proceed further was reserved, but no action was then taken. In 1898, upon its being ascertained that the same trade mark was being used, a prosecution was commenced *Held*, that, inasmuch as the complainant had not shown that he believed the use of the alleged counterfeit trade mark had been discontinued after his first discovery and complaint in 1893, the prosecution was time-barred under s 15 of the Indian Merchandise Marks Act, 1889 ; and that the complainant must enforce his remedy by civil process. RUPPELL v PONNUSAMI TEVAN . . I. L. R. 22 Mad. 488

7. ———— **Selling books with counterfeit property mark**—*Penal Code (Act XLV of 1860), s 486—Goods—Indian Merchandise Marks Act (IV of 1889)* Books are the subject of patre, and are goods within the meaning of s. VI 2, (4), of the Indian Merchandise Marks Act (I of 1889) ; therefore, when a person sells books with a counterfeit property mark, he commits at offence under s 486 of the Indian Penal Code KANAI DAS BAIRAGI v. RADHA SHYAM BASACK

I L. R. 26 Calc. 232
3 C. W. N. 97

8. ———— **User of and property in trade mark**—*Proof of trade mark—Importation and sale of articles with particular marks impressed upon them—Succession by one Bank to business of another—Merchandise Marks Act (IV of 1889), s 3—Penal Code (Act XLV of 1860), ss. 485 and 486.* A mark to be a trade mark must be a mark used for denoting that the goods are the manu... person. ...nd sold ...apressed ...riginally upon them, a mark which ... theirs, but belonged to a Bank that had ceased to exist and where there was no proof of any transfer or assignment of the mark, or that the new Bank succeeded the other in the sense either ... Bank under ... the business ...k was *held* ...t the mark ... ANOOKOOL

I L. R. 27 Calc. 776

ANOOKOOL CHUNDER NUNDY v EMPRESS.
4 C. W. N. 423

9. ———— **Importer**—*Rights of importer of goods bearing manufacturer's or producer's trade mark—Contract by importer for exclusive supply of goods—False statement in trade mark—Deception—Evidence—Admissibility of judgment of Foreign Court—Evidence Act (I of 1872), s 13, cl 4, and s 42—Parties—Joinder of parties—Civil Procedure Code (Act XIV of 1882), ss. 27, 31, 32 and 34—Practice.* The plaintiff, an importer and seller of watches, sued to restrain the defendants from importing into and selling in Bombay or other parts of India watches, similar in appearance to a certain class of watches imported and sold by

TRADE MARK—*contd.*

the plaintiff, and having a trade mark so similar to the trade mark on the watches imported by plaintiff that it was calculated to deceive purchasers into the belief that such watches were watches imported and sold by the plaintiff. It was proved that the trade mark on the watches so imported by the plaintiff was not the trade mark of the plaintiff, but that of the manufacturer in Switzerland and that the plaintiff was merely an importer and seller of the watches under a contract for exclusive supply in India. *Held*, that the plaintiff was not entitled to an injunction An importer can only protect a trade mark representing his own reputation and the advantage accruing therefrom, but not the trade mark of another, a manufacturer or producer It was necessary for the plaintiff to show that the value of the trade which he carried on was due to the reputation acquired by and attach-

ask for protection. This the plaintiff has failed to do It was contended by the defendants that in no case was the plaintiff entitled to relief, inasmuch as by using the words "Roskopf Patent" in the trade mark for which he claimed protection he was guilty of deception, the fact being that there was no patent in existence for the watches which bore this trade mark. A certified copy of the judgment of a Swiss Court against one Ferdinand Schmidt on this point was tendered in evidence *Held*, that the issue as to the use of the word 'Patent' could not be decided in this case if the trade mark in question was not this plaintiff's as the Court could not in this suit decide whether Messrs. Schmidt and Company were or were not precluded from using the word 'Patent' on Roskopf watches manufactured by them. No decision on the point could have effect in a case to which Messrs. Schmidt had not been made a party. *Held*, also, that the judgment tendered was not admissible in evidence. An application was made on behalf of the plaintiff to add the manufacturer as co-plaintiff in the suit. *Held*, that the application should be refused The plaintiff's

troduced Ss 27, 31 and 32 of the Civil Procedure Code (XIV of 1882) did not apply HEINIGER *v* DROZ (1900) . . **I. L. R. 25 Bom. 433**

10. ——— **Prior use in Scotland**—*—Prior user by owner in Scotland—Effect on right to exclusive user in British India by a person other than the owner—Infringement.* Plaintiff claimed to have been for many years the sole importer into Bombay and Madras of umbrellas bearing a certain trade mark. Defendant had recently commenced importing and selling in Madras umbrellas which, plaintiff contended, bore a trade mark so similar as to be calculated to deceive purchaser so as to induce them to buy defendant's umbrellas under the belief that they were buying plaintiff's. He asked for an injunction and damages. Defendant denied that plaintiff had been the sole importer of umbrellas bearing the trade mark in question ; or that he was the owner or entitled to the exclusive use of that trade mark ; or that umbrellas bearing that trade mark had come to be known as umbrellas imported and sold by plaintiff alone It was contended that the trade mark belonged to and had since 1881 been

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similarity of the trade mark, or that purchasers were calculated to be deceived as alleged, and contended that plaintiff could not lawfully use or claim it. For the purposes of the case it was

contention could not be supported, and that the prior use in Scotland did not justify the Scotch

11. ——— **Title of a book**—*Trade description—Unauthorised publication—Indian Penal Code (Act XLV of 1860), ss. 478, 482—Merchandise Marks Act (IV of 1889), ss. 4, 6* The complainant, as a descendant of one Shri Chandu, had for many years prepared calendars bearing the name of "Shri Chandu Panchang" at Jodhpur and had sent each year a copy of such calendar

against the defendant, under s. 482 of the Indian Penal Code (Act XLV of 1860) and s. 6 of the Merchandise Marks Act (IV of 1889). *Held*, (i) that the defendant had committed no offence under s 482 of the Indian Penal Code (Act XLV of 1860), for the title "Shri Chandu Panchang" did not come within the definition of "trade mark" given in s. 478 of the Code ; and (ii) that

TRADE MARK—*contd.*

the defendant's act did not fall under s. 6 of the Merchandise Marks Act (IV of 1889), as it was not alleged that the defendant's calendars differed as to text from the complainant's or were compiled on different principles; the allegation was simply that they were unauthorized. RADHA KRISHNA JOSHI *v.* KISSONLAL SHRIDHAR (1901)
I. L. R. 26 Bom. 289

12. ———— **Selling goods marked with a counterfeit mark**—*Ss. 482, 486 of the Penal Code, as amended by the Merchandise Marks Act (Act IV of 1889 as amended by Act IX of 1891, ss. 6 and 7—Applying a false trade description to goods.* *Held*, that a person may to some extent appropriate to his own use a name suggested by his trade, without infringing the law relating to trade marks or trade descriptions *Held*, also, that the appellants, who sold fish-hooks in boxes similar to the respondents with a design of one fish with its head and tail turned up, cannot be held to have infringed the trade mark of the respondents, who also sold fish-hooks with the design of two fish crossed with their heads and tails turned up *Held*, where the public has chosen a name for its own use such as "*mach marka*" (fish mark), that fact cannot be held to prevent other persons from applying a mark to fish hooks, which may be generally known by the same term EMPEROR *v.* BAKAULLAH MALLIK (1904) I. L. R. 31 Calc. 411

13. ———— **False or counterfeit trade mark, use of**—*Penal Code (Act XLV of 1860), ss. 482, 486—Merchandise Marks Act (IV of 1889), s 6.* *K*, a merchant of Calcutta, ordered certain goods from Europe, but refused to take delivery of the consignment on its arrival in Calcutta The goods were thereupon sold in the market with the labels of the firm of *K* attached thereto, and were purchased by *M*, a dealer in piece goods *M* sold the goods without removing the labels of *K*, and was convicted under s. 486 of the Penal Code for selling the goods with a counterfeit trade mark. *Held*, that no offence was committed by *M*, either under s. 482 or s 486 of the Penal Code MOTILAL PREMSUK *v.* KANHAI LAL DASS (1905)
I. L. R. 32 Calc. 969

14. ———— **Trade name**—*Secondary signification—Name indicating manufacturer—True description of article—Tendency to deceive—Injunction* The words "Camel Hair Belting" had acquired a special or secondary signification in the Indian market, meaning that

[illegible]

[illegible] belting, endeavouring thus to pass off their goods as the plaintiffs':—*Held*, that the plaintiffs were entitled to an injunction restraining the defendants from using the words "Camel Hair" as descriptive of, or in connection with, the belting made, sold or offered for sale by them and not manufactured by the plaintiffs without clearly distinguishing such belting from the plaintiffs' belting *Reddaway* v. *Banham*, [1896] *A. C. 139*, followed JOHN SMIDT *v.* F. REDDAWAY & Co (1905)
I. L. R. 32 Calc. 401
s. c. 9 C. W. N. 281

15. ———— **User, bonâ fide dispute as to right of**—*Criminal proceedings,* [illegible]

[illegible]

of user of such mark, he should not deal with the matter criminally, but leave it to the complainant establish the right claimed in a Civil Court *Emperor* v. *Bakaullah Malik, I. L. R. 31 Calc. 411* referred to, DOWLAT RAM *v.* EMPEROR (1905)
I. L. R. 32 Calc. 43

16. ———— *Using a false trade mark or selling goods with a counterfeit trade mark—Indian Penal Code (Act XLV of 1860), ss. 482 and 486—Bonâ fide disputes as to the right to use a trade mark—Jurisdiction of Criminal* [illegible] close proximity [illegible] a shop from [illegible] bottles which [illegible] contained rose- [illegible] the accused [illegible]

[illegible]

a false trade mark or of selling goods to which [illegible] a counterfeit trade mark was applied. When a *bonâ fide* dispute exists between the parties as to the right to use a trade mark, action should be taken before a Civil and not before a Criminal Court. *Doulat Ram* v. *The King-Emperor, I. L. R. 32 Calc. 431*, referred to and approved. SUBBA PROSAD *v.* MAHABIR PROSAD (1907)
11 C W. N. 897

17. ———— **Sellers' designs—Rights of manufacture**—*Partnership—Dissolution—Partner continuing the business—Right to sue in respect of trade mark.* In the year 1892 *M* sue in respect of trade mark. In the year 1892 *M* designed a label for goods ordered by his firm C. J [illegible] manufacturers [illegible] in fancy [illegible] came known [illegible] Mal.' By [illegible] was printed [illegible] and Gujarati [illegible] retired

characters. In 1897 [illegible] from the firm, *M*, the fourth plaintiff, continued the business of C. J. & Co. with the other plaintiffs under the name, style and firm of V. & Co. V. & Co. then ordered goods bearing the label from B W. A. & Co. in London instructing them to place on the border of the label the name of their firm V. & Co., in English, Persian and Gujarati characters.

TRADE MARK—*contd.*

In 1898, B. W. A. & Co having become insolvent, the plaintiffs imported goods, without the label from B. & Co, the defendants, who had taken up the business of B. W. A & Co. In 1899, the plaintiffs requested the defendants to arrange, if possible, to send out the goods under the "Jori Mal" label. In 1900, the defendants, having purchased from B. W A & Co their rights under the label, proceeded to place it on goods manufactured for and sold by them, leaving the border of the label blank or inserting on the border their own name, or, by special request, the names of the constituents, by whom the goods were ordered. It was not expressly agreed that B W A & Co should not supply goods under the label to constituents other than the plaintiffs. The lower Court held, *inter*

an exclusive right to the label In the absence of contract, a seller of goods has no exclusive right to a mark, which merely denotes goods, which he sells, even though he may have designed the mark himself. Such a mark may be a mere quality mark indicating the reputation of the goods, irrespective of the reputation of the seller. Obviously every trader being entitled, if not bound, to state truthfully the quality of the goods he sells, no one trader can restrain any other from exercising that right by a mark truthfully indicating quality For neither of the two grounds for protection exists in such case. His reputation is not injured and no deception is practised on the public. To give an exclusive right there must be something further. The mark must amount to a representation that the quality is wholly or in part due to and guaranteed by some person or persons concerned in or connected with the origin or history of the goods In such cases the public are invited to rely on the reputation of the person denoted, and no other person can, without their authority, make such representation. It is a question of evidence in each case, whether there is false representation or not. *Held*, also, a trade mark, belonging to a firm, would in the absence of express provisions to the contrary as part of the partnership assets, be available for

18. ——————— **Slander of title, suit for**—*Infringement of trade mark—Colourable imitation—Malice—Similarities calculated to deceive incautious, ignorant or unwary purchasers.* *A* made a representation to the Collector of Customs that the trade mark on certain goods imported by *B* was a colourable imitation of the trade mark on goods manufactured by *C* and imported by *A*. Thereupon the Customs authorities held an inquiry and detained the goods. *B* brought an action for damages against *A* for slander of title. *Held*, that in order to enable *B* to succeed he must substantiate (i) that the statement to the Collector of Customs was untrue in fact, (ii) that the statement was made maliciously, *i e*, without reasonable and probable cause; (iii) that he suffered special damage thereby. *Held*, further, that no action for slander of title lay against *A*, inasmuch as the mark on the goods imported by *B* was a colourable imitation of that on *C's* goods. A person has a right to use any marks he pleases so long as they are not calculated to mislead the public, and do not infringe anybody's trade mark. In order to arrive at a conclusion as to whether a trade mark is a colourable imitation of another or not the Court may look at the two marks in question with its own powers of forming an opinion, accompanied by the evidence given in the case It has to consider whether the mark is calculated to deceive incautious, ignorant or unwary purchasers *Re Christiansen's Trade mark, 3 R. P. C 54, Johnston v. Orr Ewing, L. R. 7 A C 219, Singer Manufacturing Company v. Loog, L R 8 A C 15*, followed NEMI CHAND *v* C W WALLACE (1907) . **I. L. R. 34 Calc. 495**

19. ——————— *Mark indicating manufacturer—Infringement, calculated to deceive—Passing off goods—Injunction—Admissibility of*

strain the use of a trade mark, if the defendant's goods on the face of them and having regard to the surrounding circumstances are calculated to deceive, evidence to prove the intention to deceive is inadmissible as being unnecessary, the rule being that a man must be taken to have intended the reasonable and natural consequences of his own acts. *Saxlehner v. Apollinaris Co, [1897] 1 Ch. 893*, followed. Where a

20 ——————— **Title of assignee of trade mark without business**—*Trade mark—Breach—Right of manufacturer to sue—Pleadings—Statement by plaintiff not admitted by defendant—Proof.* It is trite law that an assignment of trade mark, without the business, confers no effective right. An action for breach of trade mark does not lie at the instance of the manufacturer who supplies articles when another firm carries on the actual business with the articles supplied. The manufacturer may be interested in the success

TRADE MARK—*concld.*

of the firm which *de facto* carries on the business, but this cannot put him in the shoes of the latter in vindicating the latter's right against wrongdoers ULLMAN & Co *v.* CESAR LEUBA (1908)
13 C. W. N. 82

TRADE NAME.

See TRADE MARK.
I. L. R. 32 Calc. 401

TRADER.

See INSOLVENCY ACT, s. 7.
I. L. R. 7 Bom. 411
I. L. R. 13 Calc. 68

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TRANSFER.

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———— by landlord—

See LANDLORD AND TENANT—TRANSFER BY LANDLORD.

———— by tenant—

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———— fraudulent transfer—

See TRANSFER OF PROPERTY ACT, s 53
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———— instrument of—

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———— of decree, for execution—

See CIVIL PROCEDURE CODE, 1882, s 232
I. L. R. 29 Calc. 235

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION.

———— of lease—

See FERRY . I. L. R. 26 Mad. 156

———— of malikana rights—

See MALIKANA . 7 C. W. N. 846

———— of non-transferable holding—

See LANDLORD AND TENANT.
9 C. W. N. 843; 895; 979
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———— of occupancy holding—

See CIVIL PROCEDURE CODE, 1882, s. 311.
13 C. W. N. 653

———— of occupancy right—

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7 C. W. N. 607

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

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——— **registration of**

See BENGAL RENT ACT, 1869, s 26

See BENGAL RENT ACT, 1869, s 46

See LANDLORD AND TENANT—ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT

See LANDLORD AND TENANT—TRANSFER BY TENANT

See SALE FOR ARREARS OF RENT—DEPOSIT TO STAY SALE 13 B L. R. 146

See SALE FOR ARREARS OF RENT—EFFECT OF SALE . . . 9 W. R. 161
7 W. R. 409
Marsh. 212
1 W. R 225

1. ——————— **Transfer by unregistered document**—*Delivery of possession—Transfer of Property Act (IV of 1882), s 54* A certain plot of land being transferred by the Road Cess Department to the Public Works Irrigation Department for a sum less than one hundred rupees without any registered instrument, the Secretary of State for India in Council instituted a suit against the defendants for recovery of possession of the said lands. Upon an objection taken that the plaintiff acquired no title to the property as the transfer, upon which he relied, was in contravention of the provisions of s 54 of the Transfer of Property Act: *Held*, that inasmuch as the transfer was not made by a registered instrument, and as also the plaintiff had been in occupation

2. ——————— **Occupancy holding**—*Transferability, question of, if arises as between claimants not landlord or original tenants.* In cases between rival claimants of holdings neither of whom is either the landlord or the original tenant the question of transferability does not arise and the one who would have the best title if the holding were transferable is entitled to succeed. *Ambica Nath v. Aditya Nath, 6 C. W. N. 624, Ayenuddin v. Srish Chandra, 11 C. W N. 76,* followed *Bhiram Ali v. Gopi Kantha, I. L. R 24 Calc. 355, Durga Churn v Kali Prosonna, 3 C. W. N. 586, Sita Nath v. Atmaram, 4 C. W. N. 571,* distinguished. SAMIRUDDIN MUNSHI *v* BENGA SHEIKH (1909) 13 C. W. N. 630

receipt of nazarana. Instances of sales of holdings which the landlord recognises only upon

TRANSFER—*concld.*

receiving *nazarana* cannot go to prove the existence of a usage of transferability The usage to be proved is usage of sale without the landlord's consent Observation in *Maharaja Radha Kishore Manikya v Ananda Pria, 8 C. W. N. 235,* not approved. KAILASH CHANDRA PAL *v.* HARI MOHAN DAS (1909) . . . . 13 C. W. N. 541

TRANSFER OF CIVIL CASES

1. GENERAL CASES.

1. ——— **Power to transfer**—*Mad Reg. IV of 1816, s 26—Village Munsif—Jurisdiction.* In a suit under Regulation IV of 1816, the defendant having objected to the Village Munsif trying the suit on the ground of personal hostility, the Munsif transferred the suit to another Village Munsif. *Held,* that this transfer was illegal. *Per* HUTCHINS, J.—*Semble* In such a case the Village Munsif should report the facts to the District Court, and the District Judge should transfer the case for trial to another Village Munsif. LAKSHMAKKA *v* BALI . I. L. R. 8 Mad. 500

2. ——————— *Transfer to Munsif of Small Cause Court suit.* A suit within the cognizance of the Small Cause Court cannot be lawfully transferred for trial to a Munsif's Court. JOOBRAJ CHOWKEEDAR *v.* WHELAN 13 W. R. 399

4. ——————— *Power of Judge to transfer case under Act XVI of 1868* A Judge

5. ——————— *Bengal Civil*

Subordinate Judge is empowered under s. 19, Act VI of 1871, to try causes of any value. SUFFEOOLLAH SIRCAR *v* BEGUM BIBEE 25 W. R. 219

6. ——————— *Civil Procedure Code, 1859, s. 6—Withdrawal of suits from subordinate Courts—Remand by Higher Court—Fresh suit.* The power given by s. 6 of Act VIII of 1859 to a Zillah Judge for the withdrawal of suits from subordinate Courts should only be exercised

TRANSFER OF CIVIL CASES—*contd.*

1 GENERAL CASES—*contd.*

upon a cause shown, and ordinarily not without opportunity given to the parties to the suit to be heard upon the question The terms of s 6 were inapplicable to suits which the subordinate Court had received by order of remand from a Court to which the District Court was itself subordinate A suit sent by the High Court to a subordinate Court under a remand to the High Court by Her Majesty's Order in Council, and in which, under the Council's remand order, the plaint has been amended, a new statement filed, and new issues framed, is substantially a new suit. MAHOMED ZAHOOR ALI KHAN *v* RUTTA KUNWOOR

2 N. W. 481

7. ——— *Civil Procedure Code, 1882, s 25—Suit transferred to his own file by District Judge—Appeal to High Court—Remand to District Judge under s 562 of the Civil Procedure Code—Power of Judge to transfer.* By order of [illegible] Code of Civil [illegible] the Court of [illegible] Court The District Judge decided the suit, and from his dercee there was an appeal to the High Court The High Court remanded the suit under s 592 of the Code to the Court of the District Judge The latter transferred the suit so remanded for trial to the Subordinate Judge. *Held,* that the District Judge had then no power to transfer the suit, but was bound to try it himself *Semble* That s 25 of the Code of Civil Procedure has no application to a case remanded under s 562 of the Code. SITA RAM *v* NAUNI DULAIYA . I L R. 21 All 230

8. ——— *Civil Procedure Code, 1859, s 6—Transfer of part-heard case to be completed in another Court* S 6 of Act VIII of 1859 did not authorize the taking a case in progress of trial off the file of a Subordinate Judge in order that it might be completed by the Judge himself of some other Court It is clear that such transfer must take place on the institution of the suit. RAM NATH *v.* GOWHUR . 2 N. W. 230

DUMREE SAHOO *v.* JUGDHAREE . 13 W. R. 398

ABDOOL HYE *v* MACRAE . . 23 W. R. 1

9. ——— *Civil Procedure Code, 1859, s. 6—Transfer after evidence has been taken Quære* Whether a case could be transferred from one Court to another, under s. 6 after the evidence had been taken in the former Court. ASMEDH KOONWAR *v* TAYLER. KHORSHED ALI *v.* TAYLER . . . . . W. R 1864 15

10. ——— *Civil Procedure Code, 1819, s. 6—Suit brought whilst Court is closed for vacation.* The Court of the Principal Sudder Ameen of Thanna being closed during vacation, a plaint which, under s. 6 of the Civil Procedure Code, ought to have been instituted in that Court, was, by the order of the District Judge, referred for trial to the Assistant Judge, entered in the register of suits in the Judge's Court, and tried by the Assistant Judge *Held,* reversing the decree of the District Court in appeal, that it was not lawful for the Judge to refer the suit, without its having first been instituted in the Principal Sudder Ameen's Court. MOTHAL RAMDAS *v.* JAMNADAS JAVERDAS

2 Bom. 42 : 2nd Ed. 40

11. ——— *Civil Procedure Code, 1859, s 6—District Court—Power to receive plaint when lowest Court closed* Where a plaintiff presented a plaint to the District Court, the Subordinate Judge's Court, in which he ought to have presented it, being then temporarily closed, it was held that the District Court could not be considered a Court of first instance, competent to receive the plaint The decision in *In re Ganesh Sadashiv, 5 Bom. A. C. 117,* overruled; and *Mothal Ramdas* v. *Jamnadas Javerdas, 2 Bom. A. C. 42,* followed. RAMAYA ELAPA *v.* MUHAMADSHAI 10 Bom. 495

12. ——— *Civil Procedure Code, 1859, ss 5 and 6—Jurisdiction. Held,* that, though both suits were properly cognizable by the Court at Cawnpore, yet the Sudder Court's order, which it was competent to pass under s. 6, Act VIII of 1859, gave jurisdiction to the Principal Suddar Ameen of another district, whose decision was not liable to be set aside for want of jurisdiction, in reference to the provisions of s 5 of that enactment RAM BUX *v.* GIRDHAREE LALL 1 Agra 178

13. ——— *Evidence recorded by one officer and decision given by another* A suit for enhancement was filed under Act X of 1859, in the Court of a Deputy Collector The issues were framed and the evidence recorded by an Assistant Collector, apparently not invested with the powers of a Deputy Collector, who wrote a report recommending the mode in which the suit should be disposed of It was then disposed of by another Deputy Collector, who was probably acting at the time as Collector *Held,* that there was no power to transfer the case, and that the procedure by which the suit was heard by one officer and decided by another was illegal. HURDYAL OOPADHYA *v.* MAHOMED NAEEM

1 N. W. Part II p. 9; Ed. 1873, 79

14. ——— *Civil Procedure Code, 1859, ss 5 and 6* Where a District Court had jurisdiction under s 5, Act VIII of 1859, to try a suit, and defendant made no application to the Judge or communication to the plaintiff, with a view to its being tried in a different district, the case was *held* to be not one for the exercise of any special power by the High Court for that purpose KRISTO DASS KOONDOO *v.* ISSUR CHUNDER CHOWDHRY . . . . 11 W. R. 189

15. ——— *Civil Procedure Code, 1859, s. 6—Notification giving jurisdiction to try as Small Cause Court—Power to transfer pending cases.* Where, on 3rd March 1870, the Govern-

TRANSFER OF CIVIL CASES—*contd.*

1. GENERAL CASES—*contd.*

ment issued a notification under ss. 4 and 5, Madras Act IV of 1863, investing the Additional Principal Sudder Ameen of Mangalore with exclusive jurisdiction to try Small Cause suits for sums under R500 within the jurisdiction of the District Munsif :—*Held*, that the Munsif had no power after the notification to transfer to the Principal Sudder Ameen an application pending before himself at the date of the notification under s. 6 of the Civil Procedure Code, 1859, the notification not being retrospective in its operation. NARAYANA MALYA *v.* GOVIND SHETTY . 6 Mad 18

16. ——— *Civil Procedure Code, 1859, s. 13—Power of Sudder Courts.*—S. 13, Act VIII of 1859, enacted that, where a suit was brought for immoveable property situated

currence had power to make such a transfer. SKINNER *alias* NAWAB MIRZA *v.* ORDE
I. L. R. 2 All 241

17. ——— *Civil Procedure Code, 1859, s. 13—Family domains of the Maharaja of Benares.* *Held*, following S. A. No. 969 of 1877, decided the 14th December 1877, that the provisions of s. 13 of Act VIII of 1859 were not applicable in a case in which a portion of the immoveable property was situated within the limits of the family domains of the Maharaja of Benares, those domains not constituting a district within the meaning of that section. RAGHU NATH DASS *v.* KAKKAN MAL . . I. L. R. 3 All 568

18. ——— *Civil Procedure Code, 1877, s. 24—Place of suing—Grounds of transfer.* S. 24 of the Civil Procedure Code does not empower a High Court to transfer a suit in-

applied under s. 24 of the Civil Procedure Code

DASS . . . . I. L. R. 5 All. 60

19. ——— *Civil Procedure Code, 1877, s. 25—Power of High Court.* The

LALL MOZUMDAR *v.* KOMAL KISHORE DASSIA
I. L. R. 6 Calc. 30

20. ——— *Civil Procedure Code, 1882, s. 25—Jurisdiction.* An order for the transfer of a suit from one Court to another under s. 25 of the Code of Civil Procedure cannot be made unless the suit has been brought in a Court having jurisdiction. The judgment in *Peary Lall Mozoomdar v. Komal Kishore Dassia, I. L. R. 6 Calc. 30*, entirely approved. LEDGARD *v.* BULL . . . . I. L. R. 9 All. 191
L. R. 13 I. A. 134

21. ——— *Civil Procedure Code, 1877, s. 25—Transfer from Court in which a suit has been wrongly instituted.* A suit for the infringement of certain inventions, instead of being instituted in the Court having, by virtue of s. 22 of Act XV of 1859, jurisdiction to entertain it, was instituted in a Court subordinate to such Court not having such jurisdiction. The Court having jurisdiction to entertain such suit, at the joint request of the parties, transferred it for trial

transfer illegal, and the Court having jurisdiction had properly tried the suit. PETMAN *v.* BULL
I. L. R. 5 All. 371

But *held* by the Privy Council (reversing this decision) that under s. 25 of the Civil Procedure Code

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Subordinate Judge, who was incompetent to try it, the case was transferred by consent of parties to the Court of the District Judge for convenience of trial. *Held*, that such transference was incomp

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L. R. 13 I. A. 134

22. ——— *High Court, jurisdiction of—District Judge, jurisdiction of—Appeal—Appeal withdrawn from the District Court—Civil Procedure Code (Act XIV of 1882), s. 25.* An appeal, the subject-matter of which was over R5,000 in value, was wrongly presented and

TRANSFER OF CIVIL CASES—*contd.*

1. GENERAL CASES—*contd.*

filed in the District Judge's Court, and was subsequently upon application by the appellant withdrawn by the High Court under s. 25 of the Civil Procedure Code and ...

... of the District Court at the time of hearing of the appeal. *Held*, that, when an appeal is transferred under s. 25 of the Civil Procedure Code, it must be heard subject to all the objections which could be taken before the Court from which it has been transferred. The High Court therefore had no jurisdiction to hear the appeal. *Peary Lall Mozoomdar* v. *Komal Kishore Dassia, I. L. R. 6 Calc 30*, and *Ledgard* v. *Bull, I. L. R. 9 All 393, L. R. 13 I. A., 134*, referred to. RAM NARAIN JOSHY *v.* PARMESWAR NARAIN MAHTA . . . . . I. L. R. 25 Calc. 39

23. ———————— *Winding-up Company—Transfer of winding up from District Court to High Court—Companies Act VI of 1882, s. 219—Civil Procedure Code, ss 25, 647—Stat 24 & 25 Vict, c 104, s 15—Letters Patent, High Court, N.-W. P., s 9.* There is nothing in the Indian Companies Act (VI of 1882) or the High Courts Act (24 & 25 Vict, c 104) or the Letters Patent which prevents the High Court from calling for the record of the proceedings in the winding-up of a Company under the Companies Act, and transferring those proceedings to its own file. Such a power is given to the High Court by s. 647 read with s. 25 of the Civil Procedure Code. Where, in the proceeding in the winding-up of a Company under Act VI of 1882, an order was passed admitting the proof of a particular creditor of the Company before any liquidator had been appointed.—*Held*, that this was an irregularity which by itself would justify the High Court in sending for the record. Where the District Judge conducting the proceed-...

... difficult for him to reconsider it the matter again came before him, and where the case appeared to be one in which serious questions of law were likely to arise which it would probably be difficult to discuss adequately in the District Court, in the absence of the authorities upon the subject and of any rules framed by the High Court for dealing with winding-up under the Act, and the case was of a kind which would probably come before the High Court in a variety of appeals from orders brought by one side or the other:—*Held* ...

... TEA COMPANY . I. L. R. 8 All. 180

24. ———————— *Civil Procedure Code, 1882, s. 25—District Court, power of, as to suit pending in its own Court—Ultra vires.* S. 25 of the Civil Procedure Code (Act XIV of 1882) only enables a District Court to transfer a suit pending in a Court subordinate to itself, and not to transfer a suit which is pending in its own Court. Accordingly, where a District Judge made an order to retransfer to the original Court certain suits pending in his Court which had been previously transferred to his Court from a Subordinate Court.—*Held*, that the order of retransfer was *ultra vires* and should be discharged. SAKHARAM *v* GANGARAM . . . . . I. L. R. 13 Bom. 654

25. ———————— *Civil Procedure Code (Act XIV of 1882), s. 25—Transfer of execution proceedings—Insolvency proceedings—Opposing creditor's right to apply for transfer of insolvency proceedings.* The power of transfer ... the Civil Procedure Code is a proceeding ...

... proceedings as an opposing creditor, is a "party" within the meaning of s. 25 of the Code of Civil Procedure, and may apply for a transfer of the proceedings under the section. NASSARVANJI *v.* KHARSEDJI DHUNJISHAH . I. L. R. 22 Bom. 778

26. ———————— *Ganjam and ...* ... *pending in the Agent's Court to the District Court—High Court's Charter Act (24 & 25 Vict, c 104), s. 15.* An order was made by a single Judge by consent of the parties, transferring a case from the Court of an Agent to the Governor, Vizagapatam, to a District Court. A further order was made ... an order ... adjudication upon the question whether the High Court has jurisdiction to order the transfer of a suit from the High Court of such an Agent to a District Court. *Held*, that the High Court has no jurisdiction to transfer a suit pending in the Court of the Agent to the Governor, Vizagapatam, to the District Court of Vizagapatam; and that the Agency Rule No 22 made in 1840, under the powers conferred by Act XXIV of 1839, is a valid rule. MAHARAJAH OF JEYPORE *v.* PAPAYYAMMA . I. L. R. 23 Mad. 329

27. ———————— *Civil Procedure Code, 1882, s. 331—Claim below ordinary pecuniary limit.* By virtue of s. 647 of the Code of Civil Procedure, a superior Court may, for sufficient cause, transfer a claim, registered under s. 331, to a subordinate Court for trial. SITHALAKSHMI *v.* VYTHILINGA . . I. L. R. 8 Mad. 549

TRANSFER OF CIVIL CASES—*contd.*

1. GENERAL CASES—*contd*

28. ——————— *Reasons for transfer—Amending issues—Procedure on transfer.* The mere transfer of a suit for the convenience of the public, or for the acceleration of business, from one subordinate Court to another, does not affect the authority of the Judge of the District Court to transfer it to his own file, or to another Court, or to retransfer it, if he see sufficient cause for so doing, nor would the circumstance that a case had been up on appeal to the High Court on a preliminary point, and been remanded for a trial on the merits, limit the authority of the District Court Judge to bring it upon his own file, or to transfer it to the file of a Court other than that in which it was instituted. The omission of the Judge to assign his reason for transferring the case does not vitiate his proceeding When a Judge transfers a case to his own file, he is at liberty to amend the issues first laid down and to raise additional issues, and to go into the whole case, except upon any question upon which there has been a judicial finding TARUCKNATH MOOKERJEE *v* GOUREE CHURN MOOKERJEE

3 W. R 147

29. ——— Procedure on transfer—*Evidence of witnesses* Where a suit which was filed originally before a Principal Sudder Ameen, who had fixed the issues and recorded the evidence

30. ——————— *Civil Procedure Code, 1882, s 25—Court to which suit is transferred not taking fresh evidence.* Where the trial of a

District Judge had not tried the case within the meaning of s 25 of the Code. BANDHU NAIK *v.* LAKHI KUAR . . I. L. R. 7 All. 342

31. ——————— *Case referred to arbitration—Power of Judge to decide after transfer.* A case having been withdrawn by the Judge, for trial in his own Court, from the Principal Sudder Ameen's Court, where it had already been referred to arbitration :—*Held*, that the Judge was quite competent to decide the case himself, without necessarily being bound also to refer it to arbitration. ABOO MAHOMED *v.* KISHEN MOHUN SURMA . . . 6 W. R. 290

32. ——————— *Suit pending in Court of Subordinate Judge with Small Cause Court powers—Trasfer to Munsif's Court—Civil Procedure Code, s. 25—Munsif, jurisdiction of—Subordinate Judge, jurisdiction of—Provincial Small Cause Courts Act (IX of 1887), s 35.* The plaintiff filed his suit as a Small Cause Court case in

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Small Cause Court powers. In consequence of this, the District Judge made an order, under s. 25 of the Code of Civil Procedure, transferring all cases above the value of R50 then pending before the Subordinate Judge in his capacity as a Small Cause Court to the Munsif to be tried as Munsif's Court cases. The Munsif had Small Cause Court powers up to R50. The plaintiff's suit was for R69 The case was accordingly tried by the Munsif and the plaintiff appealed,

Cause Courts Act (IX of 1887) was applicable, it would remain throughout a Small Couse Court suit and be subject to the incidents of such a suit MANGAL SEN *v.* RUP CHAND

I. L. R. 13 All. 324

33. ——————— *Civil Procedure Code, 1882, s. 25—"Court of Small Causes," meaning of the expression—A Court invested with Small Cause Court powers.* The expression "a Court of Small Causes" in the last clause of s 25 of the Code of Civil Procedure (Act XIV of 1882) means a Court properly and strictly so called, and does not include a Court invested with the jurisdiction of a Court of Small Causes. *Mangal Sen v Rup Chand, I. L. R. 13 All. 324,* dissented from. RAMCHANDRA *v* GANESH

I. L. R. 23 Bom. 382

34. ——————— *Transfer of suit by order of High Court—Duty of Court to which*

35. ——————— *Civil Procedure Code, 1882, s. 25—Application to High Court after rejection of a similar application by the District*

I. L. R. 20 All. 395

TRANSFER OF CIVIL CASES—*contd.*

1. GENERAL CASES—*contd.*

36. ———— *Civil Procedure Code (Act XIV of 1882), s. 25—Transfer of suit*

cise of its appellate jurisdiction, has the power to transfer a suit from the Court of Small Causes at Calcutta to any other Court having equal or superior jurisdiction. KADAMBINI BAIJI *v.* MADAN MOHUN BASACK . . . 3 C. W. N. 247

37. ———— **Application for transfer**—*Transfer of several separate suits—Separate applications* Where it is desired to have a number of suits transferred, a separate application should be made in each case for transfer. KISHOREE LALL *v* LUCHMUN DOSS . . 2 N. W. 147

38. ———— **Part-heard case**—*Civil Procedure Code (Act XIV of 1882), ss 25, 191 (2)—Suit commenced in a District Court—Issues settled by District Judge—Case transferred to Sub-Court by High Court—Decision by Sub-Judge— Appeal to and decision of District Judge—Validity of*

such transferred by the High Court to the Court of the Subordinate Judge who decided the case; an appeal was then preferred to and was heard by the District Court, though the Judge who heard the appeal was not the Judge who had settled the

I. L. R. 26 Mad. 595

39. ———— **Re-transfer**—*Civil Procedure Code, s. 25—Transfer—Re-transfer by District Judge to his own file of a case once transferred by him to the file of the Subordinate Judge.* Where a District Judge had once exercised the powers conferred by s. 25 of the Code of Civil Procedure and transferred a case to his own file from the file of the Subordinate Judge, he cannot afterwards re-transfer such case to the Subordinate Judge. *Sakharam v Gangaram, I L. R. 13 Bom 654,* followed. *Sita Ram v. Nauni Dulaiya, I. L. R 21 All. 230,* referred to. AMIR BEGAM *v.* PRAHLAD DAS (1902) . . . I. L. R. 24 All. 304

40. ———— *Civil Procedure Code, 1882, ss. 25, 403 et seq—Transfer—Application for leave to sue in formâ pauperis filed in Court of Subordinate Judge—Application transferred by District Judge to his own file—District Judge not thereafter competent to send the suit back to the Subordinate Judge for trial.* A pauper plaintiff presented to a Subordinate Judge an application for leave to sue as a pauper. This application was, by

TRANSFER OF CIVIL CASES—*contd.*

1. GENERAL CASES—*concld.*

transfer the pauper suit thus initiated back to the file of the Subordinate Judge. *Amir Begam v Prahlad Das, I. L R. 24 All 304,* referred to NANDAN PRASAD *v.* KENNEY (1902)

I. L. R. 24 All 356

41. ———— *Act XX of 1887 (Bengal, N.-W. P. and Assam Civil Courts Act), ss. 11 and 17—Civil Procedure Code, s. 25—Transfer—Jurisdiction—Construction of Statutes* Held, that the words "in the event of the death, resignation or removal of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held," occurring in s 11, cl. (*1*), of Act XII of 1887, include the abolition by order of Government of a special Court temporarily constituted by Government to exercise jurisdiction in a particular district and that therefore where such Court, being the Court of a Subordinate Judge, had ceased to exist, and the District Judge had taken upon his own file a suit which had been pending before the said Court, it was competent to the District Judge, under s. 11, cl. (*3*), of the Act above-mentioned, to re-transfer such suit to the Court of the permanent Subordinate Judge in his district, from which Court the suit had already been transferred by him to the Court of the temporary Subordinate Judge. *Amir Begam* v. *Prahlad Das, I. L. R. 24 All 304,* and *Sakhram* v. *Gangaram, I L. R. 13 Bom. 654,* distinguished GAPPU LAL *v.* MATHURA DAS (1902) . I. L. R. 25 All. 183

2. LETTERS PATENT, HIGH COURT, CL. 13

1. ———— **Transfer to High Court**—*Jurisdiction of High Court, Calcutta—Sessions Court, Allahabad.* The High Court at Calcutta had no jurisdiction over the Court of the Sessions Judge

der the 13th

1 Ind. Jur. N. S 219

2. ———— *Ground for transfer—Prejudice to interests of party* A suit will not be removed from a Zillah Court in which it was instituted, to the ordinary original jurisdiction of the High Court, unless it be clearly shown that the interests of the party petitioning for such removal will be prejudiced by a non-removal. BORRADAILE *v.* GREGORY

Bourke Ex. O. C. 1

3. ———— *Power to transfer—Grounds for transfer—Inconvenience—Expense* The 13th Section of the Letters Patent, 1865, of the High Court at Fort William gives the Court power to order a suit to be transferred for trial only where the transfer is agreed on by the

TRANSFER OF CIVIL CASES—*contd.*

2. LETTERS PATENT, HIGH COURT, CL. 13 —*contd.*

parties, or for the purposes of justice; and in the absence of agreement it must be made out that there will be inconvenience amounting to this, that if the case be tried in the Court in which it was originally laid, the trial will be unsatisfactory. The mere fact that it would be less expensive to try the case in the High Court is not sufficient of itself for the Court to act upon and order the case to be transferred. OJOODERAM KHAN *v.* NOBINMONEY DOSSEE 1 Ind. Jur. N. S. 396

4. ——— *Ground for transfer—Nature of questions for disposal—Conduct of Judge.* On an application under the Letters Patent, 1865, cl. 13 ...

the Judge before whom the proceedings were, it was proper and necessary for the purposes of justice that the suit should be removed. THAKOOR KAPILNATH SAHAI DEO *v.* GOVERNMENT 10 B. L. R. 168

5. ——— *Ground for transfer—Nature of questions for disposal—Local prejudice.* The Court refused to transfer a case from the Mofussil where there were, among other alleged reasons, suggestions that the plaintiff's ...

6. ——— *Ground for transfer—Consent of parties—Expense.* A suit for an account and for other relief relating to immoveable property situated without the local limits of the ordinary original civil jurisdiction of the High Court, was instituted against several defendants in the Court of the Subordinate Judge of the district within which the property was situated ...

stituted, to be tried and determined by the High Court as a Court of extraordinary original jurisdiction on the grounds that the parties and the witnesses resided in Calcutta, that it would be cheaper to try the suit in Calcutta, and that all parties appearing on the motion desired a transfer. PAYN *v.* ADMINISTRATOR GENERAL OF BENGAL I. L. R. 6 Calc. 766 : 6 C. L. R. 221

7. ——— *Ground for transfer—Difficult questions of English law in case.* ...

TRANSFER OF CIVIL CASES—*contd.*

2. LETTERS PATENT, HIGH COURT, CL. 13 —*contd.*

8. ——— *Ground for transfer—Questions of English law—Parties—British subjects and residents of Calcutta.* Where a ...

case to be transferred under cl. 13 of the Letters ...

for trial to the High Court, original jurisdiction DOUCETT *v.* WISE . . 1 Ind. Jur. N. S. 227

9. ——— *Ground for transfer—Sale in execution of decree—Order winding up company.* On 25th October 1870, a petition for the winding up of the *B T E* Company of Assam was presented to the Court of Chancery in England by one of the shareholders of the Company, and a provisional liquidator was appointed. On 5th November, at an extraordinary meeting of the Company, it was resolved that the Company should be wound up, and liquidators were appointed. On 12th November the petition for winding up came on for hearing, and an order was made that the voluntary winding up should continue, subject to the supervision of the Court. On 18th November, by deed under the hands and seals of the liquidators, *M* was appointed their attorney in India. On 27th October certain immoveable properties in Assam belonging to the ...

ghur by the purchasers for confirmation of the sales, which applications were opposed by *M* and pending the Munsif's decision an application was made to the Deputy Commissioner of Luckimpore ...

TRANSFER OF CIVIL CASES—*contd.*

2. LETTERS PATENT, HIGH COURT, CL. 13
—*contd.*

sell the property on 9th December, and the sale having actually taken place, and there being

In the matter of decree-suits in the COURT OF MUNSIF OF DEBROGHUR . . **7 B. L. R. 305**

10. ———————— *Law governing*

as if the plaint had been originally filed in the High Court, the proceedings in the Hooghly Court being without jurisdiction, and the cause of action having arisen wholly within the jurisdiction of the High Court *Held*, on appeal by PEACOCK, *C J*, and MACPHERSON, *J*, that the defendant *H S*, by joining in the application to have the suit removed to the High Court, admitted the jurisdiction of that Court to try the suit in the exercise of its extraordinary original civil jurisdiction, and could not afterwards dispute the jurisdiction The law, therefore, to be administered by the High Court must be the same law and equity which ought to have been applied if the suit had been tried in the Court at Hooghly *Per* MACPHERSON, *J.* —The law which would have been applicable to the case if it had been tried at Hooghly is practically the same as the English law, whatever may be the nationality of the parties GROSE *v* AMIRTAMAYI DASI **4 B. L. R. O. C 1 : 12 W. R. O. C. 13**

11. ———————— *Letters Patent High Court, 1865, cl 13—Grounds for transfer—Practice* In a suit for immoveable property instituted in the Dinagepur Court the defendant

witnesses lived in Calcutta; that it would be impossible for her to go to Dinagepur and take her witnesses there owing to the expense; that an agreement upon which the suit was brought was executed in Calcutta; that the plaintiff resided and carried on business in Calcutta; and that all the persons who knew of the transactions in suit were residents of Calcutta or its neighbourhood. *Held*, that, under the circumstances, the case was a proper one to be transferred to the High Court. HARENDRA LALL ROY *v.* SARVAMANGALA DABEE **I. L. R. 24 Calc. 183**

SURVOMONGOLA DEBI *v.* HARENDRA LALL ROY **1 C. W. N. 109.**

TRANSFER OF CIVIL CASES—*contd.*

2 LETTERS PATENT, HIGH COURT, CL. 13
—*concld.*

12. ———————— *Application for transfer—Before whom application should be made.* An application to the High Court to remove a case from a District Court, and to try it as a Court of extraordinary original jurisdiction, under s. 13 of the Charter, should be made to a Judge sitting on the original side of the Court DOUCETT *v.* WISE . . . . . **4 W. R. Mis. 7**

13. ———————— **Suit in Civil Court of Resident at Aden**—*Aden Courts Act (II of 1864)—Transfer of suit to the High Court—Power of High Court—Jurisdiction.* The Civil Court of the Resident at Aden as constituted by Act II of 1864, is subject to the superintendence of the High Court at Bombay, within the meaning of cl 13 of the Letters Patent, dated the 28th December 1865; and the High Court has power to remove a suit from the Court of the Resident and to try and determine the same. ABDUL KAFIM FATEH MAHOMED *v* MUNICIPAL OFFICER, ADEN (1903) **I. L. R. 27 Bom. 575**

14. ———————— *Civil Cases— ... suit from Court of ... of High ... of High ...), s 15— ... Court of ... ituted by ... ct to the ... Bombay ... l Letters ... power to ... trial and ... DEN, ... m 246 ... I. A. 30 ... 8 C. L. ...*

3. GROUND FOR TRANSFER

1. ———————— **Expense, convenience, on other good reason**—*Civil Procedure Code (Act XIV of 1882), s. 23—Practice* S 23 of Act XIV of 1882 is only intended to provide for those cases where, on the ground of expense or convenience, or some other good reason, the Court thinks that the place of trial ought to be changed. Parties desirous of obtaining the transfer of a case from one forum to another ought clearly to explain to the Court by petition and affidavit what is the nature of the claim and defence; they should further state what are the issues and the evidence required, and then satisfy the Court that, either on the ground of expense or convenience, or otherwise, the place of trial ought to be changed KHATIJA BIBI *v* TARUCK CHUNDER DUTT **I. L. R. 9 Calc. 980 : 13 C. L. R. 153**

2. ———————— **Portion of property in another jurisdiction**—*Civil Procedure Code, 1877, s. 23—Procedure.* The fact that a portion of property, the whole of which is sued for in the Court of the Munsif of A, is of less value than the

TRANSFER OF CIVIL CASES—*concld.*

3. GROUND FOR TRANSFER—*concld*

remaining portion which is within the jurisdiction of the Munsif of B, is no sufficient ground for an application under the Code of Civil Procedure, s 23, for a transfer to the latter Court A party applying under s. 23, Act X of 1877, must first of all give notice to the other party or side, the application should then be received by the Munsif and transmitted to the High Court through the District Court PURPUNJOTE *v* DEON PANDEY

2 C. L. R. 352

3. ——— **Suit for partition of property partly in Calcutta and partly in mofussil.** In a partition suit instituted in the [illegible]

[illegible]

moveable property, [illegible]ths of which was in Calcutta, the rest being in the immediate vicinity, [illegible]

[illegible]

that the case was a proper one to be transferred to the High Court to be tried on the original side, and an order was made accordingly. JOTENDRO NAUTH MITTER *v.* RAJ KRISTO MITTER

I. L. R. 16 Calc. 771

TRANSFER OF CRIMINAL CASES

See APPEAL IN CRIMINAL CASES—ACTS—BURMA COURTS ACT
I. L. R. 4 Calc. 667

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES . . . 5 C. W. N. 488

See COMPLAINT—POWER TO REFER TO SUBORDINATE OFFICERS.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 110 I. L. R. 30 All. 47

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss 145, 192, 529.
I L. R. 36 Calc. 370

See CRIMINAL PROCEDURE CODE, 1898, s. 526

See CRIMINAL PROCEDURE CODE, s 526A.
I. L. R 15 Calc 455

See CRIMINAL PROCEEDINGS
I L. R. 12 All. 66
I. L. R. 14 All. 346
I. L. R. 19 Mad. 375
5 C. W. N. 252

See DISCHARGE OF ACCUSED.
7 C. W. N. 527

TRANSFER OF CRIMINAL CASES—*contd.*

See HIGH COURT, JURISDICTION OF—MADRAS—CRIMINAL.
I. L. R. 12 Mad. 39

See MAGISTRATE—GENERAL JURISDICTION.
I L R 30 Calc. 449
I. L. R. 23 Calc. 44

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES
4 C. W. N. 321
I. L. R. 13 All. 345
I. L. R. 22 Mad. 148
I. L. R. 22 Bom. 549
I. L. R. 26 Mad. 130

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT, 1871 . I. L. R. 23 Calc. 300; 442

See MAGISTRATE, JURISDICTION OF—WITHDRAWAL OF CASES.
I. L. R. 14 Mad. 399
I. L. R. 15 Mad. 94
I. L R. 22 Bom. 549

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS
I. L. R 22 Calc. 889
5 C. W. N. 686

See SECURITY FOR GOOD BEHAVIOUR.
I. L. R. 16 All. 9
I. L R 19 All. 291

——— **grounds of—**

See TRANSFER OF CRIMINAL CASE.
I. L R. 36 Calc. 904

——— **Letters Patent, High Courts cl 29—**

See TRANSFER OF CRIMINAL CASES—GROUND FOR TRANSFER.
I L. R. 28 Calc. 709

——— **power of, by Magistrates—**

See CATTLE TRESPASS ACT, s 20, SCH II.
I. L. R. 34 Calc. 926

——— **right of accused to—**

See SECURITY FOR GOOD BEHAVIOUR
I. L R. 29 Calc. 392

——— **when proceedings taken in absence of accused—**

See ACCUSED PERSON . 5 C. W. N. 110

1. GENERAL CASES

1. ——— **Power to transfer**—*Criminal Procedure Code, 1882, s. 178—Reference to High Court—Burma Courts Act (XVII of 1875), s. 80.* The Local Government has no power, under s 178 of the Code of Criminal Procedure, to transfer trial to the Court of a Commissioner a criminal case duly committed for trial to the Court of the Recorder of Rangoon; but the Local Government has the power to transfer a case from the district of Rangoon to the Sessions Division of Pegu. QUEEN-EMPRESS *v.* NGA THA MOUNG I. L. R. 10 Calc. 643

TRANSFER OF CRIMINAL CASES—*contd.*

1. GENERAL CASES—*contd.*

2. ——— *Criminal Procedure Code, 1882, s. 526—District Magistrate and Civil and Sessions Judge (quâ Magistrate) of Bangalore subordinate to High Court.* The District Magistrate and Civil and Sessions Judge of the

to transfer a case from the Courts of those Judges to any other Criminal Court Under the circumstances disclosed, the High Court transferred this case SCOTT v RICKETTS **I. L R. 9 Mad. 356**

3. ——— *Power of High Court, Bombay—Criminal Procedure Code, 1882, s 526—Act III of 1884, s 11—Cantonment Magistrate, Secunderabad* The High Court of Bombay, having been vested, by notification of the Governor-General of India in Council, No 178 of 23rd September 1874 with original and appellate criminal jurisdiction over European British subjects, being Christians, resident, amongst other places, at Secunderabad, outside the Presidency of Bombay, and within the territories of His Highness the Nizam of Hyderabad, the Cantonment Magistrate of Secunderabad in his character of a District Magistrate is subordinate to the High Court in criminal matters relating to Christian European British subjects in Hyderabad within

jurisdiction The High Court, by an order under s 526 of the Criminal Procedure Code (Act X of 1882), transferred the present case of defamation from the Court of the Cantonment Magistrate at Secunderabad to the High Court for trial, on the ground that no machinery for a trial by jury existed at Secunderabad QUEEN-EMPRESS v. EDWARDS . **I. L. R. 9 Bom. 333**

4. ——— **Aden Act (II of 1864)**—*Power of High Court, Bombay—Transfer of case from Court of Political Resident at Aden—Criminal Procedure Code, 1882, s 526* A prisoner charged with having committed murder at Perim was committed by the Magistrate there on the 26th

1886 the Government of Bombay issued the notification (No 823) above set forth. On the 11th March 1886 an application was made to the High Court of Bombay for the transfer of the case to

Perim Sessions Division and the appointment of the Resident at Aden as Sessions Judge of that Court, the accused stood properly committed to a Court of Session The High Court therefore could transfer the case from that Court, under s 526 of the Code, to any other Court of equal or superior jurisdiction, or to the High Court of Bombay *Per* BIRDWOOD, J.—The High Court cannot, under s 526 of the Criminal Procedure Code (Act X of 1882), any more than under s. 25 of the Civil Procedure Code (Act XIV of 1882), direct the transfer of a case, which is not properly before a subordinate Court of competent jurisdiction, to receive and try it *Peary Lall Mozoomdar* v *Komal Kishore Dosna, I. L. R. 6 Calc 30*, followed *Queen-Empress* v. *Thaku, I. L. R 8 Bom. 312*, distinguished. *Per* JARDINE, J.—After the High Court had annulled the proceedings in the Court of the Resident at Aden as

of a Magistrate, or of a Resident ... of a Sessions Judge, the High Court had the power to transfer it, and that under the circumstances the case should be so transferred to the High Court for trial QUEEN-EMPRESS v. MANGAL TEKCHAND **I. L. R. 10 Bom. 274**

5. ——— **European British subject**—*Jurisdiction of High Court to transfer—Grounds for transfer—Criminal Procedure Code (Act X of 1882), s. 526—Act XXXVII of 1855—Sonthal Pergunnahs.* The Court of a Magistrate in the Sonthal Pergunnahs is, as regards the trial of an European British subject, to the subordinate High Court, and the High Court has power, under s 526 of the Criminal Procedure Code, to direct the transfer of a case in which such subject is concerned. The transfer of a case should be ordered when ... which may reasonably ... Magistrate ... against him ... in the trial

8 Calc. 247

6. ——— **Transfer to High Court**—*High Court's Criminal Procedure Act (X of 1875), s 147 (Criminal Procedure Code, 1882, s 526) and s. 115—"Case" referred to High Court—Reference to Police Magistrate. Semble: That the "case"*

TRANSFER OF CRIMINAL CASES—*contd.*

1. GENERAL CASES—*contd.*

mentioned in s. 147 of the High Court's Criminal Procedure Act (X of 1875) must refer to some question in the nature of a criminal proceeding, and not to a matter of a *quasi* civil character, such, as the reference to a Police Magistrate contemplated in s. 115 REG *v* RAMADAS SAMALDAS *Ex parte* MADAVJI DHARRAMSI 12 Bom. 217

7. ——— *High Courts' Criminal Procedure Act, 1875, s 147 (Criminal Procedure Code, 1882, s 526)— "Other proceeding"—Commitment, application to quash—24 & 25 Vict c. 104, ss 13 and 15* The words "or other proceeding" in s 147 of Act X of 1875 did not include a commitment, and an application to have a commitment quashed could be entertained under the provisions of that section *In the matter of the petition of* CHAROO CHUNDER MULLICK CHAROO CHUNDER MULLICK *v* EMPRESS

I. L. R. 9 Calc. 397

8. ——— *Acquittal—Presidency Magistrates Act (IV of 1877), s 181—Calcutta Municipal Act (Beng Act IV of 1876), ss 75, 79* The powers of interference given to the High Court by s. 147 of the High Court's Criminal Procedure Act were not intended to be exercised in the case of an acquittal by the Magistrate, but only in the case of convictions or other orders whereby a defendant is aggrieved or injured. CORPORATION OF CALCUTTA *v* BHEECUNRAM NAPIT *alias* BHEECUN NAPIT . I. L. R. 2 Calc. 290

9. ——— *High Courts' Criminal Procedure Act, 1875, s 147 (Criminal* [illegible]

[illegible] should in his decision state distinctly what were the particular representations and words which [illegible]

[illegible] Court, when the case has been transferred under s 147, Act X of 1875, may either try the case *de novo* or dismiss it on the ground that the Magistrate has come to no finding on which the conviction can be sustained. QUEEN *v.* UPENDRONATH DOSS . . . . I. L. R. 1 Calc. 356

10. ——— *High Courts' Criminal Procedure Act, 1875, s 147—Transfer of case before Magistrate—Power to issue Mandamus.*

A charge was made against the accused of using criminal force under s. 141 of the Penal Code. The Police Magistrate heard the evidence for the prosecution, and, without disbelieving it, decided it did not amount to the offence charged. *Held*, that, assuming that an error of law had been committed, the High Court had no power to issue a mandamus to the Magistrate to commit the defendants; it was not a case where the Magistrate had declined jurisdiction; he had exercised his jurisdiction and heard the case. *Held*, also, it was not a case which the Court could transfer under s 147 of the High Court's Criminal Procedure Act EMPRESS *v.* GASPER

I. L. R. 2 Calc. 278

11. ——— *High Courts' Criminal Procedure Act, 1875, s 147—Case transferred to High Court—Refund of fine on quashing conviction—Notes of evidence taken by Magistrate.* The High Court had no power, under s 147, Act X of 1875 [illegible]

I. L. R. 1 Calc 354

12. ——— *High Courts' Criminal Procedure Act, 1875, s. 147—Costs—Police Magistrates—Notes of evidence.* In a case transferred to the High Court under s. 147, Act X of 1875, the Court had no power to give costs. *Semble* The case may be transferred after final determination by the Magistrate. Notes of the proceedings before them should be taken in all cases by the judicial officers of all Criminal Courts subject to the Act. *In the matter of* LOUIS. *In the matter of* BENGAL ACT VI OF 1866

15 B. L. R. Ap. 14

13. ——— **Power of District Magistrate**—*Power to call for case—Procedure when, having called for it, he finds it out of his jurisdic-* [illegible]

[illegible] further with the case. VILAETEE KHANUM *v.* MEHER ALI . . . . 24 W. R. Cr. 4

14. ——— *Held*, that, although the Magistrate of a district is competent to order the removal of any particular case from the file of a subordinate Court to his own, it is doubtful whether he can by general proceeding direct the transfer of cases which have no existence, and which are not pending before any of his subordinates GOVERNMENT *v.* GIRDHAREE LALL

1 Agra Cr. 24

TRANSFER OF CRIMINAL CASES—*contd.*

1. GENERAL CASES—*contd.*

15. ——————— *Criminal Procedure Code, 1882, ss 526 and 192—Transfer of Criminal case by the High Court to the Court of a District Magistrate—Interpretation of order—Practice.* When a criminal case is transferred by an order of the High Court from a Court subordinate to a District Magistrate, to the Court of a District Magistrate if it is intended that the District Magistrate shall have power to transfer the case to a subordinate Court, that intention will be expressed in the order of the High Court. If no such intention is expressed, it will be understood that, in the case of a transfer from a Court subordinate to a District Magistrate to a District Magistrate's Court, that District Magistrate's Court is expected to try the case itself; but, when the transfer is from the Court of one District Magistrate to the Court of another District Magistrate it will be understood that, unless the contrary is directly expressed, the Magistrate of the Court to which the transfer is made has power and jurisdiction to apply s 192 of the Code of Criminal Procedure, and to transfer the case to the Court of any Magistrate subordinate to him who may be competent to try it QUEEN-EMPRESS *v* MATA PRASAD . . . . I. L. R. 19 All. 249

16. ——— **Application for transfer**—*Criminal Procedure Code, 1872, s. 64—Power of Judge acting on English Committee.* An application for the transfer of a case under s 64 of the Criminal Procedure Code, should be made, not by letter to the English Department of the High Court, but before the Court in its judicial capacity, and should be supported by affidavits or affirmation in the usual way QUEEN *v.* ZUHIRUDDIN

I. L. R. 1 Calc. 219 : 25 W. R. Cr. 27

17. ——— **Notice of transfer**—*Subordinate Magistrates—Criminal Procedure Code (Act X of 1872), s. 48—Notice to the parties before the transfer is made.* Before a Magistrate of a District can transfer a case from a Court subordinate to him to any other subordinate Court, notice of such in- [illegible]

[illegible] AMEER MAJEE

I. L. R. 8 Calc. 393 : 10 C. L. R. 239

18. [illegible] *Criminal Pro-* [illegible] for inquiry or trial from one Magistrate to another ought not to be made without notice to the accused. QUEEN-EMPRESS *v.* SADASHIV NARAYAN JOSHI

I. L. R. 22 Bom. 549

19. **Transfer of partly heard case**—*Hearing of evidence.* Where a case which has been partly heard by one officer is transferred to another officer for trial, the latter should hear all the evidence in the case before deciding it KOPIL NATH SAHI *v.* KONEERAM . 14 W. R. Cr. 3

QUEEN *v.* KULLIAN SINGH . 2 N. W. 468

The High Court, however, declined to interfere in a case of this sort, as the prisoners did not appeal or raise any objection to the trial on this ground. KOPIL NATH SAHEE *v.* KONEERAM

14 W. R. Cr. 3

20. ——— **Adjournment**—*Application for adjournment of trial before hearing—Duty of Court to grant reasonable adjournment—Refusal to adjourn trial, effect of, on subsequent proceedings—Code of Criminal Procedure (Act V of 1898), s 526, cl. (8)* The law does not require that an application for postponement under sub-s (8) of s 526 of the Code of Criminal Procedure, or an application to the High Court for transfer, should be made within any particular period before the date fixed for the hearing It requires only that the party should notify to the Court before which the case is pending, before the commencement of the hearing, his intention to make an application for the [illegible] ment is illegal, and none of [illegible] follow can be supported *Queen Empress v. Gayitri Prosunno Ghosal, I. L R 15 Calc 455*, followed *Queen-Empress v. Virasami, I. L R. 19 Mad 375*, distinguished. SURAT LALL CHOWDHRY *v* EMPEROR (1902) . . I. L. R. 29 Calc. 211

s.c. 6 C. W N. 251

21. ——— *Criminal Procedure Code (Act V of 1898), ss 344, 526—Magistrate, competency of, to proceed with the case up to the point at which the accused is called on for his defence.* Sub-s. (8) of s 526, Criminal Procedure Code, does not make it obligatory to grant a special adjournment irrespective to whether the party has a reasonable time to make his application without such an adjournment; but makes it obligatory only if it is necessary to enable the petitioner under s. 526 to make his application before the accused is called on for his defence. Where, upon an application, made by an accused for adjournment under sub s. (8) of s 526, the Magistrate did not make any special order of adjournment for the sole purpose of enabling him to make the application for transfer:—*Held*, that the proceedings subsequent to the date of the refusal of the application were not bad, inasmuch as the applicant had sufficient opportunity for applying between the time when he notified his intention of so doing and the time he was called on

TRANSFER OF CRIMINAL CASES—*contd.*

I. GENERAL CASES—*contd.*

for defence. S. 526, sub-s. (5), requires only that a reasonable time shall be afforded for the application for postponement being made and an order being obtained thereon before the accused is called on for his defence. It is, therefore, competent to the Magistrate, before granting an adjournment, to proceed with the case up to the point at which the accused would be called on for his defence. DHONE KRISTO SAMANTA *v.* KING-EMPEROR (1902) **6 C. W. N. 717**

22. ———— **"Criminal case"**—The provision of s. 526 of the Criminal Procedure Code (Act V of 1898) do not give any power to direct the transfer of a [illegible]

Code [illegible]

"crimi [illegible]

the Cod [illegible]

of, and dealing with, some crime already committed. It does not include proceedings taken for the prevention of crime. *In re* PANDURANG GOVIND PUJARI (1900) **I. L. R. 25 Bom. 179**

23. ———— **Jurisdiction**—*Criminal Procedure Code (Act V of 1898), s. 528—Power of District or Sub-Divisional Magistrate to transfer a criminal case from the file of a Village Magistrate—Extent of power—Petty thefts triable under Mad Reg IV of 1821.* The jurisdiction which a District or Sub-Divisional Magistrate has, under s. 528 of the Code of Criminal Procedure, [illegible]

I. L. R. 26 Mad. [illegible]

24. ———— **Notice**—*Criminal Procedure Code (Act V of 1898), s. 528—Transfer of case at request of Magistrate.* An order for the [illegible]

I. L. R. 24 Mad. [illegible]

25. ———————— *Criminal Procedure Code, s. 528—Transfer, application for—Notice to opposite party.* Although s. 528, Code [illegible]

26 ———— [illegible]**ecurity for keeping the peace**—*Criminal Procedure Code, ss. 107 (2), 192—Power of District Magistrate to transfer proceedings instituted by him against a person not within his district.* *Held*, that it was competent to a District Magistrate, who had initiated proceedings under s. 107 (2) of the Code of Criminal Procedure against a person not at the time within the limits of his jurisdiction to transfer such proceedings at a later stage to a Magistrate subordinate to himself, although such Magistrate was not competent to initiate such proceedings. KING-EMPEROR *v.* MUNNA (1901) **I. L. R. 24 All. 151**

27. ———————— *Security to keep the peace—Jurisdiction of Magistrates—Criminal Procedure Code (Act V of 1898), ss. 107, 192—Proceedings, initiation of.* A District Magistrate instituting proceedings under s. 107 (2) of the Criminal Procedure Code has power to transfer the inquiry to any subordinate Magistrates, competent to inquire into the same. The object of s. 107 of the Criminal Procedure Code is to restrict the initiation only of proceedings against persons residing beyond the local limits of the jurisdiction of [illegible]

I. L. R. 31 Calc. 350

28. ———— **Supplementary case**—**Dis**[illegible]

[illegible]

after the case for the prosecution was concluded, two witnesses were examined on behalf of one of the accused and the case was adjourned till the 16th February. Between the 23rd and 16th February no application was made to the High Court for a transfer. The case was concluded on the 16th February and the accused were convicted. *Held*, that the Sessions Judge was not disqualified from trying the case. That the accused had a reasonable time for applying to the High Court before they were required to enter upon their

TRANSFER OF CRIMINAL CASES—*contd.*

1. GENERAL CASES—*concld.*

29. ——— **Succession of Magistrates—Transfer of case from one Magistrate to**

brancer v *Upendra Kumar Ghose, 12 C. W. N. 140,* commented on. *Purmessur Singh* v *Sooroop Audikaree, 13 W R Cr 40 ; Kopil Nath Sahi* v. *Koneeram, 14 W R Cr 3,* referred to *In re Raghoo Parirah, 19 W R Cr 28 ; Damri Thakur* v *Bhowani Sahoo, I L. R 23 Calc 194 , Queen-Empress* v. *Bashir Khan, I. L R. 14 All. 346,* distinguished. *Queen* v. *Hurnath Guho Thakurta, 24 W. R. Cr. 52 ; Queen-Empress* v *Angnu, (1889), All W. N. 130,* not followed MOHESH CHANDRA SAHA *v.* EMPEROR (1908) **I. L. R. 35 Calc. 457**

2. LETTERS PATENT, HIGH COURTS, 1865, CL 29.

1. ——— **Transfer to High Court**—*Power to transfer—Criminal Procedure Code, 1872, s. 64* S. 29 of the Letters Patent of 1865 empowers the High Court to transfer for trial before itself an appeal to a Court of Session from the sentence of a District Magistrate, and this power was not affected by s 64 of the Code of Criminal Procedure, 1872, which authorized the High Court to transfer an appeal from one subordinate Court of criminal jurisdiction to another SITAPATHI NAYUDU *v* QUEEN . . **I. L. R. 6 Mad. 32**

2. ——— *Power to transfer —"Competency" to investigate case.* The construction of cl. 29 of the Letters Patent, 1865, is

competent to try it, or to direct the trial by the

competency with regard to the offender, the nature of the offence and the punishment. QUEEN *v.* NABADWIP GOSWAMI

1 B. L. R. O. Cr. 15 : 15 W. R. Cr. 71 note

3. ——— *Power to transfer —Power of single Judge on original side of High Court.* On an application made for the transfer of a case from the Sessions Court at Patna for trial by the High Court at Calcutta, on the grounds mainly that all but one of the charges against the prisoners were for offences committed in Calcutta ; that the selection of Patna as the place of trial was

TRANSFER OF CRIMINAL CASES—*contd.*

2. LETTERS PATENT, HIGH COURT, 1865, CL. 29—*concld.*

calculated to prejudice the prisoners ; that the

as would prevent a fair trial ... there ; that some of the witnesses for the defence, although willing to give evidence in Calcutta, refused to go to Patna to give evidence ; and that many difficult points of law were likely to arise at the trial ; but these allegations were denied by the affidavits filed in opposition to the application :—*Held* (MACPHERSON, *J.*, doubting), that the High Court had power under cl. 29 of the Letters Patent to transfer the case for trial by itself. The Court, however, refused the application, *on the ground* that a sufficient case had not been made out for the exercise of the power of the Court *Per* PHEAR, *J.* A single Judge, sitting on the original side of the Court, has power to entertain an application for the removal of a criminal case from a Court in the mofussil to the High Court in the exercise of its extraordinary original criminal jurisdiction. QUEEN *v.* AMEER KHAN . . **7 B. L. R. 240 : 15 W. R. Cr. 69**

4. ——— *Criminal Procedure Code (Act V of 1898), ss. 145, 526—Jurisdic-* ... *pending disposal* ... *he Code of* ... *and the* ... *r it, both* ... *edure and* ... *ing Covand* ... followed.

ARUMUGA TEGUNDAN (1902) **I. L. R. 26 Mad. 188**

3. GROUND FOR TRANSFER

1. ——— **Nature of grounds for transfer**—*Transfer from one Magistrate to another.* The High Court will not, except on very strong and very clear grounds, transfer a case from one Magistrate's Court to that of another Magistrate. *In the matter of the petition of* SHANKAR ABAJI HOSHING. REG. *v.* SHANKAR ABAJI HOSHING **6 Bom. Cr. 69**

2. ——— **Probability of unfair trial** —*Transfer from one Magistrate to another.* It is only when there is reason to suppose that the prisoner will not have a fair trial that the High Court will transfer a case from one magisterial officer to another. QUEEN *v.* KISTO CHUNDER GHOSE **2 W. R. Cr. 58**

3. ——— *Proof of grounds for transfer—Grounds necessary to obtain transfer when application is opposed by accused* Before ... Criminal Court to ... the accused ... must bring ... e that a fair

TRANSFER OF CRIMINAL CASES—*contd.*

3. GROUND FOR TRANSFER—*contd.*

trial cannot be had in the District in which the case is ordinarily triable *In the matter of the petition of the* LEGAL REMEMBRANCER. EMPRESS v. NOBO GOPAL BOSE I. L. R. 6 Calc. 491

4. ———— **Prosecution initiated by Magistrate**—*Conviction before same Magistrate—Transfer of appeal from Magistrate to Sessions Judge.* Where the Magistrate of the district had procured the initiation of a number of prosecutions against the same person, and one of them which had resulted in conviction came up before him in appeal, the High Court, considering that it was not altogether seemly that he should hear the appeal, ordered its transfer to the Sessions Judge RAMZAN ALI v. DURPO KOMILLA

24 W. R. Cr. 58

5. ———— **Judge forming premature opinion**—*Convenience—Relieving judicial officer of case he wishes not to try* The High Court does not exercise its powers of transfer in a case of forgery or perjury solely on the ground that the Judge who is to try the case had formed an opinion that the document has been forged or the perjury committed. But when the transfer can be made without risk of any improper interference with the course of justice and without much inconvenience to the parties and witnesses, the transfer would be proper, not only as a fair concession to the accused person, but as a means of relieving the Judge from a position which he would himself desire to avoid. *In the matter of the petition of* ARUNACHALLA REDDI

5 Mad. 212

6. ———— *Criminal Procedure Code (Act V of 1898), s 526—Expression of opinion by Magistrate in counter-case on evidence*

was desirsome other v KUNJA [illegible] W. N. 824

7. ———— **Reasonable apprehension in the mind of the accused**—*Criminal Procedure Code, 1882, s 526—Real bias—Incidents*

have happened which, though they may be susceptible of explanation and may have happened without there being any real bias in the mind of the Judge, are nevertheless such as are calculated to create in the mind of the accused a reasonable apprehension that he may not have a fair and impartial trial. DUPEYRON v. DRIVER

I. L. R. 23 Calc. 495

FARZAND ALI v HANUMAN PRASAD

I. L. R. 19 All. 64

8. ———— **Probability of unfair trial**—*Complexity of case—Transfer from one Magistrate to another—Local investigation—Magistrate trying case, competency of, to be witness—Competent witness—Examination of Magistrate trying case as a witness* Where an Assistant Magistrate with second class powers was directed by the District

of such investigation, he held a local inquiry extending over five days, during which he made a

determination, but which, by reason of the way

but that it must be transferred to some other Magistrate exercising first class powers for disposal. HARI KISHORE MITRA v ABDUL BAKI MIAH

I. L. R. 21 Calc. 920

9. ———— **Fairness and impartiality of the jury**—*Criminal Procedure Code, 1882, s 526, cl. (e)—Expression of belief by the District Magistrate* When two such officers, as the District Magistrate and the Sessions Judge, emphatically express their belief that it will be next to impossible to obtain a fair and impartial trial if the case be heard before a jury chosen from a particular district, the bare expression of such belief, quite apart from the foundations thereof, must shake the confidence of the parties interested and of the public in the fairness and impartiality of the particular jury to try the case. An order for

TRANSFER OF CRIMINAL CASES— *contd.*

3. GROUND FOR TRANSFER—*contd.*

of the tribunal is next only to the importance of securing a fair and impartial tribunal. *Dupeyron* v. *Driver, I. L. R. 23 Calc 495,* followed The jury in a case triable by jury constitute a part and [illegible] trial should nevertheless go on before such a jury, because an erroneous verdict may, in the end, be set right by the High Court. *Empress* v. *Nobo Gopal Bose, I. L. R 6 Calc. 491,* distinguished. LEGAL REMEMBRANCER v BHAIRAB CHANDRA CHUCKERBUTTY **I. L R. 25 Calc. 727**

In the matter of the petition of the DEPUTY LEGAL REMEMBRANCER QUEEN-EMPRESS v BHAIRAB CHUNDER CHAKURBUTTY . **2 C. W. N. 65**

10. ———— Magistrate having bias against the accused—*Criminal Procedure Code, 1882, s 526A* Where a Magistrate in the course of an investigation under Ch XIV of the Criminal Procedure Code and also in the [illegible]

[illegible] quiry, and the case should be transferred from his file RATNESSARI PERSHAD NARAIN SINGH v. EMPRESS . . . **2 C. W. N. 498**

11. ———— Illegal procedure by Magistrate—*Magistrate antagonistic to accused—Power of High Court.* Where the procedure in the case of a person charged with an offence was found to be irregular and illegal, and the Magistrate was prejudiced and antagonistic to the prisoner, the High Court made an order (as in the *Bancoorah Case, 4 B L R. Ap 1*), to transfer the proceedings to be tried by another officer appointed or deputed by the Government of Bengal to try the case ABDOOL KADIR KHAN v MAGISTRATE OF PURNEAH

11 B L. R. Ap. 8 : 20 W. R. Cr. 23

12. ———— Judicial officers interested in case—*Criminal Procedure Code, 1872, s. 64—Road-cess case—Transfer of appeal for trial.* Where it appeared that the only officers in the district of P otherwise competent to hear an appeal from a conviction for theft of property alleged to have belonged to the Road Cess Committee of the district were, by reason of their connection with that Committee, interested in the result of the appeal, the High Court directed that the petition of appeal, together with all papers connected therewith, should be forwarded to the Sessions Judge of the 24-Pergunnahs, to be dealt with as an appeal presented in his own Court *In the matter of* DWARKA NATH BANERJEE . **6 C. L. R. 279**

13. ———— Magistrate expressing opinion unfavourable to accused—*Criminal Procedure Code, 1861, s 36—Transfer by Magistrate.* Although s. 36 of the Code of Criminal Procedure did not require a Magistrate to state his reasons for transferring a criminal case from a Court subordinate to [illegible] Court, th[illegible] gistrate [illegible] Magistra[illegible] evidence for the prosecution, and had expressed an opinion unfavourable to the prosecution. QUEEN v NOBOCOOMAR BANERJEE **14 W. R. Cr 12**

14. ———— Manipulation of order-sheet by Magistrate—*Criminal Procedure Code (Act X of 1882), s. 526—Inquiry preliminary to commitment—Bias—Attaching document to record after receipt of order of High Court, staying proceeding—Transfer, grounds of* It appeared that during the course of an inquiry preliminary to [illegible] then before him. In another instance a note had been subsequently interpolated in the order sheet It further appeared, that the Magistrate, after the receipt of the order of the High Court staying all further proceedings in the case, placed on the record a certain letter received from a medical [illegible] be taken before the said Magistrate [illegible] should be transferred to another Magistrate ANANT RAM v. MANSOOR ROY **2 C. W. N. 639**

15. ———— Jurisdiction—*Place of commission of offence—Transfer of preliminary investigation—Criminal Procedure Code, 1872, ss 64 and 69* The High Court, under ss 64 and 69 of the Code of Criminal Procedure, directed the preliminary investigation in this case, in which the accused was charged with criminal breach of trust, to be held in Calcutta, the place where the offence charged was, if not wholly, at all events partly, committed. QUEEN v. MACDONALD **22 W. R. Cr. 6**

16. ———— View of the scene of the occurrence by a Magistrate trying a criminal case—*Local investigation—Criminal Procedure Code, s. 526* It is not only not objectionable, but in many cases highly advisable, that a Magistrate trying a criminal case should himself inspect the scene of the occurrence in order to understand fully the bearing of the evidence given in Court. But if he does so, he should be careful not to allow any one on either side to say anything to him which might prejudice his mind one way or the other. The fact he has held such a local investigation does not amount to a ground for transferring the case to another Magistrate. *In the matter of the petition of* LALJI . **I. L. R. 19 All. 302**

TRANSFER OF CRIMINAL CASES—*contd*

3. GROUND FOR TRANSFER—*contd.*

17. ——— Bias—*Reasonable apprehension in the mind of the accused of Magistrate being biased—Suit by servant of estate under Court of Wards, the District Magistrate as Collector being Manager—Code of Criminal Procedure (Act V of 1898), s. 526.* Where the apprehension in the mind of the accused that he may not have a fair and impartial trial is of a reasonable character, then notwithstanding, that there may be no real bias in the matter, the fact of incidents having taken place calculated to raise such reasonable apprehension ought to be a ground for allowing a transfer. *In the matter of the petition of J. Wilson, I. L. R. 18 Calc. 247,* and *Dupeyron v. Driver, I. L. R. 23 Calc. 495,* referred to. The mere fact that the Magistrate of the district is, in his capacity as Collector, concerned in the management of an estate held by the Court of Wards is no ground for asking for a transfer from the district of a case brought by a servant of the estate and pending before a Subordinate Magistrate in the District. BAKTU SINGH v. KALI PRASAD (1900) . . I. L. R. 28 Calc. 297

18. ——— *High Court,*

1877), s. 9—Code of Criminal Procedure (Act V of

inquiry, within the meaning of cl. (a) of s. 526 of that Code. A Court of a Magistrate taking

Court has jurisdiction. It is doubtful whether, under s. 526, the Legislature meant to confer on the High Court the power of making a transfer in cases other than those in which a person is charged with an offence. The High Court may, however, under s. 15 of the Charter Act, direct the transfer of a case, under s. 145 of the Criminal Procedure Code, which a Magistrate has taken

therefore, by reason of the words or conduct of a

... to transfer the case from his file to that of some other officer competent to try it, though there may not be any actual bias. *Dupeyron v. Driver, I. L. R. 23 Calc. 495,* and *The Legal Remembrancer v. Bhairab Chandra Chuckerbutty, I. L. R. 25 Calc. 727,* referred to. *Held (per* TAYLOR, *J.),* that the phrases "case" and "criminal case," in the Criminal Procedure Code, are not co-extensive, and are not used indiscriminately or interchangeably. The phrase "criminal case," is intended to be used in a limited sense, and not to apply to every case cognizable by a Criminal Court. It is doubtful whether the High Court has power under s. 526 to transfer cases which do not relate to matters which may strictly be described as criminal as relating to a crime or offence under the law. The power, how-

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tried by a Criminal Court as opposed to civil cases. LOLIT MOHAN MOITRA v. SURJA KANT ACHARJEE (1901) . . . . I. L. R. 28 Calc. 709; s.c. 5 C. W. N. 749

19. ——— **Magistrate taking part during investigation by police**—*Criminal Procedure Code (Act V of 1898), ss. 526, 164, 342—Transfer of pending cases—Examination of accused*

any voluntary statement made by an accused person, but he is not entitled to examine him in respect of the facts of the case. S. 342 of the Code only empowers a Court to examine an accused to explain evidence already recorded. GYA SINGH v. MOHAMED SOLIMAN (1901) . **5 C. W. N. 864**

20. ——— **Reasonable apprehension in the mind of the accused**—*Criminal Procedure Code (Act V of 1898), s. 526—Incidents*

TRANSFER OF CRIMINAL CASES—*contd.*

3 GROUND FOR TRANSFER—*contd.*

trial. *Dhone Kristo* v. *King-Emperor, I. L R. 31 Calc. 715*, and *Joharuddin* v *Emperor, 8 C W. N. 910*, referred to Confidence in the administration of justice is an essential element in good government and a reasonable apprehension of failure of justice in the mind of the accused should be taken into consideration on an application for transfer. *Narain Chandra Banerjee* v. *The Howrah Municipality, 10 C W. N 441*, explained *Held, per* HOLMWOOD, *J.* The case should be transferred in view of the technical objection that may be taken to the validity of the Magistrate's final decision, owing to his having refused time to apply for a transfer. THE VIEWS of BRETT, *J.* as expressed in *Narain Chundra Banerjee* v. *The Howrah Municipality, 10 C W. N. 441*, concurred with KALI CHARAN GHOSE *v.* EMPEROR (1906) . **I. L. R 33 Calc. 1183**

21. ———— *Criminal Procedure Code (Act V of 1898), s 526—Rule nisi for transfer, issue of—Communication by vakil—Examining witnesses after communication—Reason-*

move the High Court for transfer of the case pending against him, the Magistrate did not pass an order at once but examined 13 witnesses for the prosecution, and then passed an order allowing 14 days' time and whereafter the fact of the issue of a rule by the High Court on the application for transfer had been communicated by a telegram from a vakil of the High Court, the Magistrate instead of postponing the case at once examined four witnesses and then made an order for adjournment :—*Held*, that these proceedings on the part of the Magistrate were sufficient to justify the transfer of the case from his file WAHED MOLLAH *v.* SHAIK BASARADDI (1906) . **11 C. W. N. 507**

22. ———— **Magistrate having prejudged accused in other case, sufficient ground for transfer**—*Criminal Procedure Code, s. 526—Transfer of criminal case*—Where the Magistrate has, in a counter case brought by the accused on the same facts, prejudged the guilt of the accused, [illegible] justice, trans[illegible] some other [illegible] EMPEROR (19[illegible]

23. ———— *Opinion arrived at in another but similar case on other evidence—Bias—Criminal Procedure Code (Act V of 1898), s. 526.* The doctrine that a reasonable apprehension in the mind of an accused that he will not have a fair trial is a sufficient ground for transfer is sound, but in applying it regard must be had to the circumstances of each case The mere fact that in another case, on other evidence, the Judge has come to a particular conclusion is not in itself a sufficient ground for transfer. *Asimaddi* v. *Govinda Baidya, 1 C. W. N. 426*, referred to. RAJANI KANTA DUTT *v.* EMPEROR (1909) **I. L. R. 36 Calc 904**

TRANSFER OF CRIMINAL CASES—*concld:*

3. GROUND FOR TRANSFER—*concld.*

24. ———— **Omission to state grounds**—*Criminal Procedure Code (Act V of 1898), s 528.* It is incumbent on the Court making a transfer under s. 528 to record its reasons therefor, but the omission to do so is not a ground for setting aside the order where it has not prejudiced the accused PRAKAS CHUNDER DUTT *v.* EMPEROR (1907) **I. L. R. 34 Calc. 918**

TRANSFER OF NON-TRANSFERABLE HOLDING.

———— *Landlord and Tenant Act (Bengal Act VIII of 1869)—Occupancy raiyat unauthorised to transfer his holding—Usufructuary mortgage, if a transfer.* By creating an usufructuary mortgage an occupancy raiyat not authorised to transfer his holding makes himself liable to ejectment by the landlord KRISHNA CHANDRA DATTA CHOWDHURY *v.* KHIRAN BAJANIA (1903) **10 C. W. N. 499**

TRANSFER OF PROPERTY.

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES. **I. L. R. 30 Calc. 981**

See TRANSFER OF PROPERTY ACT

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER. **I. L. R. 2 Bom. 547** **I. L. R 5 Bom. 554**

———— **while transferor is out of possession—**

See VENDOR AND PURCHASER—BILLS OF SALE . . **2 B. L. R. P. C. 111**

1. ———— **Ownership of cotton in press**—*Sale—Exchange—Trade usage, proof of—Contract Act ss. 49, 77, 92, 151—Transfer of Property Act, s 118—Delivery of cotton to cotton press.* According to mercantile usage in the cotton trade in Tuticorin where a dealer delivers cotton to the owner of a cotton press not in pursuance of any special contract, the property in the cotton vests in the owner of the cotton press who is bound to give the merchant in exchange cotton of like quantity and quality. The transaction is not a sale, but an agreement for exchange. Where therefore cotton thus delivered was accidentally destroyed by fire :—*Held*, that the loss fell on the owner of the press. VOLKART BROTHERS *v.* VETTIVELU NADAN . . . **I. L. R. 11 Mad. 459**

2. ———— **Erection of building for school on land**—*Gift of building for a school—Position of managers of school—Suit by managers for trover and trespass.* Where a party who, partly with his own funds and partly with R100 subscrib-

TRANSFER OF PROPERTY—*contd.*

ed by the village, erected a building for a school never gave the property to the school, and never even acquiesced in the managers of the school entering upon it —*Held*, that the managers entered upon it as trespassers, and that, although the proprietor acquiesced in their having taken possession, he did not thereby convey any property in the school to the subscribers, and was not bound to repay that portion of the money which he expended himself in building the house, or to do more than return that portion of the funds which were subscribed by the village SREEHURRY ROY *v.* HILLS . . 7 W R. 476

S C on reference on original trial.
6 W. R. Civ Ref. 21

3. ———— **Sale while vendor is out of possession**—*Right of purchaser to sue for possession* It is the practice of the Courts in this country to give effect to sales of property made by persons out of possession, and to recognize the title of the purchaser to maintain a suit RUNNOO PANDEY *v.* BUKSH ALI . . . 3 N. W. 2

KUMUROODDEEN *v.* BHADOO . 11 W. R. 134

AULOCK MONEE DOSSIA *v.* AULOCK MONEE DEBIA 25 W. R. 48

PRANKRISHNA DEY *v.* BISWAMBHAR SEIN
2 B. L. R. A. C. 207
11 W. R. 81

4. ———————— *Right of purchaser to sue for possession—Want of consideration.* Alleged purchasers whose vendors were not in possession, and who have paid nothing for what is said to have been sold to them, are not competent to maintain a suit for possession of the property in dispute BISHONATH DEY ROY *v* CHUNDER MOHUN DUTT BISWAS . 23 W. R. 165

See TARA SOONDOREE CHOWDHRAIN *v.* COLLECTOR OF MYMENSINGH
13 B. L. R. 495 : 20 W. R. 446

5. ———————— *Right of purchaser to sue for possession* The current of High Court decisions on the question whether a pur- [illegible]

6. ———————— *Wrongful dispossession of vendor—Right of vendee to sue for possession* Where a conveyance of property was made by a person who had been in possession and enjoyment for years before she was wrongfully ousted, the conveyance was *held* to give a right to sue for immediate possession. BIKAN SINGH *v.* PARBUTTY KOOER 22 W. R. 99

NITTYANUND GOSSAIN *v.* SHAMA CHURN CHATTERJEE . . . . . 23 W. R. 163

See GUNGA HURRY NUNDEE *v.* RAGHUBRAM NUNDEE . 14 B. L. R. 307 : 23 W. R. 131

TRANSFER OF PROPERTY—*contd.*

7. ———————— *Right of assignee to sue for possession—Third parties—Requisite proof.* An assignee of property, of which the assignor was not in possession when the assignment [illegible]

come back to the hands of the assignor. BOODHUN SINGH *v.* LUTEERUN . . 22 W. R. 535

8. ———————— *Right of specific performance after purchase of right to sue* Where a purchaser of a right to sue for possession brings a suit for specific performance and it is not shown that he has left undone anything necessary to [illegible]

22 W. R. 187

9. ———————— *Suit by assignee for possession—Effect of bill of sale* The assignees, [illegible]

already in the possession of one or more of themselves. *Held*, [illegible]

evidence of a contract to be performed in future upon the happening of a contingency. RAM KHELAWUN SINGH *v.* OUDH KOOER. 21 W. R. 101

And *see* BOODHUN *v.* BOODHUN SINGH
21 W. R. 156

10. ———————— *Suit by assignee for possession—Validity of transfer.* The plaintiffs sought to recover possession from the defendants of certain land, claiming under a kararnama executed to them by one Mutyawa. The defendants contended that Mutyawa had never been in possession of the land. The lower Appel- [illegible]

cumstance of Mutyawa's not having been in possession at the time the kararnama was executed did not prevent the plaintiffs from recovering possession from the defendants. *Kalidas* v. *Kanhaya Lal*, *I. L R. 11 Calc. 121 : L. R. 11 I A. 219*, referred to and followed. UGARCHAND MANAKCHAND *v.* MADAPA SOMANA . . I. L. R. 9 Bom. 324

11. ———————— *Sale in execution of decree—Assignment by purchaser who has not obtained possession.* Upon a sale in execution of a decree the property in the thing sold passes to the purchaser; and there is nothing in either the Hindu or the English law which debars a third person from taking an assignment of such property

TRANSFER OF PROPERTY—*contd.*

from the auction-purchaser, albeit it has not been reduced into possession by him GOVIND RAGUNATH *v.* GOVIND JAGOJI . I. L. R. 1 Bom. 500

12. ———— **Hypothecation of property without possession**—*Incomplete title. Held*, that the hypothecation of property to which a judgment-debtor had not acquired absolute title was incomplete and insufficient to create a valid and perfect lien in favour of the mortgagee enforceable by law against the actual possessor. HERCHUND SINGH *v* RAM SINGH . 1 Agra 286

13. ———— **Lease granted while lessor is out of possession** A valid lease cannot be granted by a person not in possession of the lands leased. TIERY *v.* KRISTO MOHUN BOSE. HOVENDEN *v* AKBAR ALI . L. R. 1 I. A. 76

14. ———————— *Rights of lessee —Suit for possession* A transfer of property of which the transferor is not at the time of the transfer in possession is not *ipso facto* void. Where a patnidar, while out of possession of the patni estate, granted a dar-patni thereof :—*Held*, that the dar-patnidar's suit against third persons, who were in possession of the estate, to recover possession, would lie, it appearing that the plaintiff had paid an adequate consideration for the dar-patni, and that the dar-patni pottah was not evidence of a contract to be performed in future on the happening of a certain contingency, or that if it were so, that the plaintiff had done all he was bound to do to entitle him to specific performance of the agreement by the patnidar. LOKENATH GHOSE *v.* JUGOBUNDHOO ROY . . . I. L. R. 1 Calc. 297

15. ———————— **Impartible zamindari—Unregistered transfer**—*Transfer of Property Act—Effect of recited transfer in a mortgage-deed—Notice to Revenue authorities of alleged transfer.* An impartible *zamindari* having been mortgaged, the *zamindar*, with other members of the joint family, including the defendant, his then presumptive heir, executed a deed-poll addressed to the mortgagee, which recited a transfer of the [illegible]

and a statement was made by the *zamindar* to the Collector that a transfer had been effected which was followed by mutation of names in the defendant's favour. *Held*, (1) that the *arzi* and statement could not operate a transfer for which a registered deed was prescribed by the Transfer of Pro- [illegible]

evidence a contract between the *zamindar* and the defendant which the latter could enforce. IMMUDIPATTAM THIRUGNANA *v.* PERIYA DORASAMI (1900) . . . . I. L. R. 24 Mad. 377
s.c L. R. 28 I. A. 46 :
5 C. W. N. 217

TRANSFER OF PROPERTY—*contd.*

16. ———— **Effect not given to intention to transfer**—*Registered deed of sale—Deed retained by vendor—Possession by vendor and subsequent transfer by registered trust deed to temple—Suit for possession by original vendee—Failure of consideration—No property passed. S* executed and registered what purported to be a sale deed in favour of first defendant. *S* retained the deed and also continued in possession of the property He subsequently transferred the property to a temple, and held possession as tenant to the temple, until his death. When *S* died, first defendant took possession of the property, whereupon plaintiffs, the Dharmakartas of the temple brought the present suit to recover possession of it The finding was that the transfer by *S* to first defendant was intended to be effected only upon an event happening which did not in fact happen :—*Held*, that, as the event did not take place, effect was not given to the intention to transfer and no property passed to the first defendant. RAMALINGA MUDALI *v* AYYADORAI NAINAR (1905)
I. L. R. 28 Mad. 125

TRANSFER OF PROPERTY ACT (IV OF 1882).

See LANDLORD AND TENANT—AGRICULTURAL TENANCY. 13 C. W. N. 949

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.
I. L. R. 28 Calc. 308

See LEASE—CONSTRUCTION.
I. L. R. 7 Bom. 258
I. L R. 17 Calc. 826

See LIMITATION, ACT, 1877, SCH II, ART 132 . . I. L. R. 10 Mad. 509
I. L R. 14 Calc. 730

See LIMITATION ACT, 1877, SCH II, ART 135 . . I. L R. 16 Calc 693
L. R. 16 I. A. 85

See MORTGAGE—FORECLOSURE—DEMAND AND NOTICE OF FORECLOSURE.
I. L. R. 8 All 383
I. L. R. 1 Calc. 582

———— **holding created before**—
See TRANSFER . . 13 C. W. N. 541

———— **Application of Act**—*Mortgage executed before Act came into force—"Property."* [illegible] Act (I of 18[illegible]) [illegible] STRAIGHT, [illegible] "property" [illegible] means an [illegible] not include actual physical object and [illegible] mere rights relating to physical objects. *Held*, by the Full Bench, that the Transfer of Property Act (IV of 1882), so far as the question of rele[illegible] and procedure is concerned, applies to mortgages executed before the coming into force of the Act. *Ganga Sahai v. Kishen Sahai, I. L. R. 6 All. 262*, and *Bhobo Sundari Debi v. Rakhal Chunder Bose, I. L. R. 12 Calc. 533*, referred to. *Per* MAHMOOD, *J.* (*contra*) —The term "property"

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd*

throughout Act IV of 1882 is used in its most generic sense, and will include the right known as an "equity of redemption" MATA DIN KASHODHAN v KAZIM HUSAIN

I. L. R. 13 All. 432

1. — — s. 2—*Mortgage executed before Act came into force—Assignment of after Act in operation.* The provisions of the Transfer of Property Act apply to the assignment of a mortgage made after that Act came into force although the mortgage may have been made before the commencement of that Act LALA JUGDEO SUHAI v BRIJ BEHARI LAL . I. L. R. 12 Calc. 505

2. ———— *Mortgage—Foreclosure—Reg XVII of 1806, s 8—Provision as to the year of grace—Extension of time by mutual agreement.* The years of grace allowed by s. 8, Regulation XVII of 1806, is a matter o procedure which it was open to the parties of extend by mutual agreement without pre[illegible]

[illegible]

Act. Proceedings under s. 8 had come to a close by the expiration of the stipulated period of extension while the Regulation was still in force, and the mortgagee brought his suit for possession in pursuance thereof after the passing of the Transfer of Property Act. *Held*, that the mortgagee was entitled to a decree such as he would have had if the Regulation had been still in force BAIJ NATH PERSHAD NARAIN SINGH v. MOHESHWARI PERSHAD NARAIN SINGH . . I. L. R. 14 Calc. 451

3. ———— *Mortgage—Foreclosure—Suit for conditional sale—Reg XVII of 1806—Procedure.* A suit was brought on the 24th January 1885 by a mortgagee upon a mortgage by conditional sale asking for a declaration that the mortgagor s right to redeem had been extinguished, and that he was entitled to possession of the mortgaged properties. The mortgage was dated the 6th April 1881, and the mortgage-money was repayable on the 13th May 1881. On the 9th July 1881 the mortgagee caused a notice to be served on the mortgagor in compliance with the provisions of ss 7 and 8 of Regulation XVII of 1806 The year of grace expired on the 10th July 1882 It was contended by the mortgagor that, as the Transfer of Property Act

[illegible]

the case. Although the year of grace had not expired when that Act came into force, and the full and complete right of the mortgagee had not ac-

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 2—*contd.*

crued, he had acquired the right to bring a suit under the provisions of Regulation XVII of 1806 at the expiration of the year of grace, and the mortgagor was under a liability to part with his property upon a suit being brought at the expiration of that year, and such right and liability came within the meaning of these terms as used in cl. (c), s 2, of the Transfer of Property Act. MOHABIR PERSHAD NARAIN SINGH v GUNGADHUR PERSHAD NARAIN SINGH I. L. R. 14 Calc. 599

4. ———— *Mortgage—Suit for foreclosure—Conditional sale—Reg XVII of 1806—General Clauses Consolidation Act (I of 1868), s 6—"Proceedings"* In a suit for fore-[illegible]

[illegible]

Regulation, those proceedings were saved by s. 6 of the General Clauses Consolidation Act (I of 1868) The "proceedings" referred to in that section are not necessarily judicial proceedings only, but ministerial proceedings, as, in the present case, the service of notice of foreclosure. UMESH CHUNDER DAS v. CHUNCHUN OJHA

I. L. R. 15 Calc. 357

5. ———— and ss. 67, 86—*Suit for foreclosure of mortgage—Beng Reg XVII of 1806, ss 7, 8—Procedure—General Clauses Act (I of 1868), s. 6* A mortgagee by conditional sale under an instrument executed while Regulation XVII of 1806 was in force and before the Transfer of Property Act, 1882, which repealed that Regulation, came into force, sued, after the repeal of that Regulation, for foreclosure of the mortgage, not having proceeded in accordance with the provisions of s 8 of that Regulation *Held* (STUART C J [illegible]

[illegible] GANGA SAHAI v. KISHEN SAHAI . . . . I. L. R. 6 All. 262

6. ———— and ss. 67 and 99—*Attachment of property mortgaged prior to 1882* In 1884 a mortgagee obtained a decree for arrears of interest due under a mortgage-deed of 1879, and in execution of the decree attached and applied for the sale of the land mortgaged :—*Held*, that by reason of s. 99 of the Transfer of Property Act, 1882, the land could not be sold otherwise than by by a suit instituted under s. 67 of the said Act. KAVERI v. ANANTHAYYA .I. L. R. 10 Mad. 129

7. ———— and ss. 67 and 99—*Mortgage-decree—Execution of decree.* A decree-holder, who had obtained a decree in the year 1880 against his judgment-debtor, declaring his title in certain

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 2—*contd.*

Act was not intended to apply to decrees already obtained declaring a lien and authorizing a sale but even a... Act saved a sale of

v *Kishen Sahai, I L R 6 All 262*, distinguished. DINENDRA NATH SANNYAL *v.* CHANDRA KISHORE MUNSHI . . . I L. R. 12 Calc. 436

8. ——— and s 86—*Mortgage—Conditional sale—Suit for possession on foreclosure—Beng Reg XVII of 1806, ss 7, 8* The procedure laid down in the Transfer of Property Act may be applied to the case of foreclosure of a mortgage executed before the Act came into operation, provided it be so applied as not to affect the rights saved by s 2, cl (c), of the Act Where, therefore, under the provisions of Regulation XVII of 1806, notice of foreclosure had been served on a mortgagor by conditional sale, the mortgage having been executed and the foreclosure proceedings taken before the Transfer of Property Act came into force, and after the expiry of the year of grace, the money not having been paid, the mortgagee instituted a suit for possession on foreclosure, and when such suit was defended by a third party who had purchased the mortgaged property at an execution-sale and obtained possession before the commencement of the foreclosure proceedings, and the necessary notice had not been served upon him —*Held*, that it was competent to the Court to apply the procedure prescribed by the Transfer of Property Act and grant the mortgagee a decree in the terms of s 86, substituting the period of "one year" for the period of "six months" therein mentioned *Ganga Sahai* v. *Kishen Sahai, I. L R. 6 All 622*, referred to. PERGASH KOER *v.* MAHABIR PERSHAD NARAIN SINGH I. L. R. 11 Calc. 582

9. ——— *Mortgage—Foreclosure, suit for—Mortgage by conditional sale—Beng Reg XVII of 1806—Procedure—Statute, construction of.* Where a suit is brought, after the date of the Transfer of Property Act, for the foreclosure of a mortgage dated previous to the Act, the procedure to be followed is that given by the Transfer of Property Act; the procedure of Regulation XVII, 1806, not being saved by s. 2, cl. (c), of Act IV of 1882. *Ganga Sahai* v. *Kishen Sahai, I L R. 6 All. 262*, approved. *Per* WILSON, J.—It is a general rule in construing Statutes that in matters of substantive right they are not to be so read as to take away vested rights, but that in matters of procedure they are general in their operation. There is nothing in the Transfer of Property Act from which it can be beyond reasonable doubt concluded that the Legislature intended to depart from this settled principle of legislation. *Per* TREVELYAN, J.—There is a clear distinction between "relief" and the mode or procedure for obtaining such relief. The "relief" remains unaffected by a change of procedure The "rights and liabilities" of a mortgagor and mortgagee, and the "relief" in respect of such rights and liabilities, are the same under Act IV of 1882 as they were before. A different procedure for enforcing such rights and obtaining such relief, has, however, been adopted by the Transfer of Property Act. BHOBO SUNDARI DEBI *v* RAKAL CHUNDER BOSE . . . . I. L. R. 12 Calc. 583

——— ss. 2 cl. (c), (d); 111 cl. (d).

See MERGER . I. L. R. 36 Calc. 802

——— s 2, cl. 36.

See LANDLORD AND TENANT. I. L. R. 33 Calc. 786

——— s. 3

See CONTRACT . I. L. R. 33 Calc 702

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS L. R. 29 I. A. 203

See MORTGAGE . 10 C. W. N. 276

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING. I. L. R. 21 Calc. 110

See REGISTRATION ACT, 1877, s 50 I. L. R. 16 All. 478

1. ——— *Meaning of* ... of the word "notice" ... of 1882) ... h existed ... RAMAN *v.* BALLI . . . . I. L. R. ... All. 591

2 ——— *Mortgage—Registration, if it amounts to notice—Constructive notice.* Case in which it was held that the mere registration of puisne mortgages did not amount ... mortgagee, and

... or wilful abstention in not causing such ... 414. *Janki Pershad* v. *Kishen Dat, I. L. R. 16 All.* ... *I. L. R. 6* dissented from. *Lakshman* v. *Dasrat, I. L. R. 9 Bom. 168, Dundaya* v. *Chenbasapa, I. L. R. 11 Bom. 427, Chintaman* v. *Dareppa, I. L. R. 17 Bom. Bom 506, Narayan* v. *Bapu, I. L. R. 9 All. 591, 741, Churaman* v. *Balli, I. L. R.* disapproved. *Shan Maun Mull* v. *Madras Building Company, I. L. R. 15 Mad. 268, Dimodara* v. *Soma Sundara, I. L. R. 12 Mad. 429, Madras Building Company* v. *Rowlandson, I. L. R. 13 Mad 383, Inder Dawan Pershad* v. *Gobind Lall Chowdhry, Preo Nath Chattopadhya I. L. R. 23 Calc. 790,*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd*

——— s. 3—*concld.*

... and *Jadu* ... *W. N.* ... tion by ... s upon the facts and circumstances of that case—upon the degree of care and caution which an ordinary prudent man would necessarily take for the protection of his own interest by search into the registers kept under the Registration Act BUNWARI JHA *v.* RAMJEE THAKUR (1902) . 7 C. W. N. 11

——— ss 3, 6 (*e*), 130.

See ASSIGNMENT

I. L. R. 36 Calc 345

——— s. 4.

See REGISTRATION ACT, 1877, s. 17, CL (*d*).
I L. R. 17 Mad. 275

——— ss. 4, 107—*Registration Act, ss 17 (d), 49—Proof of terms of oral lease by unregistered argeement in writing by tenant to occupy on certain conditions—Such evidence not excluded by s. 92 of the Evidence Act* The effect of the closing words of s 4 of the Transfer of Property Act is that s 107 of that Act must be read along with s. 17 (*d*) of the Registration Act so as to add to the first sentence of s. (*d*) words to the following effect —"and all instruments referred to in s. 107 of the Transfer of Property Act." An instrument which does not fall within s. 107 of the Transfer of Property Act is not ...

lease can be made and is not an instrument referred to in s 107, although it is a lease within the definition in s. 3 of the Registration Act. Such a document is not compulsorily registrable when s. 17 (*d*) of the Registration Act read ...

——— ss. 4, 123.

See GIFT . I. L. R. 33 Calc. 584

——— s. 6.

See HINDU LAW—REVERSIONARY RIGHT.
I. L. R. 29 Mad. 120

See ONUS OF PROOF—HINDU LAW—ALIENATION . I. L. R. 17 All. 125

See RIGHT OF SUIT—MESNE PROFITS.
2 C. W. N. 43

1. ——— *Property—Actionable claim—Transferable claim—Civil Procedure Code, s. 266—Execution of decree—Attachment.*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 6—*contd*

Under the Transfer of Property Act, "property" includes an actionable claim. RUDRA PERKASH MISSER *v.* KRISHNA MOHAN GHATUCK
I. L. R. 14 Calc. 241

2 ——— *Reversionary right —Assignment of the interest of a Hindu rever-* ...

HARJAN SINGH . . I. L. R. 25 Calc. 778

3. ——— *Mesne profits, right to recover—Transferability of—Actionable claim—Transfer of Property Act, s. 130.* A right to recover mesne profits which are in the nature of damages is not transferable DURGA CHUNDRA ROY *v.* KOYLASH CHUNDER ROY . . 2 C. W. N. 43

4. ——— *Hindu law—Transfer by a Hindu reversioner of his reversionary interest Held*, that it is not competent to a Hindu reversioner to transfer his reversionary in- ...

——— s. 6 (a).

See COMPROMISE . I. L. R. 31 Mad. 474

See HINDU LAW—REVERSIONERS
I. L. R. 29 Calc. 355

See MAHOMEDAN LAW.
I. L. R. 31 Bom. 165

1. ——— *Spes successionis—Non-transferable and non-releasable—Deeds executed by pardanashin lady—Burden of proof—Mahomedan law.* It was not intended by s 6 (*a*) of the Transfer of Property Act to establish and perpetuate the distinction between that which according to the phraseology of English lawyers is assignable in law and that which is assignable in equity. SUMSUDDIN *v.* ABDUL HUSEIN (1906)
I. L. R. 31 Bom. 165

2. ——— *Hindu Law—Reversioner—Renunciation of reversionary right to a transfer of an expectancy and as such is void—Limitation Act (XV of 1877), Sch II, Art 127—Time does not* ...

who were also the reversioners of *V* renouncing ...

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 6 (a)—*contd.*

sion of *A* to his knowledge, from the enjoyment of his family property and that his right to partition was not barred by Article 127, Schedule II of the Limitation Act. *Held*, further, that the renunciation of their reversionary rights by the reversioners amounted to a transfer of an expectancy and was a nullity under s. 6 (a) of the Transfer of Property Act and that such renunciation cannot be a good consideration for a contract. [illegible] *v.* [illegible] 190[illegible]

I. L. R. 30 Mad. [illegible]

2. ———— Transfer of [illegible] by [illegible] or by consent decree—[illegible] in execution proceedings—[illegible] [illegible] [illegible]—[illegible], construction of [illegible]—Amendment of execution petition, power of Court to allow. *A*, the owner of an impartible and inalienable zemindari, which passed on the death of the owner for the time being who had only a life estate, to the senior male member of the family mortgaged it to *B* in 1882 without possession. Four male members of the family *C, D, E, F*, who were in the line of heirs joined *A* in executing the mortgage. Subsequently some usufructuary mortgages were executed to *B* and *B* was in possession of the zemindari. In 1894, Original Suit No. [illegible] of 1894 was brought by *B* against *A, C, D, E, F*, and others to recover the amount due under the mortgage of 1882. A consent decree was passed making defendants *A, C, D, E, F* liable for the amount and directing that in case the amount was not recovered in the lifetime of *A*, it should be recovered from the other defendants when they succeeded to the estate and the zemindari was made liable for the decree amount. *A* died in 1894. He was succeeded by [illegible] not a party to the suit and on the latter's death in 19[illegible] *C* succeeded as zemindar. In 1899 and 190[illegible] two applications for execution by sale of the whole zemindari were put in by *B* and were granted after notice served on *C*. The notices, however, only stated that application was made for execution of the decree, but the reliefs asked for were not stated. *B* applied again for execution in 190[illegible]. The prayer was for sale of the zemindari and for the appointment of a Receiver, but the prayer for sale was given up at the trial. *C* raised various objections which were overruled, and the Subordinate Judge appointed a Receiver to take charge of the zemindari and its appurtenances. *C* appealed:—*Held*, on appeal, that *C* in 1882 was not a claimant [illegible] with *A* to the zemindari and that the [illegible] by *C* of his right to the zemindari in 1882 was a transfer of a bare expectancy and was a nullity under s. 6 (a) of the Transfer of Property Act. The prohibition in s. 6 (a) of the Transfer of Property Act is based on principles of public policy, and the Court cannot allow such transactions to be effected by a consent decree. [illegible] *v.* [illegible] I. L. R. 2[illegible] Mad. 2[illegible], referred to. The principle on which English Courts grant relief [illegible] when the property actually vests, cannot [illegible] effect to in the face of express prohibition [illegible] ed in s. 6 (a) of the Transfer of Property Act. [illegible] order passed in execution proceedings [illegible] judicata only when the court gave [illegible] [illegible] of the relief prayed for. [illegible] *v.* *Gopalkrishna Pattar*, I. L. R. 2[illegible] [illegible] followed. *Held*, further, that as the [illegible] was validly appointed on the ground [illegible] property was the subject-matter of the [illegible] Appellate Court had jurisdiction to [illegible] as a means of realizing the amount from the judgment-debtor personally and the property [illegible] considered under attachment, [illegible] under s. 274 of the Code of Civil Procedure. Amounts realized by an [illegible] in possession after decree for sale [illegible] in satisfaction of the decree [illegible] under s. 295 of the Code of Civil Procedure; also, that under the circumstances of the [illegible] decree-holder may be considered to [illegible] for the enforcement of the decree against [illegible] sonally and the order of the lower Court [illegible] on that ground. Amendment of petition [illegible] setting a prayer for execution against [illegible] allowed. [illegible] *v.* [illegible] 190[illegible] . . . . I. L. R. 30 Mad. [illegible]

———— s. 6 (b)—

See [illegible] . . I. L. R. [illegible]

———— ss. 6, 19, [illegible]—[illegible] *v.* [illegible] [illegible] s. 1[illegible]—[illegible] [illegible] by will of [illegible] [illegible] [illegible]—[illegible] Act [illegible] of 1[illegible], [illegible]—[illegible] Act [illegible] [illegible] (1[illegible], [illegible]. *Held*, that the right of a [illegible] [illegible] or other [illegible] of a [illegible] property is not an estate in [illegible] or an estate in [illegible] property or an estate [illegible] was deferred to [illegible]. It is [illegible] not a [illegible] [illegible]. It does not [illegible] the definitions of a "vested interest" in s. [illegible] the Transfer of Property Act IV of 1882, [illegible] "a contingent interest" in s. [illegible] of the [illegible] s. 10[illegible] of the Indian Succession Act X of 18[illegible]. So far from being a vested or a contingent [illegible] or a right, in [illegible] or in [illegible], it is a [illegible] [illegible] or chance [illegible] of s. 6 of the Transfer of Property Act IV of 1882, [illegible] chance of [illegible] [illegible] succeeding to an estate [illegible] [illegible] of succession, which cannot be [illegible] [illegible]. [illegible] *v.* [illegible] 190[illegible] . . . . I. L. R. 30 Bom. [illegible]

———— s. 7.

See [illegible]—[illegible] of [illegible] [illegible] [illegible] of [illegible] [illegible] I. L. R. [illegible] Bom. 1[illegible]

..R OF PROPERTY ACT (IV .)—contd.

s. 8.

DEED—CONSTRUCTION
L. R. 30 I. A 71

: MORTGAGE . 9 C W. N. 710

e REGISTRATION ACT, s 18
I L. R. 18 Mad. 454

..e VENDOR AND PURCHASER—PURCHASERS, RIGHTS OF
I. L R. 22 Bom 610

———— *Mortgage—Superior and ..e rights existing in the same person— ords in mortgage-deed, effect of—Estoppel— Act (I of 1872), ss 92, 115—Judgment nunc* Defendant No 1 amongst other pro- ..ortgaged a taluk, in which he had a zamindari right and in some villages of .. had a subordinate *sarbarakari* interest. ..gage-deed did not in terms purport to pass ..*rakari* rights. But it is found that though ..*arakari* tenure was never allowed to be merged in the superior tenure, yet at the mortgage was created, it was not known ..y *sarbarakari* interest existed in these ..but both parties understood that the ..iterest in the taluk without reservation of ..*barakari* rights passed under the mortgage. ..y PARGITER, J —That it was not open to ..rtgagor, on subsequently discovering that the *sarbarakari* rights in these villages, to ..had not mortgaged his entire interest in ..lages, and that defendants Nos 2 and 3, ..ere subsequent *bonâ fide* mortgagees for ..of the *sarbarakari* interest, were in no better ..n. *Held* by WOODROFFE, J —That accord- ..the rule of construction embodied in s 8 of ..ransfer of Property Act, the general words

..ntered *nunc pro tunc* GOUR CHANDRA GAJANARAIN DEB *v.* MAKUNDA DEB (1905)
9 C. W. N. 710

——— ss. 8, 70—*Mortgage—Accession to ..gaged property* *Held*, that a theatre, erected

.. English law, which is, that all things which are ..nexed to the property mortgaged are part of the ..rtgage security and therefore the deed need ..tain no mention of structures or fixtures, ..less a contrary intention can be collected from ..e deed. MACLEOD *v.* KISSAN (1904)
I. L. R. 30 Bom. 250

TRANSFER OF PROPERTY ACT (IV OF 1882)—contd.

———— s. 10.

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS.
I. L R. 26 Mad. 157

See MARRIED WOMAN, PROPERTY OF.
I. L. R. 30 Mad. 378

1. ———— *Married Woman's Property Act (III of 1874), s 8—Restraint on anticipation.* S 10 of the Transfer of Property Act merely excepts from the general rule laid down in s. 8 of the Married Woman's Property Act, III of 1874, the particular case of a married woman, and does not give to a restraint upon anticipation any greater force than it had before the passing of the Act, but merely preserves to it the effect it had previously, leaving the Married Woman's Property Act of 1874 and the decisions upon it untouched. HIPPOLITE *v.* STUART . I. L. R. 12 Calc. 522

2 ——— and s. 2—*Condition against alienation—Inheritance—Deed of compromise—Bengal Civil Courts Act, VI of 1871, s. 24.* In a suit for possession of certain shares in certain villages a compromise was effected between the plaintiffs and *B*, the defendant The terms of the compro-

sequently, certain creditors of *B* attached the shares referred to in the deed in execution of a

by OLDFIELD, J., that the deed of compromise passed an absolute estate to *B* and his heirs to which the law annexed a power of transfer, and

the rule contained in s 10 of the Transfer of Pro-

objecting to the attachment to show that, under the Hindu law the rights of *B* in the property ceased to exist at his death, or that his estate devolved upon them free of his debts; that the Hindu law being silent on this subject, the principles of justice, equity, and good conscience

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 10—*concld.*

must be applied, to which, so far as transfer was concerned, effect was given by s. 10 of the Transfer of Property Act; that the restriction imposed by the deed of compromise upon *B's* powers of alienating the absolute estate which it conferred upon him were opposed to the policy of the law and could not be recognised; and that *B* must be held to have had an absolute estate which would devolve upon his heirs, and which could be sold in execution of decrees for his debts. *Tagore Case, 9 B L R. P.C. 377,* referred to BHAIRO *v.* PARMESHRI DAYAL . . I. L. R. 7 All. 516

3. ——— and s. 12—*Transfers by act of parties—Assignments by operation of law* Ss. 10 and 12 of the Transfer of the Property Act (IV of 1882) relate only to transfers by act of parties. *In the matter of the* WEST HOPETOWN TEA COMPANY I. L. R. 12 All. 192

——— ss. 10, 11.

See RIGHT OF SUIT—CONTRACTS AND AGREEMENTS . I. L. R. 8 All. 452

——— ss. 10, 110 (g)—*Perpetual lease—Covenant against alienation without covenant for re-entry—Construction of documents* Where a perpetual lease of a village to the lessee and his heirs contained a covenant against alienation by the lessee, but no covenant giving the lessor a right of re-entry upon breach of the former covenant, it was *held* that the successors in title of the lessor could not recover the property the subject of the lease from the alienees of the successors in title of lessee *Nil Madhab Sikdar v Narattam Sikdar, I L R. 17 Calc 826,* and *Parmeshri v. Vittappa Shanbaga, I L R 26 Mad. 157,* followed. NETRAPAL SINGH *v* KALYAN DAS (1906)
I. L. R. 28 All 400

——— s 14.

See PERPETUITIES, RULE AGAINST.
I. L. R. 20 Bom. 511

——— ss 14, 15 and 123—*Trust validly created by registered instrument without delivery of possession—Ss 14 and 15 of the Transfer of Property Act do not affect any rule of Hindu Law—Hindu Law—Gift—Settlement on persons then in existence at close of a life in being valid—Trusts Act (II of 1882), s 6* *R* by registered deed of settlement settled property in trust and after making various provisions for the maintenance of himself and his wife and his grand-daughters *V* and *R* further provided that on the death of the survivor of the grand-daughters, the trustees were to hold the property in trust for the sons of the grand daughters, who attain 18 and the daughters of the grand-daughters who should attain that age or marry. A female child on the consummation of marriage or on attaining 18 was to be given R1,000, and a male child on attaining age was to be given his share of the property. The settlor did not give possession of the properties to his trustees, but remained in possession till his death.

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 14—*concld.*

In a suit by the reversioners of *R* to set aside the settlement as null and void :—*Held,* that a transfer of property and a valid declaration of trust were effected by the registered deed, though unaccompanied by physical delivery of possession and that nothing in s. 6 of the Trusts Act was in conflict with this view. *Held,* also, that the settlement by way of remainder in favour of the sons of *V* and *R* (such sons being in existence at the date of the settlement) was valid under the Hindu Law. A settlement by way of remainder to take effect on the happening of an event following immediately on the close of a life in being is good. *Sreemutty Soorjumoney Dossee v. Denobundoo Mullick, 9 Moo. I. A. 134,* followed. A bequest to a class, some of whom could not take, is not void, but will ensure for the benefit of such of the class, who can take The rule in *Leake v. Robinson, 2 Mer. 363,* does not apply to the wills of Hindus. *Bhagabati Barmanya v. Kali Charan Singh, I. L. R. 32 Calc. 992,* referred to and followed. *Ram Lal Sett v. Kanai Lal Sett, I. L. R. 12 Calc. 663,* referred to and followed. Ss. 14 and 15 of the Transfer of Property Act do not affect the rule of Hindu Law above stated and do not apply to Hindu wills. In determining the validity or otherwise of dispositions of property under ss. 14 and 15 of the Transfer of Property Act regard must be had to possible events and not to events as they have actually happened; and if it is possible that the vesting may be postponed beyond the limits fixed by the sections, the disposition will be bad, although, as events actually happened, it was not so postponed. RANGANADHA MUDALIAR *v.* BAGIRATHI AMMALL (1906) . I. L. R. 29 Mad. 412

——— ss. 17, 89.

See APPEAL . I. L. R. 31 Calc. 373

——— *Order for stay of sale—Mortgage decree—Civil Procedure Code (Act XIV of 1882), ss. 244, 291 and 588—Order absolute for sale—Court's power to adjourn sale of mortgaged property* An appeal lies against an order for stay [illegible] directed to be sold in execution [illegible] that the [illegible] of the Code [illegible] absolute for [illegible] sale had been made under s. 89 of the Transfer of Property Act, the Court has power to adjourn the sale of the mortgaged property with a view to give time to the mortgagor to raise money to pay off the decree. It could adjourn the sale to a future [illegible] in the event of [illegible] ason. *Kedar* [illegible] *R. 25 Calc.* [illegible] *nan, I. L. R.* [illegible] AMKISHEN *v.* [illegible] 31 Calc. 373

——— s. 25—*Lis pendens—Contentious suit—Suit for partition—Admission of share in plaint—Transfer after filing of plaint—Objection to share in written statement.* A instituted a suit

TRANSFER OF PROPERTY ACT [illegible]

[illegible]

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

[illegible]

I. L. R. [illegible] Calc. [illegible]
I. L. R. [illegible] All. [illegible]

[illegible] creating [illegible] without [illegible] maintenance. [illegible]

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 39—*concld.*

upon the construction of the decree that it was the intention of the parties to create a charge on the property for the payment of maintenance within the meaning of s. 100 of the Transfer of Property Act, the charge could be enforced against *bonâ fide* transferees for value without notice. *Harjas Rai* v. *Naurang, All. Weekly Notes,* (1906) 82, distinguished. MAINA *v.* BACHCHI (1906)

I. L. R. 28 All. 655

———— s. 40—*Trust Act (II of 1882), s. 91—Mortgagee with knowledge of facts which might have revealed the existence of an equitable right bound by such right.* Where a mortgagee, at the time of his mortgage, is aware of circumstances, which ought to have put him on enquiry, and such enquiry, if made, would have revealed the existence of an agreement by the mortgagor to mortgage the property to a third party, the mortgagee's rights will, on the principles embodied in s. 40 of the Transfer of Property Act and s. 91 of the Trusts Act, be postponed to the rights of such third party. KAMESWARAMMA *v.* SITARAMANUJA CHARLU (1905) . . I. L. R. 29 Mad. 177

———— s. 41.

See GUARDIAN I. L. R. 29 All. 292

See N.-W. P. RENT ACT, s. 7.

I. L. R. 8 All. 409

1. ———— *Ostensible ownership—Purchase bonâ fide for value from ostensible owner—Laches—Decision based upon ground not specifically pleaded.* Where a Court sees that the rights of one of two innocent parties must be sacrificed, it is entitled to consider whether anything in the conduct of the party who comes into Court and seeks relief has debarred him from asserting his right. Where the plaintiff had for many years left another person in possession of a house, and the defendant had become at auction sale the *bonâ fide* purchaser for value of the house under a decree against such person as ostensible owner, the Court found that s. 41 of the Transfer of Property Act applied, and dismissed the plaintiff's suit. The Court is not precluded from basing its decision upon a ground not specifically pleaded by either of the parties. THAKURI *v.* KUNDAN

I. L. R. 17 All. 280

2. ———— *Transfer by ostensible owners—Inquiry by transferee as to title of transferors—Reasonable care.* A Government official, owning *zamindari* property in the district in which he was employed, caused that property to be recorded in the revenue-papers in the name of his young sons. The sons sold portions of the property and mortgaged others. The vendee and mortgagee satisfied himself that the property had been recorded for some years in the names of the sons, but there stopped, and made no further inquiries as to whether the property really belonged to the sons, who were the ostensible owners, or not. *Held,* that the transferor,

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 41—*concld.*

though acting in good faith, had not taken reasonable care to ascertain that the transferor had power to make the transfer. PARTAP CHAND *v.* SAIYIDA BIBI (1901) . . I. L. R. 23 All. 442

3 ———— *Mortgage by ostensible owner.* Where certain mortgagees took a mortgage from a person, who was in possession of the property mortgaged, was recorded as owner, and held the title-deeds of the property, it was *held* that there was nothing in the transaction to put the mortgagees on inquiry as to the real title to the property, but the principle of s. 41 of the Transfer of Property Act, 1882, applied, and a suit to restrain the mortgagees from selling the property in execution of a decree on their mortgage was rightly dismissed. *Ramcoomar Koondoo* v. *John and Maria Mc Queen, 11 B. L. R. 46,* followed. KHWAJA MUHAMMAD KHAN *v.* MUHAMMAD IBRAHIM (1904) . . I. L. R. 26 All. 490

[illegible]

the mortgagee obtaining a personal decree under s. 90 of the Transfer of Property Act (IV of 1882) against the mortgagor, if the requirements of the section are otherwise fulfilled a personal covenant to pay is implied in and is an essential part of every simple mortgage. *Savaba Khandapa* v. *Abaji Jotirav, I. L. R. 11 Bom. 475,* not followed. [illegible]

[illegible]

———— s. 43.

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.

I. L. R. 18 Mad. 492

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

I. L. R. 26 Bom. 379

See SALE . . 9 C. W. N. 1019

See VENDOR AND PURCHASER—MISCELLANEOUS CASES.

I. L. R. 14 Mad. 459

———— *Mortgagor acquiring the mortgaged property cannot use the mortgage right as a shield against subsequent mortgages executed by himself.* The doctrine that a person paying off mortgage or purchasing the mortgaged property in execution of a decree on the mortgage can set up such mortgage as a shield against puisne incumbrancers will not, on the principle embodied in s. 43

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 43—*contd.*

of the Transfer of Property Act, apply, when the person so paying or purchasing is the mortgagor himself. The effect of the payment or purchase in such cases so far as the mortgagor and those claiming under him are concerned will be simply to extinguish the mortgage, and the rights of subsequent incumbrancers will be determined as if such prior mortgage never existed. MANJAPPA ROI *v.* KRISHNAYYA (1905)

I. L. R. 29 Mad. 113

——— s. 44.

See HINDU LAW—PARTITION—RIGHT TO PARTITION—PURCHASER FROM CO-PARCENER I. L. R. 13 Mad. 275

See PARTITION ACT (IV OF 1893), s. 4 I. L. R. 30 All. 324

s. 45.

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF . . 4 C W N. 465

——— s. 48.

See N.-W P RENT ACT, s. 7 I. L. R. 8 All. 409

——— s. 50—*Mortgage with possession—Lease to mortgagor—Death of the mortgagee and his surviving undivided brother—Sister entitled as heir—Possession and management by mortgagee's widow—Payment of the rent by the tenant in good faith to mortgagee's widow—Suit by sister for recovery of rent—Assignment by lessor not necessary* On the 14th December 1895 Lingappa mortgaged with possession certain property to Subraya who on the same day let out the property to Lingappa for twelve years. Subsequently Subraya having died his interest as mortgagee survived to his undivided brother Ramkrishna Ramkrishna died in the year 1901 and thereafter possession and management of the property was taken by Subraya's widow Gowri. She got her [illegible]

[illegible]

chargeable with rent sued for. S. 50 of the Transfer of Property Act (IV of 1882) was applicable, inasmuch as the defendant in making the payment to Gowri acted in good faith and had no notice of the plaintiff's interest in the property. The language of the section is general and no assignment by the lessor during the tenancy was necessary. KAVERIAMMA *v* LINGAPPA. (1908)

I. L. R. 33 Bom. 96

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 51.

See DECREE—FORM OF DECREE—MORTGAGE . . I. L. R. 8 All. 502

See EJECTMENT, SUIT FOR.

I. L. R. 29 Calc. 871

1. ——— *Equitable principle embodied in s. 51 not opposed to Mahomedan Law—Mahomedan Law—De facto guardian, power of, over minor's property* Under Mahomedan Law, a sale by the mother as *de facto* guardian of her minor son, of the property of such minor is not binding on him. The rule of equity embodied in s 51 of the Transfer of Property Act is not opposed to any principle of Mahomedan Law and s. 2 does not preclude its application in cases decided under the Mahomedan Law. What constitutes good faith within the meaning of s 51 is a question of fact and a person may act in good faith, though he acts under a mistake of Law. DURGOZI ROW *v.* FAKEER SAHIB (1906) . I. L. R. 30 Mad. 197

2 ——— *Improvements, right to claim compensation for, when allowable.* Good faith within s 51 of the Transfer of Property Act is not necessarily precluded by facts showing negligence in investigating the title. Where, however, a purchaser knows or must be presumed to know that the vendor could sell only under certain circumstances, and he either knows that such circumstances do not exist or wilfully abstains from making any enquiries on the subject, the mere fact that he purchased for [illegible]

I. L. R. 32 Mad. [illegible]

3. ——— A "belief" in good faith under s. 51 of the Transfer of Property Act (IV of 1882) means not only acting honestly and fairly but includes due enquiry. So, where a person consciously avoids making an enquiry, though he may be said to have a belief in [illegible]

[illegible]

Bibee, 4 C. W. N. [illegible] referred to ABHOY CHURN [illegible] DASSEE (1908) . . [illegible]

——— s. 52

See s. 88 . . [illegible]

See FOREIGN COURT [illegible]

[illegible]

See PRE-EMPTION [illegible]

See LIS PENDENS

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 52—*contd*

1. ———————— *Registered and unregistered documents—Transfer of property "pendente lite"—Act III of 1877 (Registration Act), s. 50.* B held a decree for the sale of property which had been mortgaged to him by an instrument which was not compulsorily registrable, and was not registered. N purchased the same property *pendente lite* by a registered deed of sale. *Held*, that there was here no competition between a

favour. BHAGWAN DAS *v* NATHU SINGH

I. L. R. 6 All. 444

2. ———————— *Lis pendens—Contentious suit.* Where there are several defendants to a suit, the suit does not become "contentious" within the meaning of s 52 of the Transfer of Property Act, 1882, only when all the defendants are served with summonses in the suit, nor can a suit be contentious as regards some of the

3. ———————— *Lis pendens—Suit for maintenance by widow praying it to be charged on immoveable property—Right to immoveable property in dispute in such suit* A suit in which a widow claims to get her maintenance made a charge on immoveable property is one in which a right to such immoveable property is directly and specifically in question within the terms of s. 52 of the Transfer of Property Act, and any transfer of the property during the pendency of the suit, not effected for the purpose of paying off any debt entitle to priority over the claim for maintenance, will be affected by the *lis pendens* created by the suit *Bazayet Hossain* v. *Dooli Chand, I. L. R. 4 Calc 402, 409,* referred to and followed DOSE THIMMANNA BHUTTA *v* KRISHNA TANTRI (1906) . . I. L. R. 29 Mad. 508

4. ———————— *The doctrine of lis pendens, applies to cases, in which decrees are*

and a decree passed in pursuance of such compromise, provided such compromise is not tainted by fraud or collusion The word "contentious" is used in s. 52 of the Transfer of Property Act in the sense in which it is used in Probate Practice and means the opposite of common form or voluntary business. ANNAMALAI CHETTIAR *v.* MALAYANDI APPAYA NAIK (1905)

I. L. R. 29 Mad. 426

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 52—*concld.*

5. ———————— *Civil Procedure Code (Act XIV of 1882)—Contentious suit—Active prosecution—Non-service of the summons on the defendant—Transfer of property by the defendant—Lis pendens.* S. 52 of the Transfer of Property Act (IV of 1882) imposes two conditions—(a) the existence of a contentious suit and (b) that the

plaintiff's part, the suit would be contentious, notwithstanding the fact that the service of the summons could not be effected on the defendant. A suit cannot be said to be non-contentious merely because the decree therein is passed *ex parte*. *Annamalai Chettiar* v. *Malayandi Appaya Naik,*

Marwari, I. L. R. 31 Calc. 745, not followed. *Jogendra Chunder Ghose* v. *Fulkumari Dassi, I. L. R. 27 Calc. 77,* and *Annamalai Chettiar* v. *Malayandi Appaya Naik, I. L. R 29 Mad. 426,* approved. *Per* BEAMAN, J.—I am clearly of opinion that from

———— *Lis pendens exists until the final decree in appeal is passed.* The functions of an Appellate Court are not the same in India as in England and America. In India, the decree of the Appellate Court is, under the Code of Civil Procedure, the final decree in the case, and the proceedings in appeal must, for the purposes of s. 52 of the Transfer of Property Act, be treated as a continuation of the proceedings in the lower Court. A transfer of property, which is the subject-matter of contentious litigation, by a party thereto *after* the date of the decree of the lower Court and *before* an appeal is preferred against such decree, will be affected by the principle of *lis pendens* under s. 52 of the Transfer of Property Act. SETTAPPA GOUNDAN *v.* MUTHIA GOUNDAN (1908) . . . I. L. R. 31 Mad. 268

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— ss. 52, 53.

See LIS PENDENS.
I. L. R. 32 Calc. 186

——— *Estate under administration—Purchase from legatee or heir, effect of—Transfer of immoveable property in fraud of creditor—Lis pendens—Pleadings—Suit on mortgage—Sale in execution of mortgage-decree—Purchase of equity of redemption by mortgagee before sale— Validity of sale.* When the estate of a deceased person is under administration by the Court or out of Court, a purchaser from a residuary legatee or heir buys subject to any disposition, which has been or may be made of the deceased's estate in due course of administration. An issue as to whether a transfer of immoveable property was fraudulent against a creditor within s. 53 of the Transfer of Property Act can be raised and decided only in a suit properly constituted for that purpose; and the present suit not having been so constituted either as to parties or otherwise, that question was not decided and decision given as in the case presented to the Court. *Mallarjun v Narhari, 5 C. W. N 10 s c. L R 27 I A 236,* referred to In a suit purporting to be brought on a mortgage, only a money-decree was made It was pointed out that so long as that decree remained unreversed, the suit could not be regarded as one in which a right to immoveable property was "directly and specifically in question," within s. 52 of the Transfer of Property Act. By the time mortgaged properties were brought to sale in execution of a decree obtained on the mortgage, the equity of redemption had been purchased by the mortgagee himself in the name of a *benamidar*, so that at the time of sale the mortgagee alone was represented on each side of the record The mortgagee himself became a purchaser at that sale *Held*, that the sale under such circumstances passed no title [illegible]

[illegible]

——— s 53.

See FRAUDULENT CONVEYANCE.
I. L. R. 34 Calc. 999

See FRAUDULENT TRANSFER.
I. L. R. 30 Mad. 6

See LIS PENDENS I. L. R. 13 All. 371
13 C. W. N. 226

See MAHOMEDAN LAW—GIFT.
I. L. R. 29 Bom. 428

See MORTGAGE-BOND
I. L R. 35 Calc. 1051

See PARTNERSHIP.
I. L. R. 31 Mad. 206

See REGISTRATION ACT, 1877, s 50.
I. L. R. 8 All. 540

1. ——— ——— *Stats. 13 Eliz., c 5, and 27 Eliz., c. 4—Voluntary transfers as against creditors or subsequent transferees for consi-*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 53—*contd.*

deration—Notice—Registration—Duty of mortgagee in searching for prior incumbrances—Post-nuptial settlement with power of appointment to wife—Deed of appointment in favour of children—Secrecy as evidence of fraud—Subsequent mortgage by wife and trustee of settlement without mention of deed of appointment. In 1870 the defendant *J* and her husband executed a post-nuptial settlement by which they assigned certain Municipal debentures to the defendant *E* (the brother of *J*) and one *G* "upon trust for *J* during her life and after her death as she should by deed or will appoint," and subsequently the trustees, in pursuance of a power given them by the settlement, sold the debentures and invested the proceeds in house property in Calcutta, such house and premises thereafter representing the trust property and being held by the trustees on the trusts of the settlement. On the 17th December 1878 *E* retired from the trust and made over his interest to the remaining trustee *G*, and on the same day *J* executed a deed of appointment in favour of her children representing to her solicitor that she did so to protect the property from her husband. The deed of appoint- [illegible]

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 53—*contd.*

G's solicitors saying that they had searched the register up to 1884. *J* first set up the deed of appointment as a defence in the present suit, which was brought on the mortgages against *E* and *J* and their children, and in which the plaintiffs sought to recover the amount advanced with interest, and prayed that the deed might be declared void as against them. In this suit *E* did not appear. The principal grounds of defence were that the mortgage-deeds were not explained to *J*, that she was ill at the time and left all the transactions to her brother *E*, and that she did not know the contents of the deeds which she contended were therefore not binding on her; that the deed of appointment was made in consideration of her natural love and affection for her children; and that the plaintiffs had notice of it On the facts the lower Court (SALE, *J*) found that she had full and complete knowledge of the contents of the mortgage-deeds and was bound by them, and that there was

ing of the Transfer of Property Act, the deed of appointment was a voluntary conveyance and fraudulent within the meaning of the Stat 27 Eliz, c. 4, and void as against the plaintiffs as subsequent transferees for valuable consideration; the legal presumption of fraud which the Court was entitled to make on the cases decided on that Statute rendering the question of notice or no notice immaterial *Judha* v. *Abdool Kureem, 22 W. R 60; Doe d. Otley* v *Manning, 9 East 59; Doe d Newman* v. *Rushan, 17 Q B, 724;* and *Godfrey* v *Poolee, L R 18 Ap Cas. 497,* referred to S. 53 of the Transfer of Property Act has not altered the law in that respect The deed of appointment came within the definition of "transfer of property" given in that Act, there being nothing in the Act to suggest that it was intended to confine its operation to transfers by contract The words of s 53, "may be presumed to have been made with such intent as aforesaid" (*i e.*, with a fraudulent intent), should be construed in accordance with the cases decided under the Stat. 27 Eliz, c. 4 Even assuming that it was intended by s 53 to exclude voluntary conveyances of which a subsequent transferee had notice from the presumption of fraud:—*Held*, on the facts, that the plaintiffs had no notice of the deed of appointment The doctrine of notice, if applied, must be applied in accordance with, and subject to, the definition of notice given in the Act itself. There was no actual notice, and there was not such an "abstention from inquiry or search" on the part of the plaintiffs

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 53—*contd.*

doctrine of registration amounting to notice, as

Court is to presume fraud only in accordance with the facts of each particular case, the facts of the present case were amply sufficient to raise the presumption as regards the deed of appointment. That deed therefore was fraudulent as against the plaintiffs, and they were entitled to a declaration that it was void and inoperative as against them. *Held*, on appeal (by PETHERAM, *C.J.*, and NORRIS and O'KINEALY, *JJ.*), that, looking to the unusual way in which the transaction as to the deed of appointment was carried out, and the secrecy given to it, the result of which was to enable *E* and *J* to raise money on the trust property by inducing persons to believe that the whole title lay in themselves alone and on the other facts in the case, apart from the presumption which might be made under s. 53 of the Transfer of Property Act, where a transfer is made gratuitously for a grossly inadequate consideration, *viz*, that it may be presumed to have been made to defraud or defeat creditors, the decree of the Court below was correct. JOSHUA *v.* ALLIANCE BANK OF SIMLA . I. L. R. 22 Calc. 185

2. ———— *Rights of a transferee in good faith and for consideration—Good faith, meaning of—Effect of transfer made with the object to delay or defeat a creditor, the transferee not being aware of such an intention.* Where a transferee for value is not aware of any intention on the part of the transferor to defeat or delay his creditors, but has knowledge only of an impending execution against the transferor, such knowledge ... the transfer, and

, other-

of s. 53

Ram-

referred

SIRDAR

I. L. R. 24 Calc. 825
1 C. W. N. 665

3. ———— *Transfer in fraud of creditors—Good faith* When it is said that a deed is not executed in good faith, what is meant is that it was executed as a mere cloak, the real intention of the parties being that the ostensible grantor should retain the benefit to himself RAMASAMIA PILLAI *v.* ADINARAYANA PILLAI I. L. R. 20 Mad. 465

4. ———— *Debtor and creditor—Intent to delay and defeat creditors—Stat. 13 Eliz., c. 5.* A mere preference by a debtor of one creditor to another, and *à fortiori* a mere *bonâ fide*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd*

s. 53—*contd*

security given to a creditor to the extent of his debt, is not within s. 53 of the Transfer of Property Act, 1882, as it is not within the English Statute of 13 Eliz, c 5 But where a document given by way of security goes further and secures debts that are not due, the effect is, *quoad* such fictitious debts, to defeat or delay the creditors. Where a party intends to rely upon a document as not within s. 53 of the Transfer of Property Act because it merely creates a preference in favour of certain creditors over the rest, he must show strictly that the document is such and nothing more NARAYANA PATTAR *v*. VIRARAGHAVAN PATTAR ...
I. L. R. 23 Mad. 184

5. ———— *Assignment in fraud of creditors—Interest taken under will.* B died in 1891, leaving a widow (defendant No 1) and two sons P and D (defendants Nos 4 and 5) By this will he gave his widow a life interest in the rents and income of his property subject to the

[illegible]

dered her life-interest to her son *D*, and that such interest was therefore not available to satisfy the plaintiff's decree against her As to *P's* interest the defendants alleged that by a deed of settlement,

[illegible]

That even independently of the attachment, her assignment to her own son *D* was invalid as against

[illegible]

6. ———— Fraudulent conveyance—*Sale by debtor in order to defeat an execution—Intent to defeat or delay creditors—13 Eliz, cap 5, and 27 Eliz, cap. 4.* Bhagwant filed a suit against Ganpati, the manager of a Hindu undivided family, to recover a sum of money due to him, and on the same day obtained an order for attachment before judgment of certain property belonging to the defendant and his family. Before the attachment was actually effected, the property in question and other property was sold to Kedari (defendant No 1). The deed of conveyance was executed on the day the suit was filed, and the order for attachment was made and notice of the order for attachment was given both to the vendor and the purchaser before the deed was registered, but before the attachment was actually effected. Subsequently the plaintiff obtained a money decree in his suit, and then filed this suit against the vendor and purchaser, praying for a declaration that the conveyance was fraudulent and void, and that the property was liable to attachment in execution of his decree The lower Courts dismissed the suit, holding that the

[illegible]

pated execution, that did not show that the intent was to defeat or delay the creditory so as to render cl 1 of s 53 applicable Such intent would probably be inferred if their was such an inadequacy of consideration as to bring the case within cl. 1 of s 53. Cl 3 of the section only comes into operation when the facts justify the application of cl. 1 or cl 2 BHAGWANT APPAJI *v*. KEDARI KASHINATH (1900) . I. L. R. 25 Bom. 202

7. ———— *Suits by one creditor to set aside deed—Creditor not a judgment-creditor—Meaning of the word "creditor"—Statute 13 Eliz, c 5.* Under s 53 of the Transfer of Property Act (IV of 1882), a creditor may sue to set aside a deed executed by his debtor, by which he (the creditor) is defrauded, defeated or delayed,

[illegible]

VENKAPPA SHANBOG (1902)
I. L. R. 27 Bom. 146

8. ———— *Transfer to one creditor*—

June 18[illegible]
mediately
property
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Kupaji, obtained letters of administration to the estate of the deceased, and, as such administrator, sold the property to the son of mortgagee, the latter having died. Subsequently the plaintiffs obtained a money-decree against the estate and

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 53—*contd.*

sued to establish their right to attach the property, alleging that the sale was void under s 53 of the Transfer of Property Act (IV of 1882). The lower Appellate Court held that the purchase was for value, and that there was no evidence of fraud, and it dismissed the suit. On second appeal:—*Held* (affirming the decree), that the sale was valid. The fact that it was a sale of the whole of the property of the deceased to one of his creditors made no difference The only question was whether the transaction was in good faith and for proper

MOTIJI (1903) I L R. 27 Bom. 322

9. ——— *Fraudulent transfer—Suit to set aside fraudulent conveyance—Frame of suit—Appeal.* A suit under s 53 of the Transfer of Property Act to obtain a declaration that a con-

Patel v *Dhunbai*, *I L R 16 Bom 1*, *Ishvar Timappa Hegde* v *Devare Venkappa*, *I L.R. 27 Bom 146*; *Chatterput Singh v. Maharaj Bahadur*, *I L. R. 32 Calc 198*, and *Reese River Silver Mining Co* v. *Atwell*, *L R 7 Eq 347*, referred to But a suit cannot be dismissed on this ground, if the objection is taken for the first time in appeal HAKIM LAL v. MOOSHAHAR SAHU (1907)

I. L. R. 34 Calc. 999

10. ——— *Mortgage—Assignment of invalid mortgage—Right of assignee as against mortgagor and subsequent mortgagee for consideration—Maxim—Qui prior est tempore potior est jure* On the 23rd of October 1897 one *MA* executed a mortgage of certain property in favour of *HA*, which was registered on the 29th of October 1897 This mortgage was found to be fictitious and without consideration and to have been made solely for the purpose of defeating the creditors of the mortgagors On the 15th of August 1898 the mortgagee transferred his rights under this mortgage to his wife *B*, in part satisfaction of her dower debt It was found that this was a *bonâ fide* transaction and that *B* obtained the transfer of the mortgage without any knowledge of its fraudulent character and was a transferee in good faith and for consideration. On the 29th of October 1897 the same property was again mortgaged to one *BP*, who accepted the mortgage in ignorance of the existence of the mortgage of the 23rd October 1897. This mortgage was registered on the 22nd of March 1898 *BP* afterwards brought a suit for sale on his mortgage impleading *B* as a defendant, as well as the mortgagor and the prior mortgagee. *Held*, that *B* was entitled

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s 53—*concld.*

to no relief as against *BP*, though as against the

Stock Banking Company v. *Gleadhill*, [1891] 1 Ch D 31, distinguished. *Cockell* v. *Taylor*, *15 Beav 103*; *Ogilvie* v. *Jeaffreson*, *2 Giff. 353*; *Parker* v. *Clarke*, *30 Beav. 54*; *French* v. *Hope*, *L. J. 56 Ch D 363*; *Bickerton* v. *Walker*, *L. R. 13 Ch. D 151*, and *Rice* v *Rice*, *2 Drew. 73*, referred to BASTI BEGAM v. BANARSI PRASAD (1908)

I. L. R. 30 All. 297

11. ——— *Mortgage—Part of consideration fictitious—Intention to defeat or delay creditors—False case, setting up of, at a later stage—Effect* A mortgage purported to secure R8,500 But it was proved that R4,853 only of the consideration money had passed. It was, however, not shown that the transaction was intended *only* to defeat or delay the realisation of their dues by certain other creditors, though after the latter

circumstances a decree should be passed in favour of the mortgagee on the footing of the amount actually advanced, that part of the transaction being separable from the rest. The setting up at a later stage of a false case should not affect rights created by the transaction. *Ishan Chandra Das Sarkar* v. *Bishu Sardar*, *I. L R. 24 Calc. 825*; *Narayana Pattar* v. *Viraraghavam Pattar*, *I. L R. 23 Mad 184*, relied on. RAJANI KUMAR DAS v. GOUR KISHORE SAHA (1908)

I. L. R. 35 Calc. 1051
12 C. W. N. 761

12. ——— *Transfer with intent to defeat or delay creditors—Mahomedan law—Transfer by Mahomedan to one of his wives with intent to defeat claim of the other for dower.*

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satisfaction of her claim for dower. *Held*, on suit by the first wife to have the transfer above-mentioned set aside, that such transfer was not necessarily unimpeachable, but that it was necessary to find, first, that the transfer was a real and not merely a colourable transaction; and, secondly, that the second wife had not combined with her husband in carrying out the transaction in question for the improper purpose of defeating the claim of the first wife. HAMID-UN-NISSA v. NAZIR-UN-NISSA (1909) . . I. L R. 31 All. 170

——— s. 54.

See EASEMENTS ACT (V OF 1882), s. 4
I. L. R. 31 All. 612

See ESTOPPEL . I. L. R. 36 Calc. 920

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 54—*contd.*

See MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF PRE-EMPTION—GENERALLY. I. L. R. 16 All 344

See MORTGAGE—REDEMPTION—RIGHT TO REDEEM . I. L. R. 24 Mad. 449

See PRE-EMPTION—CONSTRUCTION OF WAJIB-UL-URZ. I. L. R. 7 All. 462; 626

See REGISTRATION ACT, 1877, s. 17. I. L. R. 10 All. 20 I. L. R. 27 Calc. 468

See REGISTRATION ACT, 1877, s. 18 I. L. R. 18 Mad. 454

See REGISTRATION ACT, 1877, s. 48 I. L. R. 13 Mad. 324 I. L. R. 27 Calc. 468

See SALE CERTIFICATE I. L. R. 35 Calc. 614

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.

See VENDOR AND PURCHASER—INVALID SALES . . I. L. R. 16 Mad. 61

1. ——— ——— *Optional registration.* Per GARTH, C.J.—S. 54 of the Transfer of Property Act virtually abolishes optional registration. NARAIN CHUNDER CHUCKERBUTTY *v.* DATARAM ROY I. L. R. 8 Calc. 597 : 10 C. L. R. 241

2. ——— ——— *Sale — Transfer of immoveable property without written conveyance in satisfaction of a decree—Title of transferee—Mahomedan law—Dower.* A Mahomedan widow obtained a decree for dower against her four sons. The decree was partly satisfied, and as [illegible]

[illegible]

Held, that although the transfer of the property in question was not a transfer made by a Court in [illegible]

3. ——— *Enforceable contract of sale followed by delivery of possession to defendant, but not followed by registered sale deed no defence to suit for possession—Construction of stat.* [illegible]

[illegible] there is no registered sale, create any interest in the property agreed to be sold and cannot, even if [illegible]

[illegible] *Dorasami, I. L. R. 24 Mad. 377*, considered. KURRI VEERAREDDI *v.* KURRI BAPIREDDI (1905) I. L. R. 29 Mad. 336

4. ——— *Transfer of property by the Road Cess Department to the Public Works Irrigation Department—Property valued at less than 100 rupees—Delivery of possession.* A certain plot of land being transferred by the Road Cess Department to the Public Works Irrigation Department for a sum less than one hundred rupees without any registered instrument, the Secretary of State for India in Council instituted a suit against the defendants for recovery of possession [illegible] taken that [illegible] perty, as [illegible] n contra- [illegible] Transfer [illegible] h as the transfer was not made by a registered instrument, and as also the plaintiff had been in occupation [illegible]

[illegible] *Goala, I. L. R. 22 Calc. 179*, distinguished. [illegible] DRAPADA BANERJEE *v.* SECRETARY OF STATE FOR INDIA (1907) . I. L. R. 34 Calc. [illegible]

5. ——— [illegible]

[illegible] *Bhagwan Das, I. L. R. 11 All.* [illegible] *Motiram v. Daru bin Dhondi,* [illegible] *547*; and *Sagaji v. Namdev,* [illegible] followed. BAIJNATH SINGH *v.* [illegible]

6. ——— [illegible] *tion if dispenses with* [illegible]

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 54—*contd.*

deration—Conveyance if may be challenged on ground of want of consideration by legal representative of vendor. The mere registration of a document which purports to be a transfer for consideration does not, apart from all questions as to whether consideration passed or not, convey title to the transferee. The Court has to see what was the intention of the vendor, if no consideration passed *Mauladan* v. *Rughu Nandan Pershad Singh, I. L. R 27 Calc. 7,* referred to Where it appeared that it was the intention of the owner, whether consideration passed or not, to transfer the property to the defendant who was his concubine, and the plaintiff claimed the property by right of inheritance, the defendant was not bound to prove payment of consideration, and the *kobala* as it was prevailed against the claim of the plaintiff *Lal Achalram* v. *Raja Kazim Hussain Khan, 9 C. W N. 477; s. c. L. R. 32 I. A. 113; I. L. R 27 All 271,* applied. GOSTHO BEHARY GHOSH v. ROHINI GOWALINI (1908) . . . . . 13 C. W. N. 692

——— ss. 54, 56 (6) (b)—*Contract of sale—Deed of sale not registered—Rights and remedies of the contracting parties* The plaintiff executed a conveyance of immoveable property of the value of upwards of R100, which was not registered

and that all that the defendant *I* was entitled to

(1904) . . . I. L R. 28 Bom. 466

——— ss. 54, 100—*Agreement to execute a mortgage over immoveable property—Charge—Deposit of title-deeds—Mortgage* Plaintiffs sued defendants for money lent and also claimed to be

they had deposited the title-deeds of immoveable properties with the plaintiffs, and undertook to execute a deed of mortgage over those properties in favour of the plaintiffs, whenever the latter should call upon them to do so. This deposit had been made outside of the town of Madras, and the document had not been registered :—*Held,* that plaintiffs were not entitled to a charge on the immoveable property, but only to a personal decree. A deposit of title-deeds creates a mortgage and not

only if made in the towns specified in the paragraph,

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 54—*concld.*

it follows that a grant of security by a mere deposit of title-deeds unaccompanied by writing, duly attested and registered, evidencing it, is invalid, if it takes place outside of those towns. KONCHADI SHANBHOGUE v. SHIVA RAO (1905)
I. L. R 28 Mad. 54

——— s. 55.

See CIVIL PROCEDURE CODE, 1882, s 111.
9 C. W. N. 178

See LIEN . I. L. R. 39 Mad. 524

See LIMITATION ACT, 1877, SCH. II, ART. 116 . . I. L. R. 21 Mad. 8

See VENDOR AND PURCHASER—BREACH OF COVENANT.
I. L. R. 15 Mad. 56
I. L. R. 25 Calc. 298
2 C. W. N. 222
I. L. R. 21 Mad. 8

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF
I. L. R 13 Mad. 158

1. ——— *Meaning of words "material defects"—Defect in title* The expression, "material defect in the property" in s. 55 of the Transfer of Property Act (IV of 1882), includes a defect in the title to an estate. ESSA SULLEMAN v. DAYABHAI PARMANANDAS
I. L. R. 20 Bom. 522

2. ——— *Limitation Act (XV of 1877), Sch. II, Arts. 132, 111—Art. 132 applies to suits to enforce the charge created by s. 55 of the Transfer of Property Act.* The statutory charge,

cable to a suit to enforce such charge is Art. 132 of Sch II and not Art. 111. *Natesan Chetti* v. *Soundararaja Ayyangar, I. L R. 21 Mad. 141,* overruled. *Avuthala* v *Daumma, I L. R. 24 Mad. 233,* overruled *Subrahmania Ayyar* v. *Poovan, I L R. 27 Mad. 28,* overruled. RAMAKRISHNA AYYAR v. SUBRAHMANIA AYYAR (1905)
I. L. R. 29 Mad. 305

——— ss. 55, 59.

See COVENANT, CONSTRUCTION OF.
I. L R. 30 Mad. 284

——— ss. 55 (2), 108 (b)—*Art. 116, Sch. II of*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 55—*contd.*

following terms: "Deed of consent or permission granted to . . , by . .

every cart load of timber so removed .
you are to pay a kuttikanam of R2 4 0 and on those timber, the seal of the Etam shall be impressed without delay . during the period of 6 years, the Etam shall not grant any permission to others to cut trees . . You have the right to cut down trees and none whatever to the land." The first defendant and the other defendants formed a Tarward and in a suit brought on behalf of the Tarward against *P* and the first defendant, it was declared that the karar was not binding on the Tarward and *P* was restrained from cutting timber. The present suit was instituted by *P* to recover personally from the first defendant and from the Tarward properties the amount advanced with interest as damages. *Held*, that the suit so far as the Tarward properties were concerned was *res judicata* by reason of the decision in the previous suit. *Held*, also, that the suit as against the first defendant was barred by limitation. The article applicable to the suit is either Art. 62 or Art. 97 of Sch II of the Limitation Act. The document is not a sale or lease of immoveable property within the definition of those terms in the Transfer of Property Act and a covenant for title or for quiet enjoyment cannot be implied under s 5 (2) or s. 108 (*b*) of the Act. Art 116 of Sch. II of the Limitation Act does not apply to the case The document did not create a mortgage or charge on immoveable property. It is no more than an exclusive license to cut trees. A document may create an interest in land and bring it within the provisions of the Registration Act The covenant of title will not necessarily be implied in such cases unless it is one of the transactions in which the

——— s. 55 (4).

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.

L R 30 I. A. 238
I. L. R. 31 Calc. 57

——— s. 55 (4) (*b*).

See LIMITATION ACT (XV OF 1877), SCH II, ARTS 111, 132

I. L. R. 30 All. 172

See VENDOR'S LIEN.

I. L. R. 31 All. 443

——— ss. 55 (4) (b) cl. (6)—*Vendor's lien for unpaid purchase-money—Sale-deed containing acknowledgment of receipt of consideration-money in full —Mortgagee taken the mortgage without notice of*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 55—*concld.*

unpaid purchase-money—Estoppel—Evidence Act (I of 1872), s. 115. In a registered sale-deed of a chawl it was stated that the vendor had received consideration in full and there was also an acknowledgment of the vendor at the foot of the deed to the same effect. The vendor had also parted with all the title deeds relating to the property. The vendee subsequently mortgaged the property to the plaintiff who had no knowledge that the full amount of the consideration-money was not paid to the vendor though he knew that the vendor was in possession of some portion of the property.

chase-money and by her act in handing over the title-deeds *Per Batchelor, J.*—A vendor of immoveable property who endorses upon the purchase-deed a receipt for the purchase-money cannot set up a lien for unpaid purchase-money as against a mortgagee for value without notice under the purchaser. TEHILRAM *v.* KAHSIBAI (1908)

I. L. R. 33 Bom. 53

——— s. 55 (5) (d)—*Requisites of a valid acknowledgment—Where no contract to the contrary liability to pay public charges attaches to vendee on the passing of property—Condition precedent to liability.* Under s 55 (5) (*d*) of the Transfer of

——— s. 56.

See CIVIL PROCEDURE CODE, 1882, s. 13.

8 C. W. N. 30

——— ss. 56, 67, 81, 88—*Marshalling—Purchaser of portion of mortgaged property has no right*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 56—*concld.*

to marshall. A *bonâ fide* purchaser, who purchases for value a portion of a mortgaged property without notice of such mortgage has no right, in a suit by the mortgagee to enforce his mortgage, to insist that the portion not sold to him must be proceeded against first and the portion purchased by him must be sold only for the balance, if any, due.

cannot claim such a right under s. 81 or s. 56 of the Transfer of Property Act, as the former applies only ... the latter confers such

Krishna

L. R. 29

Mad. 217, referred to and explained It is competent to the Court under s 88 of the Transfer of Property Act to order a *sufficient portion* of the

——— ss. 56, 81, 82.

See Res Judicata

I. L. R. 31 Calc. 95

——— s. 57.

See Mortgage—Sale of Mortgaged Property—Purchasers

I. L. R 24 Mad. 412

——— s. 58.

See Costs . 9 C. W. N. 372; 697

See Decree—Construction of Decree—Mortgage . I. L. R. 19 Mad. 249
L. R. 23 I. A. 32

See Hât . I. L. R. 36 Calc. 665

See Limitation Act, 1877, Sch II, Art. 147 . . I. L. R. 16 Mad. 64

See Limitation Act, 1877, Sch II, Art 148 . . I. L. R. 14 Bom. 113

See Mortgage—Accounts.

I. L. R. 14 Bom. 113

See Mortgage—Construction.

I. L. R. 12 All. 175
I. L. R. 13 All. 28
I. L. R. 21 All. 4
I. L. R. 26 Mad. 662
I. L. R. 26 Bom. 252
L. R. 29 I. A. 148
9 C. W. N. 1001

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 58—*contd.*

See Mortgage—Form of Mortgage

I. L. R. 9 All. 183
I. L. R. 12 All. 203
I. L. R. 14 All. 195
I. L. R. 27 Bom. 600
I. L. R. 26 Bom 33
I. L. R. 25 Mad. 220

See Mortgage—Sale of Mortgaged Property—Rights of Mortgagees.

I. L. R. 22 Calc. 33

See Pre-emption—Construction of Wajib-ul-arz.

I. L R. 7 All 258; 343

See Registration Act, s 49.

I. L R. 15 Mad. 253

See Wajib-ul-arz.

I. L R. 26 All. 337

——— s. 58—*Mortgage by conditional sale—Whether sale or mortgage to be ascertained from whose instrument—Transfer of interest need not be in express terms—" Meddatu Krayam," meaning of.* The question whether a document operates as a mortgage, or as a conditional sale must be determined on a consideration of the whole document. The mere description of the document as " Meddatu Kravam " is not conclusive The transfer of

(1909) .

——— s. 58 (4).

See Vendor and Purchaser

8 C. W. N. 41

——— ss. 58, 59.

See Civil Procedure Code (Act XIV of 1882), s. 545

I. L. R. 31 Mad. 330

See Mortgage . 10 C. W. N. 276

——— ss. 58, 59, 100.

See Landlord and Tenant

I. L R. 33 Calc. 985

1. ——— *Attestation, absence of—Charge.* Where a transaction evidenced by a document was a mortgage as defined by s. 58 of the Transfer of Property Act, but the document ... witnesses as required by

operate as a
Kumari Bibi
he observa-
la v. Mahar
ved. Pran
(5)

I. L. R. ... Calc. 720
9 C. W. N. 697

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

— **s. 58**—*concld.*

2. ——— *Simple mortgage—Transfer of interest—Charge—Attestation by one witness—Invalidity* A bond for the repayment of a debt contained the statement, " as collateral security for payment of the said money, I do mortgage 23 bighas, etc., etc., " but there was no statement in it showing that there was any actual transfer of any interest *Held* (MACLEAN, *C J*, *dubitante*), that the bond amounted to a simple mortgage as defined in s. 58 of the Transfer of Property Act and not to a charge merely as contemplated by s. 100 of that Act. Such a document cannot operate as a valid mortgage, unless attested by at least two witnesses NOPINCHAND NASKAR *v*. RAJ KOOMAR SARKAR (1905) . . **9 C. W. N. 1001**

3. ——— — ss. 58 (b), 67, 68, 98—*Combination of simple and usufructuary mortgage—Personal covenant to pay—Right of mortgagee to decree for mortgage-money and for sale.* A mortgage-deed, after acknowledging receipt of the consideration and mortgaging the land with possession (the usufruct apparently being taken in lieu of interest), contained the following proviso as to redemption —" Thereafter on [naming a date] on paying [the amount advanced] we shall redeem our land If on the date so fixed the amount be not paid and the land recovered back, in whatever year we may pay [the amount advanced] on [naming the date] of any year, then you shall deliver back our lands to us " *Held*, that this contained a promise by the mortgagor to pay on the date named, and that the mortgagee was entitled to a decree for the mortgage-money, under cl. (*a*) of s. 68 of the Transfer of Property Act, and to a decree for sale under s. 67, the right to cause the mortgaged property to be sold in default of payment being implied within the meaning of s 68 (*b*) KANGAYA GURUKAL *v* KALIMUTHU ANNAVI (1904) **I. L. R. 27 Mad 526**

——— **s 59.**

See ATTESTATION . **I. L. R. 33 Calc. 831**

See BENGAL TENANCY ACT, s 12 **3 C. W. N. 499**

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE **I. L. R. 9 Mad. 103**

See DEED—EXECUTION. **5 C. W. N. 454**

ATTESTATION . **I. L. R. 27 Bom. 91**
7 C. W. N. 160 ; 384

See DEPOSIT OF TITLE-DEEDS
I. L. R. 14 All. 238
I. L. R. 17 All. 252
I. L. R. 24 Calc. 348

See EVIDENCE ACT, 1872, s 68
I. L. R. 18 Mad. 29
I. L. R. 26 Calc. 228

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— **s. 59**—*contd.*

See MORTGAGE . **9 C. W. N. 1001**

See REGISTRATION ACT (III OF 1877), s 28 . . **I. L. R. 29 Calc. 654**

See SIGNATURE . **I. L. R. 24 All. 319**

1. ——— *Oral agreement for kanom—Suit for ejectment by a jenmi.* A jenmi in Malabar sued to eject a tenant, who proved by oral evidence that he had one year before suit paid to the plaintiff a sum of money as a renewal fee and the plaintiff agreed to demise the land to him on kanom for a period of twelve years. *Held*, that although no instrument had been executed and registered the plaintiff was not entitled to eject the defendant. ITTAPPAN *v* PARANGODAN NAYAR **I. L. R. 21 Mad. 291**

2. ——— *Registration of mortgage—Interest in land—Right to redeem immoveable property mortgaged* Two documents were produced in evidence ; one of which was in terms an absolute sale. This document had been registered. The other document (which was not dated) had ap- [illegible]

on the face of it an absolute and unconditional sale, [illegible]

complied with, if some of such papers are registered while others are left unregistered. A document which gives a person a right to redeem a mortgage on immoveable property on payment of money creates an interest in immoveable property and its registration is compulsory under s. 7 of the Registration Act MUTHA VENKATACHELAPATI *v*. PYANDA VENKATACHELAPATI (1904) **I. L. R. 27 Mad. 348**

3. ——— *Mortgage—Attestation of mortgage Held*, that the attestation of [illegible]

Notes, (1896) 89, followed. GANGA DEI *v* SHIAM SUNDAR (1904) . . **I. L. R. 26 All. 69**

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 59—*contd.*

4. ——————— *Deposit of title deeds—Equitable mortgage—Subsequent legal mortgage—Priority—Registration Act (III of 1887), ss. 17 and 48—Whether equitable sub-mortgage requires registration.* R executed mortgages in favour of D some time before June 1893. On the 3rd June 1893, D deposited these mortgage-deeds with G's

in a fortnight, one-fourth by promissory note payable six months from date, and the remaining half by a promissory note payable within a year. In the meantime and until payment of the claim in full of

already made over to you as such agent as aforesaid as security for the due payment of the said debt, not to be parted with by you without mutual consent of myself and Raja Gokul Dass, or under an order of Court." *Held*, that the mortgage was concluded on the day when the deeds were deposited with G's agent in Calcutta, and that under s. 59 of the Transfer of Property Act a valid equitable sub-mortgage was created in favour of G on that day *Kadar Nath Dutt v Sham Lal Khettry, 20 W. R. 150*, referred to Upon a suit by the

have priority over the subsequent legal mortgage. *Held*, that a deposit of title-deeds of certain property under a verbal arrangement to secure payment of a debt was not an oral agreement or declaration relating to such property within the meaning of s 48 of the Registration Act, but the transaction was a valid equitable mortgage within

5. ——————— *Provisions of section not sufficiently complied with when witnesses not present at execution but attest on executant's acknowledgment of signature.* A mortgage-deed is "attested" by witnesses within the meaning of s. 59 of the Transfer of Property Act only when such attesting witnesses are actually present at the time of execution. The provisions of the section are not complied with when the witnesses are not present at the execution of the document, but attest it subsequently on the acknowledgment by the mortgagor of his signature. *Abdul Karim v. Salimun, I. L. R. 27 Calc. 193*, followed. *Ramji v. Bai Parvati, I. L R. 27 Bom 91*, dissented from. *Ganga Dei v. Shiam Sundar, I. L R. 26 All 69*, dissented from. *Per* WALLIS, *J.*—The provisions of s 50 (cl. 3) of the Indian Succession Act prescribing the manner in which wills must be attested and allowing attestation by witnesses on the testator's acknowledgment of his signature, cannot be regarded as statutory definition of an attestation applicable to other Indian Acts. *Per* SANKARRAN-NAIR, *J*—The absence in s. 59 of the Transfer of Property Act of the provision as to attestation on acknowledgment of signature contained in s 50 (3) of the Succession Act, shows that, under s. 59 of the Transfer of Property Act, attestation of the actual signature is necessary. SHAMU PATTER *v* ABDUL KADIR RAVUTHAN (1908)

I. L. R. 31 Mad. 215

6. ——————— *Dekkhan Agriculturists' Relief Act (XVII of 1879), s. 63 (a)—Mortgage-deed—Attestation by two witnesses—Signature by the Sub-Registrar—Statement by the writer of the deed in concluding the writing of the body of the document that it was written by him.* A deed of mortgage was signed by the Sub-Registrar who was bound to attest it under the provisions of s. ... Relief Act ... in con- ... locument ... leed was not attested by two witnesses as required by s 59 of the Transfer of Property Act (IV of 1882). *Held*, ... of the Sub-Registrar nor ... f the ... t for ... tness ... and ... bury, ... (1908) . . . I. L. R. 33 Bom. 44

7. ——————— *Evidence Act, s. 68—Mortgage registered or unregistered not duly attested ad-* ... *personal covenant to pay* A mort- ... only one ... personal ... ther such mortgage is registered or unregistered. *Madras Deposit and Benefit Society v. Oonnamalai Ammal, I. L. R. 18 Mad. 29*, overruled. *Sadakavaur v Tadepally Basaviah, I. L. R 31 Mad. 284*, 285, followed. A document which purports to be a mortgage, but is not a mortgage owing to non-compliance with the provisions of s 59 of the Transfer of Property Act regarding attestation, is not a document which is required by law to be attested within the meaning of s. 68 of the Evidence

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 59—*contd.*

Act, and is admissible to prove the personal covenant to pay therein which is not required by law to be attested PULAKA VEETIL MUTHALAKULANGARA KUNHU MOIDU *v* THIRUTHI PALLI MADHAVA MENON (1909) I. L. R. 32 Mad. 410

8. ——— *Zurpeshgi patta —Attestation—Document executed by purdanashin lady* Where it appeared from the evidence of the attesting witnesses to a *zurpeshgi patta* executed by a *purdanashin* lady that the witnesses were present in the room where the lady signed the document, but that she was behind a *purda* or screen at the time when she actually affixed her signature —*Held*, per BRETT, *J*, that having regard to the custom of this country there was a sufficient compliance with the provisions of s 59 of the Transfer of Property Act. *Horendra Narain v. Chandra Kanta, I L R 16 Calc 19, Abdul Karim v Salimun, I L R 27 Cal. 190, Sasi Bhusan Pal v Chandra Peshakar, 4 C L J 41,* referred to *Held*, on appeal under the Letters Patent (RAMPINI C J and MITRA, J), that there was nothing to show that the attesting witnesses did not see the lady sign the deed, and that moreover the Court could not interfere at this stage with the concurrent findings of three Courts on a question of fact HARMONGAL NARAIN SINGH *v* GANAUR SINGH (1907) . . . . . 13 C. W. N. 40

——— ss. 59, 98.

See KANOM . I. L. R. 30 Mad. 300

——— ss. 59, 100.

See COMPROMISE I. L. R 35 Calc. 867

——— *Mortgage-deed not attested as required by s 59 cannot create charge under s 100.* An instrument, which is invalid as a mortgage for want of attestation under s 59 of the Transfer of Property Act, cannot operate to create [illegible]

——— s. 60.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—EQUITY OF REDEMPTION
I. L. R. 21 Bom. 226

See MALABAR LAW—MORTGAGE
I. L. R 16 Mad. 328

See MORTGAGE—REDEMPTION—REDEMPTION OF PORTION OF PROPERTY.
I. L. R. 17 All. 63
I. L. R. 21 Mad. 369
I. L. R. 20 All. 23
4 C. W. N. 507
I. L. R. 22 Mad. 209

See MORTGAGE—REDEMPTION—REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM . I. L. R. 16 Mad. 486
I. L. R. 23 Mad. 33

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 60—*contd.*

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION . 5 C. W. N. 83
I. L. R. 22 All. 238
I. L. R. 24 Mad. 409; 449

See RES JUDICATA—ESTOPPEL BY JUDGMENT . I. L. R. 24 All. 44

1. ——— *Right of redemption, extinguishment of—Breach of condition in mortgage deed—Conditional sale.* The breach of a condition in a mortgage-deed to the effect that on default of payment on a certain date the mortgage [illegible]

2 ——— *Redemption of mortgage—Clog on equity of redemption—Bond* [illegible]

usual stipulation for repayment of the money secured thereby, contained a covenant to the effect that the mortgaged property should not be redeemed until the principal money and interest due under the bond had been paid *Held*, that such provision was a clog or fetter on redemption placing in the way of the mortgagor a bar to the exercise [illegible]

3 ——— *Mortgage—[illegible] of mortgagee purchasing part of the mortgaged property—Redemption* Where a mortgagee [illegible] part of the mortgaged property, and thus a [illegible] takes place of the rights of the mortgagee and the mortgagor in the same person, the [illegible] character of the mortgage is broken up, and [illegible] several mortgagors may in such a case [illegible] own share only on payment of a proportionate part of the mortgage-money, but he cannot [illegible] mortgagee to allow him to redeem the [illegible] other persons, in which he is not interested. [illegible] *Mal v. Puran Mal, I. L. R. [illegible], Lachmi Narain v Muhammad [illegible], I L. R. 17 All. 63,* referred to *[illegible] v. [illegible] Dinkar Joshi, I. L. R. 15 Bom 2[illegible],* [illegible]. KALLAN KHAN *v.* MARDAN KHAN [illegible]
I. L. R. 22 All. 1[illegible]

4 ——— *Mortgage—Purchase of part of the mortgaged property—Mortgage foreclosed, purchaser not being made a party—Right of purchaser to redeem part of the mortgaged property.* The plaintiff's father purchased some of land which along with other property, was the subject [illegible]

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 60—*contd*

mortgage by conditional sale. The mortgagees subsequently instituted a suit for foreclosure, in which they obtained a decree and an order absolute for foreclosure But the mortgagees, although they had notice of his interest in the mortgaged

the whole mortgage BRIJ KISHORE *v.* MADHO SINGH (1905) . . I. L. R. 28 All. 279

5. ——— *Mortgage—Redemption—Effect of purchase by mortgagees of part*

portion of the mortgaged property, the right of redemption of each of the several mortgagors is confined to his own interest in the mortgaged property; he cannot redeem the remainder of the mortgaged property against the wishes of the mortgagees. *Nawab Azimut Ali Khan* v *Jowahir Singh, 13 Moo I. A. 404; Kuray Mal* v. *Puran Mal, I. L. R. 2 All. 565*, and *Girish Chander Dey* v. *Juramoni Dey, 5 C. W N 83*, followed MUNSHI *v.* DAULAT (1906) . . I. L. R 29 All 262

6. ——— *Inheritance of mortgagors' rights by mortgagee—Integrity of mortgage broken up* Where the equity of redemption in respect of a part of the mortgaged property becomes vested in the mortgagee whether by purchase or by inheritance or otherwise, there is a merger of rights and the integrity of the mortgage is broken up *H* mortgaged certain property to

that the plaintiffs were entitled to redeem their

——— ss. 60, 83, 95—*Redemption of mortgage—Clog on equity of redemption—Parties to suit for redemption—Effect of payment of mortgege-money into Court.* After the execution of a usufructuary mortgage the mortgagor executed a bond, which, in addition to the usual stipulation of re-payment of the money secured thereby, contained a covenant to the effect that the mortgaged property should not be redeemed until the principal money and interest due under the bond had been paid off.

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 60—*concld.*

Held, also, that, where the purchaser of part of equity of redemption comes into Court seeking to redeem the whole mortgage, and pays into Court the entire amount due at the time upon that mortgage, the rights of a purchaser of another portion of the equity of redemption claiming only to redeem his proportionate share in the mortgage, cannot be dealt with in that suit, for upon payment by the plaintiff of the full amount due, the mortgage has ceased to exist. RUGAD SINGH *v* SAT NARAIN SINGH (1905) . . . I. L. R. 27 All. 178

——— s. 61—*Redemption, clog on—Contract to pay off subsequent mortgages before redeeming prior mortgage—Validity—Contract to pay off an unsecured debt.* In a suit for redemption by a mortgagor the mortgagee set up by way of defence a contract entered into at the time of the execution of four bonds of later dates, to the effect that the mortgage in suit was not to be redeemed without paying off the sums due under the subsequent bonds One of these bonds was a simple bond, the others mortgage-bonds secured on the same property *Held*, that, so far as these mortgage-bonds were concerned, the contract was enforceable and must be given effect to, but as regards the simple bond the contract was a clog on the equity of redemption and was not enforceable. DURGA PERSHAD *v.* DUKHI RAY (1905) . 9 C. W. N. 789

——— ss. 61, 62.

See MORTGAGE—REDEMPTION—RIGHT OF —REDEMPTION . I. L. R. 16 All. 295

——— s. 62.

See MORTGAGE—REDEMPTION—MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE . I. L. R. 8 All. 402

See MORTGAGE—REDEMPTION—REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM . I. L. R. 16 Mad. 486
I. L. R. 23 Mad. 33

——— ss. 62, 63.

See MORTGAGE REDEMPTION.
I. L. R. 29 All. 471

——— ss. 62, 83—*Civil Procedure Code (Act XIV of 1882), ss 13, 43—Res judicata—Usufructuary mortgage—Suit for possession of mortgaged property—Tender of mortgage-money—Deposit in Court—Redemption decree—Second suit to recover mesne profits from the date of deposit to the date of*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd*

———— s. 62—*contd*

and placed him in possession of the property In 1901 the plaintiffs tendered the amount of the principal to the defendant, but it was not accepted The plaintiffs in consequence filed a suit under s 62 of the Transfer of Property Act (IV of 1882) to recover possession of the mortgaged property and at the same time, under s 83 of the Act, deposited the amount of the principal in Court as the amount payable on the mortgage The Court passed a decree for possession In 1904 the plaintiffs filed another suit to recover mesne profits from the defendant from the date of the deposit to the date when he recovered possession of the mortgaged property from the defendant in execution of the redemption decree in the previous suit. The claim was disallowed on the ground of *res judicata* *Held*, that the plaintiffs having failed to ask for mesne profits in the previous suit, his present claim was barred either under s 13 or 43 of the Civil Procedure Code (Act XIV of 1882) The profits derived by a mortgagee after a proper tender made or after the amount due has been deposited in Court are profits for which he has to account to the mortgagor in virtue of a liability tacked on, so to say, by the Statute to the mortgage contract, and as such a claim to them by the mortgagor is one arising from and connected with his right to redeem or recover possession of the property From the date of the tender or of the deposit, as the case may be, the mortgagee continues as mortgagee but with a statutory liability to account for the profits received by him from that date He is not then a mere trespasser but a mortgagee still, holding the property as a kind of trustee for the mortgagor and as such accountable to the latter for the profits RUKHMINIBAI *v* VENKATESH (1907)
I. L. R. 31 Bom. 527

———— s 63.

See MORTGAGE—ACCOUNTS
I. L. R. 17 All. 282

———— s 65.

See LANDLORD AND TENANT—TRANSFER BY TENANT . I. L. R. 10 Calc. 443

1. ———————— Cl. (a)—*Duty of mortgagor to pay public revenue on mortgaged land —Default in payment—Sale for arrears of revenue—Subsequent sale by purchaser at revenue sale to original mortgagor—Right of mortgagee under*

If he fails to perform that duty, and the land is sold for arrears of revenue, and the purchaser at the revenue sale sells the land to the original mort-

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 65—*contd.*

son), on his purchase from the auction-purchaser,

I. L. R. 28 Mad. 385

2. ———————— *Purchaser*

gaged property is purchased for such amount—Sale for revenue—Trusts Act (II of 1882), s. 90 Where

RENGA SRINIVASA CHARI *v* GNANAPRAKASA MUDALIAR (1906) . . I. L. R. 30 Mad. 67

3. ———— ss 65 and 68—*Mortgagor and Mortgagee—Construction of mortgage—Sale of premises at suit of a prior mortgagee—Right of a second mortgagee to sue the mortgagor personally.* The

covenanted therein to pay to him daily the proceeds of certain sales of firewoods of which the plaintiff was to credit part towards the secured debt The defendants having failed to pay the amount due on the first mortgage, the first mort-

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 65—*concld.*

had committed default so as to entitle the obligee to sue them personally under the former section. SINGEE v. TIRUVENGADAM. **I. L. R. 13 Mad. 192**

4. ——— **ss. 65 and 90**—*Prior and subsequent incumbrancers—Implied covenants binding upon the mortgagor.* A puisne mortgagee of property, upon which there existed several prior incumbrances, obtained a decree for sale after redemption of the prior incumbrances. The prior incumbrances were redeemed and the mortgaged property was put up to sale; but the sum realized by the sale was not sufficient to cover even the amounts due upon the [illegible]

[illegible] the puisne mortgagee decree-holder was entitled to a decree under s 90 of the said Act in respect of the deficit due upon the prior incumbrances as well as in respect of the deficit upon his own mortgage. ALI JAN v. MARIAM BIBI (1904) **I. L. R. 26 All. 93**

——— **s. 67.**

See post, s 99 **I. L. R. 30 Calc. 463**

See COSTS . . **9 C. W. N. 372**

See LIMITATION ACT, 1877, SCH. II, ART. 122 **I. L. R. 24 Calc. 473**

See LIMITATION ACT, 1877, SCH. II, ART 132 . **I. L. R. 20 Calc. 269**

See LIMITATION ACT, 1877, SCH. II, ART. 147 . **I. L. R. 16 Mad. 64**

See MORTGAGE—POWER OF SALE.
I. L. R. 26 Bom. 241
I. L. R. 12 Mad. 109
I. L. R. 21 Bom. 267

REDEMPTION—RIGHT OF REDEMPTION. **I. L. R. 23 All. 1**

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES **I. L. R. 9 All. 68**

See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT VII OF 1880), ss 2, ETC **I. L. R. 29 Calc 537**

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY **I. L. R. 24 All. 549**

See SURETY—ENFORCEMENT OF SECURITY . **I. L. R. 30 Calc. 1060**

1. ——— *Right of suit for sale by usufructuary mortgagee* Under s. 67 (*a*) of the Transfer of Property Act (IV of 1882), a usufructuary mortgagee whose possession has not been disturbed cannot maintain a suit either for foreclosure or for [illegible] money. *Chou* [illegible] *Moradabad, S* [illegible] *Bahadur, 7 N* [illegible] *Buksh, 5 N. W. 122*, *Venkatasami* v. *Subramanya*,

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 67—*contd.*

I. L. R. 11 Mad. 88, and *Jhabbu Ram* v. *Girdhari Singh, I. L. R 6 All 289*, referred to. UMDA v. UMRAO BEGAM . . **I. L. R. 11 All. 367**

2 ——— *Usufructuary mortgage—Remedy of mortgagee.* A usufructuary mortgagee is not entitled in the absence of a contract to that effect, to sue for sale of the mortgaged property. *Semble:* The construction placed on s 67 (*a*) of the Transfer of Property Act, 1882, in *Venkatasami* v. *Subramanya, I. L. R 11 Mad 88*, that a usufructuary mortgagee can sue either for foreclosure, or for sale, but not for one or other in the alternative is wrong. CHATHU v. KUNJAN KU **I. L. R. 12 Mad. 109**

3. ——— **and s. 58 (d)**—*Usufructuary mortgage with a personal covenant—Suit by mortgagee for sale—Right of suit.* In a suit for sale by a [illegible] the mortgagee was not precluded by the Transfer of Property Act, s 67, from bringing the property to sale under the mortgage. RAMAYYA v GURUVA **I. L. R 14 Mad. 232**

4. ——— **and s. 68**—*Usufructuary mortgage—Dispossession of mortgagee—Suit for sale —Right of suit* The plaintiff, at the request of the mortgagors, paid off part of the debt due on a usufructuary mortgage to one of two mortgagees thereunder, and was placed by the mortgagors in possession under a usufructuary mortgage of that part of the mortgage premises which has been in the enjoyment of the mortgagee so paid off, who executed a release The other mortgagee under the first mortgage obtained a decree for sale on the footing of that instrument, and the mortgaged premises were sold "subject to the establishment" of the plaintiff's claim: the decree-holder purchased and afterwards assigned his rights to two of the present defendants who dispossessed the plaintiff. The plaintiff then sued the mortgagors and mortgagees and the defendants above referred to *Held*, that the plaintiff was not entitled to a decree for sale. *Semble:* The plaintiff might have sued to [illegible]

5. ——— **and s. 68 (a)**—*Mortgagee's right to sue for mortgage-money and for sale—Usufructuary mortgage—Covenant to repay mortgage-money—Right of suit* The first defendant executed a usufructuary mortgage of certain land in favour of plaintiff's deceased husband. It contained a covenant to pay the mortgage-money in Chittrai Kalavadi of the year 1883 This covenant was followed by these words: "If I fail to pay the mortgage amount in the said Kalavadi,

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 67—*contd.*

then you shall receive the said mortgage amount in the Chittri Kalavadi of whatever year I may pay it, deliver the said lands to my possession having cleared off the arrears of Government revenue, and also give back the bond." The plaintiff sued to recover the money secured from the defendant *personally and also by sale of the mortgaged property.* *Held* by a Full Bench, that the bond contained a covenant to pay, and that therefore the suit was maintainable. SIVAKAMI AMMAL *v.* GOPALA SAVUNDRAM AYYAN

I. L. R. 17 Mad. 131

6. ——— and ss. 83, 84—*Suit by mortgagee instituted before payment into Court—Right of mortgagee to a decree.* In a suit to recover money due on a mortgage, defendant paid the money into Court and a notice was issued to the mortgagee under s. 83 of the Transfer of Property Act. The mortgagee filed his suit before notice was served on him, and it was not proved that the mortgagee was aware of the fact of payment into Court when he filed his suit. *Held,* that the plaintiff was not debarred by s. 67 of the Transfer of Property Act from obtaining a decree. SITARAMAYYA *v.* VENKATRAMANNA

I. L. R. 11 Mad. 371

7. ——— and ss. 86, 89—*Usufructuary mortgage dated 20th April 1882 sued on in 1884—Form of decree.* In a suit filed in 1884 on a usufructuary mortgage, dated 20th April 1882, a decree was passed for the payment of the mortgage-money,

I. L. R. 11 Mad. 88

8. ——— and s. 90—*Suit for money-decree on mortgage with personal covenant—Execution against mortgaged property—Sale of security in execution of decree.* A mortgage-deed contained a per-

9 ——— *Decree for pay-*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 67—*contd.*

10. ——— and s. 99—*Charge for maintenance created by a decree, how enforced—Civil Procedure Code, 1882, s. 244 (c)—Separate suit.* Where

purpose of securing the payment of the future

followed *Ashutosh Banerjee v. Lukhimoni Debya, I. L. R. 19, Calc. 139,* distinguished. MATANGINI DASSEE *v.* CHOONEYMONEY DASSEE

I. L. R. 22 Calc. 903

11. ——— *Usufructuary mortgage—Sudbharna bond—Covenant to repay—*

cipal money, and no such agreement was implied

fructuary mortgage cannot as such (*i.e.*, unless

12. ——— *Charge—Attachment without sale—Transfer of Property Act (IV of 1882), ss. 99, 100.* The plaintiff, a judgment-

and sent a copy of the decree for execution there. He obtained in that Court an order for attachment and sale of the property, but the order was reversed on appeal in May 1895, the High Court holding that the properties could not be sold in execution of the

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s 67—*contd.*

decree, but that a separate suit must be brought under s. 67 of the Transfer of Property Act. The plaintiff then applied to the Court that passed the decree for an order for transmission of the decree to the mofussil Court with a view to execution. [illegible]

[illegible] under s. 67 of the Transfer of Property Act *Held*, on appeal (reversing the decision of SALE, *J.*), that an order for attachment only as distinct from a sale could be made. *Aubhoyessury Dabee* v *Gouri Sunkar Panday, I. L. R. 22 Calc. 859*, explained. *Chundra Nath Day* v. *Burroda Shoondury Ghose, I. L. R. 22 Calc 813*, referred to GOURI SUNKER PANDAY *v.* ABHOYESWARI DABEE

I. L. R. 25 Calc. 262

See CHUNDRA MONI DASSEE *v.* MUTTY LAL MULLICK . . . . . 2 C. W. N. 33

13. ————ss. 67, 99—*Decree—Setting aside sale—Void sale—Civil Procedure Code* (*Act XIV of* [illegible]

Sheodeni Tewari v. *Ram Saran Singh, I L. R. 26 Calc. 164*, and *Shib Dass Dass* v. *Kali Kumar Roy, I. L. R 30 Calc. 463*, referred to Such a sale may be set aside under s 244 of the Code of Civil Procedure *Mayan Pathuti* v. *Pakuran, I. L. R. 22 Mad 347*, followed SONU SINGH *v* BEHARI SINGH (1905) . . I. L. R. 33 Calc. 283

——— ss. 67, 96, 97

See MORTGAGE I. L. R. 30 Mad. 408

——— ss. 67, 99.

See EXECUTION OF DECREE.

I. L. R 32 Calc. 494

——— ss. 67, 99 and 100—*Execution of decree—Attachment—Application in execution* S 99 of the Transfer of Property Act (IV of 1882) contemplates attachment of property by a judgment-creditor (even if he be a mortgagee), and he is entitled to attach the property by an application in execution of the decree. The proper time to consider the applicability of s. 99 of the Transfer of Property Act is when an application for sale is made in execution NATHUBHAI *v.* BAI UJAM (1908) . . . I. L. R. 32 Bom. 205

——— ss. 67, 111, 116—*Lease by mortgagee in favour of mortgagor—Mortgagor holding over without payment of rent—Lease when determined—Limitation Act (XV of 1877), Sch. II, Art. 139—Suit by mortgagee for possession.* A usufructuary mortgagee executed a lease of the mortgaged property in favour of his mortgagors for

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 67—*concld.*

five years, but after the expiry of the term of the lease neither claimed nor received rent from his mortgagors for more than 12 years and then sued them for possession of the property :—*Held*, that the suit was barred by limitation *Held*, also, that the lease determined on the expiration of five years and [illegible]

[illegible] *Held*, also, that no suit for sale could be brought upon the mortgage, as the mere fact that it provided for redemption upon payment of the principal did not make it a simple mortgage. KHUNNI LAL *v.* MADAN MOHAN LAL (1909)

I. L. R. 31 All. 318

——— s. 68.

See LIMITATION ACT, 1877, SCH. II, ART. 116 . I. L. R. 21 Mad. 242

See MORTGAGE—POSSESSION UNDER MORTGAGE . . I. L R. 6 All. 298

See MORTGAGE—POWER OF SALE.

I. L. R. 26 Bom. 241

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE I. L. R. 22 Mad. 332

1. ——————— *Mortgage of non-transferable property—Right to sue for mortgage-money.* Where a decree was obtained by a landholder for cancelment of a deed whereby an occupancy-holding was mortgaged with possession, and the mortgagee consequently failed to obtain possession and brought a suit against the mortgagor to recover the mortgage-money :—*Held*, that, inas- [illegible]

[illegible] KUAR [illegible]

2 ——————— *Sale of mortgaged* [illegible] *—Personal suit* [illegible]

Transfer of Property Act, and does not [illegible] the mortgagee to sue the mortgagor personally. ARUMUGAM *v* SIVAGNANA . I. L. R. 13 Mad. 321

3. ——————— *Failure of mortgagor to give possession as stipulated —Personal suit for mortgage amount.* In a suit against a mortgagor for the principal and interest due on a mortgage, it appeared that the payment of interest had fallen into arrears, and that the mortgage-deed provided that in such event the mortgagee should be entitled to possession of the mortgage-premises; the mortgagor falsely alleged that all the interest due had

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd*

———— s. 68—*contd.*

been tendered. *Held*, that the mortgagee was entitled under s. 68 of the Transfer of Property Act to sue for the amount due on the mortgage SARAVANA *v* CHINNAMMAL . . I. L. R. 15 Mad. 65

4. ———————— *Personal decree against mortgagor—Right of suit* Suit for a personal decree on a usufructuary mortgage which contained no express covenant to pay, but provided that, if the mortgagor repaid the secured debt before a certain date (now passed), he should be replaced in possession. The mortgaged premises had been attached in execution of a decree obtained by a third party against the mortgagor, and a claim preferred by the plaintiff having been erroneously rejected and the premises sold, he was dispossessed. The mortgagee accordingly brought his suit as above. *Held*, that the plaintiff was not entitled to maintain the suit either under the terms of the mortgage or under Transfer of Property Act, s 68 GOPALASAMI *v* ARUNACHELLA

I. L. R. 15 Mad. 304

5. ———————— *Right of suit—Usufructuary mortgage—Mortgagee kept out of possession by mortgagor's indirect conduct* Where a usufructuary mortgagee is unable to obtain possession of the mortgaged property owing to his

6. ———————— *Usufructuary mortgage—Lease of mortgaged premises by mortgagee to mortgagor—Mortgagor holding on after expiry of lease —Right of suit* H L and others, mortgagees, under a usufructuary mortgage executed in their

nant, but refused to give up possession of the mortgaged property to the mortgagees. *Held*, that the mortgagees were entitled, either under cl. (*b*) (as held by EDGE, C J, and TYRRELL, J) or under cl. (c) (a) held by KNOX, BANERJI, and BURKITT, JJ) of s. 68 of Act IV of 1882, to a money decree for the amount due under the mortgage. *Shitab Dei* v *Ajudhia Prasad*, *All Weekly Notes, (1887). 269*, and *Jhabbu Ram v. Girdhari Singh, I. L. R. 6 All 298*, distinguished. HIRA LAL *v* GHASITU

I. L. R. 16 All. 318

7. ———————— *Usufructuary*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 68—*contd.*

8. ———————— *Usufructuary mortgage—Possession not given—Suit for sale.* A usufructuary mortgagee to whom the mortgagor fails to deliver or to secure possession of the property

9 ———————— *Mortgage—Right of mortgagee to sue for mortgage-money* Where on

confined to an unforeseen event or accident; but would include the consequences of conduct such as that of which the mortgagor had been guilty. AHMAD-UL-LAH KHAN *v* SALAR BAKHSH (1905)

I. L. R. 27 All. 488

10. ———— s. 68 (b)—*Holder of unregistered mortgage deprived of his security by subsequent registered*

Such right exists independently of, and is not

I. L. R. 29 Mad. 362

11. ———— s. 68 (c)—*Mortgage—Construction of document—Power of sale in a usufructuary mortgage.* A mortgage-deed, which was primarily usufructuary, provided that, if the mortgagor failed to deliver possession, or if the mortgagee was dispossessed from the mortgaged premises, he might

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 68—*concld.*

recover the amount of the mortgage-debt from the mortgagor and the mortgaged property. *Held*, that the mortgagee failing to get possession was competent to sue for and obtain a decree for sale of the mortgaged property. *Jafar Husen* v. *Ranjit Singh, I. L. R. 21 All. 4* ; and *Kashi Ram* v. *Sardar Singh, I. L. R. 28 All 157*, referred to. NARPAT *v* RAM SARAN DAS (1908)
I. L. R. 30 All. 162

———— s. 69.

See MORTGAGE—POWER OF SALE.
I. L. R. 11 Mad. 201

See VENDOR AND PURCHASER.
I. L. R. 31 Bom. 566

———— *Limits of town of Bombay—Land situate ...*

———— s. 70.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.
I. L. R. 29 Calc. 803

———— ss. 70, 111, cl. (d).

See MERGER . I. L. R. 33 Calc. 1212

———— s. 72.

See MORTGAGE—ACCOUNTS
I. L. R. 19 Mad. 327
I. L. R. 21 Mad. 32
I. L. R. 20 All. 401

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.
I. L. R. 30 Calc. 794

1. ———— S. 72 of the Transfer of Pr... of law which ... formly adopte...

I. L. R 10 All. ...

2. ———— *Mortgagee in possession expending money to defend his title against mortgagor* A mortgagee in possession is, under s. 72 of the Transfer of Property Act (IV of 1882), entitled to add to his mortgage-debt, in the absence of a contract to the contrary, sums spent by him for making his own title thereto good against the ...

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 72—*concld.*

has been passed. DATTA RAM *v.* VINAYAK (1904)
I. L. R. 28 Bom. 18

3. ———— *Mortgage—Prior and subsequent incumbrances—Rights of usufructuary mortgagee, who satisfies a decree on a prior mortgage of the property mortgaged to him. Held*, that a usufructuary mortgagee, who satisfies a decree for sale on a prior mortgage affecting the property mortgaged to him is entitled to retain ...

AHMAD (1905) . . . I. L. R. 27 All. 4..

4. ———— *Mortgage—Redemption of part—Whole burden on remainder—Purchase by mortgagee of portion of mortgaged property—Enhancement of Government revenue—Compensation for improvements. G*, the predecessor in title of the plaintiffs, mortgaged Kachaura to *N K*, the predecessor of the defendant, and subsequently mortgaged 11 biswas of Kachaura and 6 biswas of Agrana to *N K. N K* obtained a decree on the first mortgage and purchased the whole of Kachaura. The plaintiffs acquired from *G* the equity of redemption in 5 biswas of Agrana and brought the suit, out of which these two appeals arose, to redeem this 5½-biswa share on payment of a proportionate amount of the mortgage money and to recover surplus profits, if any. The parties submitted to the decision of the Lower Courts that the plaintiffs must redeem the whole 6-biswa share *Held*, in S. A. 265 of 1904, that the answer to the question whether the defendant mortgagee could throw the whole burden of the second mortgage on the remainder of the mortgaged property depended on the circumstances under which his purchase was made If two persons jointly mortgaged property ...

remaining property. The second mortgage ... contained clauses (*a*) that if the Government revenue was enhanced the mortgagor was to be liable for the amount of the enhancement, (*b*) that if the ... amount ... 298 of 1904, (*a*) that the defendant mortgagee, ... paid enhanced revenue to save the property, upon failure by the mortgagor was entitled to receive from ...

property in Kachaura could not recover ... spent in constructing wells in Kachaura BONRA THAKUR DAS *v.* COLLECTOR OF ALIGARH (1906)
I. L. R. 28 All. 593

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 73.

See LIMITATION ACT, 1877, SCH II, ART. 132 . . . 5 C W. N. 356

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS
I. L. R. 15 Calc. 546
8 C. W. N. 332
9 C. W. N. 989
I. L. R. 33 Calc. 87

See SALE FOR ARREARS OF RENT—SURPLUS PROCEEDS OF SALE
I. L. R 20 Calc. 214
I. L. R. 24 Calc. 746

1. ——— *Rent-sale, with power to purchaser to annul incumbrances—Bengal Tenancy Act (VIII of 1885), s 167—Right of mortgagor to have his lien transferred to sale-proceeds* In the case of a rent sale (under the Bengal Tenancy Act), with express power to the purchaser to annul

R 15 Calc 546, referred to NIM CHAND BABOO *v.* ASHUTOSH DUTT (1905) . 9 C. W. N. 117

2 ——— *Sale of mortgaged*

——— s. 74.

See DECREE—FORM OF DECREE—MORTGAGE . . I. L R. 18 All. 189

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES
I. L. R. 24 All. 185
I. L. R. 19 All. 527

FORECLOSURE—RIGHT TO FORECLOSURE . I. L. R. 24 All. 179

1. ——— *Redemption of prior mortgage—Extinguishment of prior mortgage—Title by possession.* The trustees of a religious institution improperly mortgaged land forming part of its endowment, and put the mortgagee into possession on the 27th June 1877 as usufructuary mortgagee. The mortgagee assigned his mortgage to defendant No 1 on the 7th December 1882 On the 23rd December 1889 the mortgagors executed to the plaintiff a deed of usufructuary mortgage of the same land to secure

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 74—*concld.*

R1,400; the deed stated that the money was borrowed with a view to discharge a prior mortgage, and proceeded "as you have undertaken to pay R1,000 to the mortgagee, I credit you with R1,000 and receive R402 in cash" The plaintiff paid off the prior mortgagee on the 18th April 1890, but did not obtain possession, other persons having entered in the interests of the institution The plaintiff now sued for possession and a declaration of his mortgage right, the persons in possession and the prior mortgagee, but not the mortgagors, being joined as defendants *Held*, that the Transfer of Property Act, s. 74, was not applicable to the case, and that the plaintiff was not entitled to a decree. KOOPMIA SAHIB *v.* CHIDAMBARAM CHETTI I. L. R. 19 Mad. 105

2. ——— *Mortgage of property—Subsequent mortgage to same mortgagee—Third mortgage, with possession—Decree obtained by first mortgagee—Usufructuary mortgagee not a party—Subsequent suit by first mortgagee against usufructuary mortgagee for amount of decree.* The owner of land mortgaged it to plaintiffs, and, at a subsequent date, gave plaintiffs a second mortgage over it. At a still later date, the mortgagor gave a further usufructuary mortgage over it to the predecessor in title of the third defendant. Plaintiffs then sued the mortgagors on their two mortgages, obtained a decree and brought the property to sale, when it was purchased by the second plaintiff, the undivided brother of the first plaintiff. The third defendant was not made a party to this suit. Plaintiffs now sued the mortgagors as well as the third defendant, and prayed that the third deferdant might be decreed to pay them the amount of their decree, and that in default it be declared that the third defendant be absolutely debarred of his right to redeem the prior mortgagee, and that he be ordered to surrender possession of the property to plaintiffs *Held*, that the right of the third defendant was not affected by either the decree or the sale; the only effect of the sale being to transfer to the purchaser (the first mortgagee) the equity of redemption of the mortgagor *Held*, also, that the only right that the third defendant had now was that which he could have claimed to exercise if he had been a party to the suit on the prior

I. L. R. 26 Mad. 537

——— ss. 74, 86.

See CIVIL PROCEDURE CODE, 1882, s. 244.
I. L. R. 27 All. 325

——— s. 75.

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION. . I. L. R. 33 All. 1

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 75—*concld.*

See Mortgage—Sale of Mortgaged Property—Purchasers
I. L. R. 20 Bom. 390

See Mortgage—Sale of Mortgaged Property—Rights of Mortgegees.
I. L. R. 19 All. 527

——— s. 76

See Landlord and Tenant—Transfer by Tenant . I. L. R. 10 Calc. 443

See Mortgage—Accounts.
I. L. R. 6 All. 303
I. L. R. 15 Mad. 290

See Right of Suit—Injury to Enjoyment of Property.
I. L. R. 16 All. 386

——— s. 78.

See Mortgage—Marshalling
I. L. R 12 Mad 424, 429
I. L R 13 Mad. 383
I. L R 15 Mad. 268

1. ——— *Transfer of Property Act (IV of 1882), ss 3, 78—Gross negligence—How far registration amounts to notice—Registration Act, s 50.* Where a mortgagee prior in date duly investigated the title of the mortgagor, but after the execution of the mortgage returned

notice of the prior mortgage, but without having duly investigated the mortgagor's title or searched the register —*Held*, that the prior mortgagee was not within s 78 of the Transfer of Property Act guilty of such gross negligence as would postpone her mortgage to the subsequent mortgagee and the conduct of the subsequent mortgagee was not such as to create any predominating equity in his favour The fact that there is in this country a universal system of registration is one of the circumstances to be taken into consideration in determining the question of gross negligence, *Semble* · The question whether registration is notice or not is a question of fact, and as each case arises it should be determined

Cooper, 2 Russ. 193 ; Farrow v. *Rees, 5 Beav. 18 , Hunt* v. *Elmes, 2 DeG. F. & J. 578 ;* and *Agra Bank* v *Barry, L. R. 7 H. L 148,* referred to Monindra Chandra Nandy *v.* Troyluckhoo Nath Burat . . . 2 C. W. N. 750

2. ——— *Gross negligence—Failure to get possession of title deed does not necessarily amount to gross negligence where system of registration exists—Delay, effect of, in registration*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 78—*concld.*

of documents. A mortgaged property to B on 21st December 1896 and subsequently mortgaged the same property to C on 20th January 1897. A wilfully delayed the registration of the mortgage deed to B, which was finally registered on the 21st April 1897. The title-deeds of the property were not given to B, but were given to C, when the property was mortgaged to him The mortgage was executed outside Madras and was in respect of property in the mofussil. In a suit by C to recover the amount due on his mortgage deed, C claimed priority over B on the ground that B was guilty of gross negligence in not obtaining possession of the title-deeds. *Held,* that the failure on B's part to obtain the title-deeds

not make B's failure in obtaining the title-deeds amount to gross negligence What amounts to gross negligence must be determined according to the circumstances of each case; and one of the circumstances to be taken into consideration in this country is that a universal system of registration is established by law. As registration puts subsequent incumbrancers in a position, with the exercise of reasonable care, to find out prior incumbrances, failure on the part of the prior mortgagee to get possession of the title-deeds must not be imputed to him as gross negligence. The system of registration having caused mortgagees to attach little importance to the possession of title-deeds, the existence of a practice by which the title-deeds are left with the mortgagor must also be taken into consideration. Another fact to be considered is that the possession of title-deeds in the Presidency towns, where mortgages may be created by depositing them, is of greater importance than in the mofussil. ... I. L. R. 12 *Mad.* 429, ... *Mull* ... 208, ... *indra,* ... 750, ... R. 7 H. L ... v. Anna ... 1 Mad. 7

——— s 80.

See Mortgage—Redemption—Miscellaneous . I. L R. 23 All. 429
8 C. W. N. 690

See Right of Suit—Sale in Execution of Decree . I. L. R. 12 All. 546

——— s. 81.

See Mortgage—Marshalling
I. L. R. 13 Mad. 235
I. L. R. 23 Calc. 790
2 C W. N. 793

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd*

————s. 81—*concld.*

See REGISTRATION
I. L. R. 26 Bom. 538

———— ss. 81, 82

See CIVIL PROCEDURE CODE, 1882, s. 13
8 C. W. N. 30

———— s. 82.

See MORTGAGE—MARSHALLING
I. L. R. 22 All. 284

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES
I. L. R. 29 Calc. 803

See SALE IN EXECUTION OF DECREE—JOINT PROPERTY
I. L. R. 23 All. 355

1. ———— *Mortgage—Contribution—Apportionment of the mortgage-debt—mortgage-decree* A brought a suit upon a mortgage-bond. Five of the defendants, who have subsequently purchased all the mortgaged properties, contended that under s 82 of the Transfer of Property Act the mortgaged debt should be

claim. ROGHU NATH PERSHAD *v.* HARLAL SADHU
I. L. R. 18 Calc. 320

2. ———— *Partial redemption of mortgage—Apportionment of mortgage debt—Contribution* In 1884 *A* and *B*, being divided brothers, hypothecated to *X* and *Y* the house now in suit which was *A's* family property, and a house belonging to *B*. In 1886 *A* hypothecated

Property Act, s 82, plaintiff was not entitled to compel defendants 4 and 5 to satisfy their debt against *B's* house so far as it extended NEELAMEGAN *v.* GOVINDAN . I. L. R. 14. Mad. 71

3. ———— *Mortgage-debt*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 82—*contd*

tained a decree for sale on his mortgage. At the date of this mortgage, some of the villages comprised therein were liable under one or both of two decrees obtained on prior mortgages Subsequently to the decree of the 28th of February 1878, four of the villages affected by that decree were sold in execution of a simple money-decree

that the said four villages had been sold for considerably more than the amount for which they were proportionately liable under the mortgage-decree; that the defendants were owners of villages which were equally liable with his (the plaintiff's) villages under the decree of the 28th of February 1878, but which had contributed nothing towards the satisfaction of that decree; that six of those villages and an eighth share in a seventh had been purchased by *S* (the predecessor in title of one of the defendants *H*), in execution of simple money-decrees, and that a share in an eighth village had been similarly purchased by the predecessor in title of the other defendants Against these villages the plaintiff sought contribution *Held*, that, in calculating the amount to which the plaintiff was entitled by way of contribution, the plaintiff was bound to take into account the liabilities which existed on most of the villages in respect of which the suit was brought under the two prior mortgages; that

to recover, regard must be had to the claims ... the other ... execution ... 8, and had, more than ... HARI RAJ SINGH *v.* AHMAD-UD-DIN KHAN
I. L. R. 19 All. 545

... each took a fourth share in the family property and each became liable for a fourth of the mortgage-debt. One of the sons then sold the greater portion of his

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 82—*contd.*

share in the mortgaged property to plaintiff giving plaintiff a security bond for a sum of money and hypothecating other lands to indemnify plaintiff from any loss which might arise if the original mortgagee should bring the mortgaged lands to sale. The mortgagee obtained a decree on his mortgage, in execution of which a portion of the mortgaged land was sold, including that which plaintiff had bought. The proceeds of sale of the said portion were sufficient to satisfy the mortgagee's decree Plaintiff then sued on his security bond, and the land hypothecated to him was sold, plaintiff receiving the amount secured by the bond He now sued under s. 82 of the Transfer of Property Act, and claimed rateable contribution from the other portions of the mortgaged property which had not been sold to satisfy the mortgagee's decree *Held*, that he was entitled to recover, and that his right to rateable contribution was in no way affected by the indemnity bond or the payment made to him thereunder. *Held*, further, that the words "in the absence of a contract to the contrary," in s 82 of the Transfer of Property Act, apply to contracts between a mortgagor and mortgagee, and that an agreement which is binding only as between the mortgagors is not "a contract to the contrary," within the meaning of the section RAMABHADRACHAR *v.* SRINIVASA AYYANGAR (1900)

I. L. R. 24 Mad. 85

5 ——— *Contribution to mortgage-debt—Liability of land in possession of third person* Certain land was mortgaged to *R.* Subsequently a portion of the land comprised in *R's* mortgage was mortgaged to plaintiffs together with other land *R* then obtained a decree on his mortgage, in pursuance whereof the said portion of *R's* security which was also mortgaged to plaintiffs was sold *R's* decree was thus satisfied, without the necessity for the sale of the remaining land which comprised *R's* security. This remaining land was purchased by some of the defendants Plaintiffs now sued on their mortgage, *and claimed not only as against their mortgagors*, and the property comprised in their security, but also, on the principle of contribution, sought to charge any balance which might still remain due as against the remaining land already referred to as having been purchased by some of the defendants *Held*, that plaintiffs were not entitled to enforce contribution against the defendants *Semble* That, if the claim for contribution were maintainable, it ought not to have been joined with the ordinary claim on a mortgage Plaintiffs had purchased a portion of the property comprised in their own mortgage when it was sold in execution of *R's* decree, already referred to By that purchase they had made a profit. It was contended that plaintiffs in their character of second mortgagees stood in a fiduciary position towards their mortgagors, and that they were not entitled to be treated as independent strangers buying at an auction-sale There was nothing to show that plaintiffs had taken any advantage of their position. *Held*, that plaintiffs took an

property, since under the circumstances they must be taken to have paid the full value of the unincumbered property. The owners of certain property, wishing to raise a sum of R10,500 on mortgage, executed two mortgages in favour of the same mortgagees over the same lands, on the same day;—one for R10,000 and another for R500 The later instrument recited the bond for R10,000 as a prior mortgage. The mortgagees then sued on the mortgage for R500, and obtained a decree, under which portions of the security were sold, subject to liability under the mortgage for R10,000. The mortgagees now sued on the

...jected that

on of s 43

, that this

regarding

the case as one of a mere personal claim on the instrument of mortgage, s. 43 did not apply. SESHA AYYAR *v* KRISHNA AYYANGAR (1900)

I. L. R. 24 Mad. 96

6. ——— *Contribution, suit for—Mortgage-debt—Mortgage-decree directing sale of some of the mortgaged properties first—Purchase of properties by different parties—Payment of mortgage-decree by some of the purchasers in execution of decree against purchased properties—Liability of purchasers of other properties for contribution, if any.* S 82 of the Transfer of Property Act makes it clear that mortgaged properties are only liable to contribute rateably to a mortgage-debt in the absence of a contract to the contrary. Although all the properties mortgaged may be originally equally liable for the mortgage-debt,

the debt is not realized by the sale of those properties. Whatever might have been the right of the purchaser of some of the properties if such a mortgage-decree had not been passed, he cannot, when he has purchased the properties subsequently to the decree, and subject to the mortgage and to the decree, and subject to the mortgage and ... with regard to it, call

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7. ——— *Mortgage—Contribution—Valuation of properties for the purpose of ascertaining their liability to contribution.* In estimating—for the purpose of giving effect to a claim for contribution—the respective values of two

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 82—*contd.*

or more properties, the subject of a mortgage the time to be regarded is the date of the execution of the mortgage in virtue of which contribution is claimed. MARDAN SINGH v THAKUR SHEO DAYAL (1905) . I. L. R. 27 All. 549

8. ——— *Purchase by the mortgagee of some of the mortgaged properties in execution of another decree, effect of—Contribution—Execution proceeding—Separate suit* If by reason of it being necessary to sell the remaining share in the mortgaged properties of the judgment-debtor, any equity should arise between the decree-holder and other persons interested in the properties mortgaged to have the decretal money distributed over the whole property mentioned in the decree, that equity must be enforced by an independent suit *Nafar Chunder Mundul* v. *Baikanto Nath Roy, 4 C L R 15,* referred to A mortgagee having purchased the equity of redemption in a part of the mortgaged property previously applied subsequently to enforce his ...d properties ...chased into ... the persons ... parties On objections being taken that the decree-holder was not entitled to do so, and that even if he could do so the decretal amount ... sought to be ...

I. L. R. 34 Calc. 13

9. ——— *Mortgagor and mortgagee—Requisites of valid tender—Mortgagee wishing to gain possession—Mortgagor's right to redeem—Construction of mortgage-deed.* In a mortgage-deed after enumerating several contingencies ...

if the due date or extended date, if any, had elapsed, and in such case all such rights and remedies shall be available to the Banker as will be available to her under the terms of these presents upon default being made in payment of the principle moneys or interest and all other moneys thereby secured and the Banker may in such event in her discretion without any further consent on the part of the Company forthwith enter upon and take possession of the mortgaged premises or any of them of which she is not already in possession " Owing to the happening of some of the contingencies the plaintiff, the mortgagee, claimed that the debt owing on the security of the mortgage-deed had become payable and that she was entitled to enter upon and take possession of the premises mortgaged to her. She contended that the expression " as if the due date had elapsed " not only served to accelerate the due date, but also to fix the amount of the mortgage-money at what it would have been if in fact the due date had elapsed The defendant alleged a tender of the mortgage-money to the plaintiff's attorneys and a refusal to accept the same, and claimed to redeem the property. *Held,* (i) that the words " as if the due date had elapsed " were used merely to accelerate payment and they could not be construed to cover the further amount that would have been due on the expiry of the due date of the mortgage (ii) That the tender was not good, as the plaintiff's attorney disclaimed authority to receive it (iii) That the defendant was entitled to redeem the property. *Per* CHAPMAN— A tender must be made either to the principal, whose business it is to consider it, or to his authorised agent, and a tender made to a person, who disclaims authority to receive it is made at the maker's risk *Watson* v *Hetherington, I. C. & K. 35;* and *Bingham* v. *Allport, 1 N. & M. 398,* followed. BAI RUTTONBAI v FRASER ICE FACTORY (1907) . . I. L. R. 32 Bom. 521

10. ——— ss. 82 and 100—*Mortgage—Co-mortgagors—Sale of property of one or more out of several co-mortgagors—Proceeds of such sale not sufficient to satisfy the decree—Contribution.* ...

mortgaged property has been sold in execution of a decree for sale on the mortgage and has fetched at auction a larger sum than was rateably attri... ...whole of ...t his co-...bute and ...the proceeds of the sale of his portion of the mortgaged property was in excess of the amount rateably due from it. He therefore does not acquire a charge in respect of such excess against his co-mortgagor's portions of the mortgaged property. *Ibn Husain* v. *Ramdai, I. L. R. 12 All. 110; Pancham Singh* v. *Ali Ahmad, I. L. R. 4 All. 58; Ex parte Gifford, 6 Ves. 805; 6 R. R. 53; Davis* v. *Humphreys, 6 M. & W. 153; 55 R. R. 547; Kinu Ram Das* v. *Mozaffer Hosain Shaha, I. L. R. 14 Calc 809; Rajah of Vizianagram* v. *Rajah Setrucherla Somasekharaz, I. L. R. 26 Mad. 686; Dakhina Mohon Roy* v. *Saroda Mohan Roy, I. L. R 21 Calc. 142; Sesha Ayyar* v. *Krishna Ayyangar, I. L. R. 24 Mad. 96; Pattabhiramay Naidu,* v. *Ramayya Naidu, I. L. R. 20 Mad. 23; Seth Chittor Mal* v. *Shib Lal, I. L. R.*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 82—*contd.*

14 All. 273 ; Platt v. *Mendel, L. R. 27 Ch D. 246 ; Kissory Mohan Roy* v. *Kally Churn Ghose, I. L. R. 22 Calc. 100*, and *Tombs* v. *Roch, 2 Collyer 490*, referred to *Per* BANERJI, J.—As regards the application of the doctrine of contribution there is no distinction between a case where the payment in respect of which contribution is claimed is made to avert a legal process and a case in which payment has been enforced by sale of the property of the claimant for contribution *Rodgers* v. *Maw, 15 M. & W. 444 ; Bhagirath* v. *Naubat Singh, I. L R. 2 All. 115 ; Ibn Hosain* v *Ram Dai, I. L. R. 12 All. 110 ; Baldeo Sahai* v. *Baij Nath, I. L. R. 13 All 371 ; Hari Raj Singh* v. *Ahmud-ud-din Khan, I. L. R 19 All 545 ; Ramabhadrachar* v. *Srinivasa Ayyanger, I. L R 24 Mad. 85 ;* and *Rajah of Vizianagram* v. *Rajah Setrucherla Somasekharaz, I. L R 26 Mad 686*, referred to. It is not essential to the accrual of the right of contribution that the whole of the debt in respect of the payment of which contribution is claimed should have been satisfied. A right to contribution arises when the payment made by the claimant for contribution or the amount realized by the sale of his property exceeds the amount for which that property was rateably liable and the property of the person from whom contribution is sought has to that extent benefited by being relieved of liability. *Dering* v. *The Earl of Winchelsea, 2 W. & T (7th ed), p. 535 , Davies* v. *Humphreys, 6 M. & W. 153 ; Craythorne* v. *Swinburne, 14 Ves 160 ; Bhagirath* v. *Naubat Singh, I. L. R. 2 All 115 ; Ibn Husain v. Ram Dai, I L. R. 12 All 110 ; Hari Raj Singh* v *Ahmad-ud-din Khan, I L. R. 19 All 545 ; Rajah of Vizianagram* v. *Rajah Setrucherla Somasekharaz, I L R 26 Mad 686 ; Lalji Mal* v *Nand Kishore, I. L. R 19 All 332* , and *Cottingham* v. *The Earl of Shrewsbury, 3 Hare 627*, referred to. A person who is entitled to contribution, also acquires, in the case of a mortgage, a charge upon the property of his co-mortgagors. *Bhagirath* v *Naubat Singh, I. L. R. 2 All 115 ; Pancham Singh* v *Ali Ahmad, I. L. R 4 All. 58 ; Ibn Hosain* v *Ram Dai, I. L. R 12 All. 110 ; Baldeo Sahai* v. *Baij Nath, I L R. 13 All 371 , Hari Raj Singh* v. *Ahmad-ud-din Khan, I. L. R. 19 All. 545 ; Shanto Chandar Mukerji* v. *Nain Sukh, I. L R 23 All 355 ; Dannappa* v. *Yamnappa, I L R 26 Bom 379 ;* and *Dakhina Mohan Roy* v. *Saroda Mohan Roy, I. L. R 21 Calc 142*, referred to *Seth Chitor Mal* v. *Shib Lal, I. L R 14 All 273 ; Kinu Ram Das* v. *Muzaffar Hosain Shaha, I. L R 14 Calc 809 ;* and *Shivrao Narain* v. *Pundlik Bhaire, I. L. R. 26 Bom. 437*, distinguished. IBN HASAN *v.* BRIJBHUKAN SARAN (1904) . . . **I. L. R. 26 All. 407**

11. ——— *Mortgage—Effect of satisfaction of entire mortgage-debt by one co-mortgagor—Charge—Subrogation. Held*, (i) that a mortgagor who discharges the whole mortgage-debt obtains thereby a charge on his co-mortgagor's share of the mortgaged property in respect of the amount paid by him in excess of the share of [illegible]

[illegible] created by one of the other co-mortgagors. *Bhagwan Das* v. *Har Dei, I. L. R. 26 All. 227 ;* and *Pancham Singh* v. *Ali Ahmad, I. L R. 4 All. 58*, referred to. HAR PRASAD *v.* RAHUNANDAN PRASAD (1908) . . **I. L. R. 31 All. 166**

——— s. 83.

See MORTGAGE. **8 C. W. N. 153 ; 216 ; 332**

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION **I. L. R. 26 Bom. 312**

MISCELLANEOUS CASES. **I. L. R. 27 Bom. 23**

See RIGHT OF SUIT—REVENUE, SALE FOR ARREARS OF . **I. L. R. 13 All. 195**

See SPECIFIC PERFORMANCE — SPECIAL CASES . . **I. L. R. 13 Mad. 316**

1. ——— *Deposit in Court by mortgagor.* The deposit intended by the Transfer of Property Act, s. 83, must be made unconditionally. Accordingly when the mortgagor in making the deposit prays that the amount should be paid out to the mortgagee on his producing certain deeds, the provisions of the section are not complied with. NANU *v.* MANCHU **I. L. R. 14 Mad. 49**

2. ——— *Deposit in Court by mortgagor—Full and unconditional tender.* The fact that a certain sum of money tendered under s. 83 of the Transfer of Property Act, and [illegible] due, [illegible] it, [illegible] m [illegible] to a registered receipt (to which the mortgagee agrees) and to the return of the title-deeds does not render the tender conditional and therefore invalid. *Nanu* v. *Manchu, I. L. R. 14 Mad. 49*, distinguished. KORA NAYAR *v* RAMAPPA **I. L R. 17 Mad. 267**

3. ——— and s. 84—*Deposit in Court to the account of the mortgagee of amount remaining due on mortgage—Deposit to credit of persons not entitled in addition to persons entitled.* A mortgagor before bringing a suit for redemption deposited the mortgage-money in Court to the credit of persons who were not entitled to it in addition to that of persons who were entitled to it *Held*, that he was not entitled to claim the benefit of ss. 83 and 84 of the Transfer of Property Act, inasmuch as the persons really entitled to the money could not draw it. MADHABI AMMA *v* KUNHI PATHUMMA . . **I. L. R. 23 Mad. 510**

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd*

——— s. 83—*contd.*

4. ——— *Mortgage—Repayment of money lent—Lender not bound to accept payment by instalments, unless he has so agreed* Where no stipulation or covenant has been made between the contracting parties as to the repayment of a sum borrowed, the lender is entitled to decline to receive payment of a sum due to him in instalments, and he can claim that the whole sum due be paid at one and the same time. BEHARI LAL *v.* RAM GHULAM (1902)

I. L. R. 24 All. 461

5. ——— *Redemption of mortgage—Deposit in Court by the mortgagor of the the sum alleged by him to be due on the mortgage—Conditions of such deposit.* A mortgagor paid into Court, under the provisions of s. 83 of the Transfer of Property Act, the sum which in his estimation was sufficient to redeem his mortgege. The mortgagees refused to accept this sum in discharge of the mortgage, and the mortgagor filed a suit for redemption, without, however, withdrawing from Court the money which he had deposited, In this suit the mortgagor obtained a decree for redemption on payment of the sum deposited, *plus* a small item for costs; and an appeal by the defendants from this decree was dismissed The [illegible] Court, but, [illegible] y the Court [illegible] the money, [illegible] *Held*, that the defendants had, after such withdrawal of the money deposited by the plaintiff, no right to proceed with their appeal. The money deposited by the mortgagor plaintiff continued to be held by the Court on the terms upon which it was originally deposited, and the defendants were only entitled thereto upon fulfilling the conditions laid down in s. 83 of the Transfer of Property Act, that is to say, if they stated their willingness to accept the money deposited in full discharge of their mortgage, and deposited the mortgage-deed (if in their possession or power) in Court. DAL SINGH *v* PITAM SINGH (1902)

I. L. R. 25 All. 179

6. ——— *Mortgage—Payment of mortgage-money into Court—Payment made to credit of mortgagee and a third person. Held,* [illegible]

benefit of the provisions of s. 83, nor would the omission of the mortgagee to take any notice of such irregular payment be any bar to his bringing a suit for sale on his mortgage. DEBENDRA MOHAN RAI *v.* SONA KUNWAR (1904)

I. L. R. 26 All. 291

7. ——— *Money deposited under, becomes property of mortgagee only when conditions stated in section complied with.* Money deposited in Court by the mortgagor for payment to the mortgagee under s. 83 of the Transfer of Property Act, does not become the property of the latter, until he has complied with the [illegible]

——— *Deposit made in full discharge of mortgage-bond—Withdrawal of money by Receiver as agents of mortgagees—Withdrawal without following the provisions prescribed by the Act—Principal and Agent—Sonthal Pergunnahs Settlement Regulation III of 1872, s 6, as amended by s. 24 of Regulation V of 1893, construction of, as to amount of interest recoverable on bond—Interest previously paid by debtor whether to be taken into account in making decree* On 27th July 1885 a simple mortgage-bond for ₨34,000 providing for interest at 18 per cent per annum and on default in payment compound interest at the same rate was executed by a debtor, now represented by the respondents in favour of one of a firm of money-lenders, the transaction being admittedly governed by s 6 of the Sonthal Pergunnahs Settlement Regulation III of 1872, as amended by Regulation V of 1893. On 27th October 1890, interest to the amount of R23,403-15-6 had at various times been paid and that was all that was due for interest up to that date. [illegible]

fixed, as amounting together with the interest already paid, to R68,000, which by s. 6 of Regulation III of 1872, as amended by s 24 of Regulation V of 1893, was the full amount (being double the principal) which the mortgagor considered could be recovered from him on the bond On tendering that amount the mortgagor demanded the return of the bond, but the mortgagee, though willing to give a receipt for the money, could not give him the bond, and the mortgagor deposited the money in Court under the provisions of s. 83 of the Transfer of Property [illegible]

not disclosed and without the provisions of the Transfer of Property Act, for such withdrawals [illegible]

out, and charged interest and compound interest

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 83 *concld.*

at 12 per cent. on the entire sum (R22,859-5) shown to be due on that date. The pleas in defence were s 6 of the Regulation III of 1872 as limiting the amount of interest recoverable, and the deposit under s. 83 of the Transfer of Property Act as being a full discharge of the bond The High Court, affirming the decree of the Subordinate Judge, held on the construction of the Regulations that the plaintiffs having received the principal and a sum for interest equal to the principal there was nothing more due and dismissed the suit. *Held* by the Judicial Committee, that in the absence of anything to show that he had any greater power or authority to withdraw the money than the plaintiffs themselves had the Receiver must be taken to have withdrawn it subject to the conditions prescribed by s 83 of the Transfer of Property Act, that is, in full discharge of the bond The plaintiffs were bound by the acts of their agent and could not rely upon the Receiver's default in omitting to perform any of the necessary conditions, in order to escape from the consequences which would of necessity have followed the withdrawal if everything prescribed by the Act had been rightly done RAM CHANDRA MARWARI *v.* KESHOBATI KUMARI (1909)
I. L. R. 36 Calc. 840

——— s. 84.

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION I. L. R. 26 Bom. 312
8 C. W. N. 153; 216

MISCELLANEOUS CASES . I. L. R. 27 Bom. 23

See MORTGAGE REDEMPTION—MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE . I. L. R. 8 All. 502

——— s. 85.

See HINDU LAW—ALIENATION—ALIENATION BY FATHER.
I. L. R. 27 Calc. 724
I L. R. 28 Calc. 517
I. L. R. 24 All. 211

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.
I. L. R. 30 Calc. 599
11 C W. N. 1078

PURCHASERS . . I. L. R. 23 All. 467

REDEMPTION—RIGHT OF REDEMPTION.
5 C. W. N. 83
I. L. R 23 All. 25

MORTGAGED PROPERTY. I. L. R. 24 All. 549

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING

See PRACTICE . I. L. R. 32 Calc. 748

See RES JUDICATA.
I. L. R. 31 Calc. 428

See SALE IN EXECUTION OF DECREE—JOINT PROPERTY I. L. R. 25 All. 214

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 85—*contd.*

1. ——— *Parties—Mortgage of mortgagees rights—Suit by sub-mortgagee for sale of the interest of his mortgagor. Held*, that in a suit by a sub-mortgagee to recover a debt secured by a mortgage of the defendant's rights as mortgagee the defendant's mortgagor is not a necessary party. In such a suit the plaintiff cannot bring to sale the mortgagee rights of the defendant. *Ganga Prasad* v. *Chunni Lal, I. L. R. 18 All 113*, referred to RAM JATAN RAI *v.* RAMHIT SINGH (1905) . . . . I. L. R. 27 All. 511

2. ——— *Non-joinder of necessary parties—Civil Procedure Code, 1882 s 32.*

[illegible]

CHAND (1905) . . . I. L. R. 27 All. [illegible]

3. ——— *Does not authorise Court to introduce unnecessary complications—Mortgagee not compellable to distribute liability among mortgaged properties—Contribution, right of, against properties not included in suit—Marshalling not compellable so as to prejudice mortgagee—Power of Court executing mortgage-decree.* There is nothing in the provisions of the Transfer of Property Act to support the view that as between a mortgagee and the holders of the equity of redemption the mortgagee is bound to distribute his debt rateably upon the mortgaged properties. *Tim-* ... *Mad 335,* ... ed to ... ected ... ontri- ... only ... have been compelled to pay the whole debt, they are entitled to contribution from the other parties, who are liable, though the properties in their hands have not been included in their suit. *Jagat Narain* v. *Qutub Husain, I. L R 2 All. 807,* followed *Chagandas* v. *Gansing, I. L R 20 Bom. 615,* followed. *Semble*. Where, however, the mortgagor sells not merely the equity of redemption but conveys a portion of the property itself free from any liability to contribute to the mortgage-debt, the purchaser may insist upon the mortgagee proceeding in the first instance, against the property in the hands of the mortgagor. Marshal- ... a mort- ... hich may ... litigation ... *Ch D.* ... to realise. ... *54*, distinguished. *Ram Dhan Dhur* v. *Mohesh Chunder Chowdhry, I. L. R 9 Calc 406*, distinguished. *Obiter*: It is competent to the Court to

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd*

———— s. 85—*contd.*

executing a mortgage-decree to exercise its control in bringing the different items of property comprised in the decree to sale in a particular order to adjust the equities of the parties before it, who are interested. KRISHNA AYYAR v. MUTHUKUMARASAWMIYA PILLAI (1905) . **I. L. R. 29 Mad. 217**

4. ———— *Parties to suit—Suit for foreclosure—Exemption of part of the mortgaged property—Persons interested only in the portion exempted not necessary parties* If a plaintiff (mortgagee), suing on the basis of his mortgage for either sale or foreclosure, thinks fit to exempt from his suit some portion of the mortgaged property and to sell or to foreclose the mortgage in respect of the remainder, there is nothing in law to prevent his doing so If such a plaintiff exempts a portion of the mortgaged property from his suit he is not obliged to make parties to the suit the persons interested in the portion of the property so exempted *Chandika Singh* v. *Pokhar Singh, I L. R 2 All 906,* distinguished. *Sheo Prasad* v *Bihari Lal, I L R 25 All 79, Jai Gobind* v *Jasram, All Weekly Notes, (1898) 120,* and *Nazir Husain* v. *Nihal Chand, All Weekly Notes, (1905) 156,* referred to SHEO TAHAL OJHA v. SHEODAN RAI (1905) **I. L. R. 28 All. 174**

5 ———— *Mortgagee holding two mortgages on same property and who has sued on the first mortgage and sold the property without mentioning the second mortgage, cannot sue on his second mortgage* A mortgagee who is made a defendant under s 85 of Transfer of Property Act and who omits to set up a mortgage is barred from suing on such mortgage when in *consequence of his omission the property is ordered* to be sold free from the mortgage which had not been pleaded. *Sri Gopal* v *Pirthi Singh, I. L R 24 All 429,* referred to A party holding two mortgages on the same property and suing on the first mortgage alone, is in respect of the second mortgage a party to the suit under s 85 of the Transfer of Property Act; and if he omits to mention his second mortgage and the property is ordered to be sold free of such mortgage, he cannot afterwards sue to enforce his second mortgage against such property. *Sundar Singh* v. *Bholu, I L R. 20 All 322,* dissented from *Dorasamy* v *Venkataseshu Aiyar, I. L. R 25 Mad 108,* followed. NATTU KRISHNAMA CHARIAR v ANNANGARA CHARIAR (1907) **I. L. R. 30 Mad. 353**

6. ———— *Mortgage—Suit for sale on a mortgage—Parties* Whether or not s 85 of the Transfer of Property Act, 1882, refers solely to persons interested in the equity of redemption of both mortgagor and mortgagee. *Jaggeswar Dutt* v. *Bhuban Mohan Mitra, I. L R 33 Calc. 425,* referred to. KHAIRATI v. BANNI BEGAM (1908) . . . . **I L. R. 30 All. 240**

7. ———— *Mortgagee releasing part of mortgaged property cannot enforce entire claim against the other properties—S. 85 of the Transfer of Property Act does not necessitate the* ... portion in which third parties have become interested as assignees of the equity of redemption" A suit is not liable to be dismissed under s 85 of the Transfer of Property Act for non-joinder ... proceed against PONNUSAMI MUDALIAR v SRINIVASA NAIKAN (1908) . **I. L. R. 31 Mad. 333**

8. ———— *Mortgage suit—Parties — Omission to join all the heirs of a purchaser of mortgaged property within time—Effect—Limitation—Notice—Apportionment of debt.* Where three days before the period of limitation would ... the purchaser not having been made parties — *Held,* that the suit could not be dismissed on the ground of defect of parties, unless it was found that the plaintiff was aware at the ...

9. ———— *Mortgage—Suit for sale on a mortgage—Parties.* In a suit for sale on a mortgage the ordinary rule is that a plaintiff mortgagee cannot be allowed so to frame his suit as to draw into controversy the title of a third party who is in no way connected with the mortgage and who has set up a title paramount to that of the mortgagor and mortgagee. *Jageswar Dutt* v. *Bhuban Mohan Mitra, I. L. R 33 Calc. 425, Mon Mohini Ghose* v. *Parvati Nath*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 85—*concld.*

Ghosh, I. L. R. 32 Calc. 746, and *Kairati Lal v. Banni Begum, All. Weekly Notes, (1908) 100,* referred to. JOTI PRASAD *v.* AZIZ KHAN (1908).
I. L. R. 31 All. 11

10. ———— ss. 85, 86—*Mortgage decree need not reserve rights admitted by all parties—Decree must be construed with reference to pleadings.* There is nothing in the provisions of the Transfer of Property Act, which requires that a decree in a mortgage suit should in terms reserve rights admitted by all the parties and order the sale to be subject to them and s. 96 of the Act does not militate against this view. *Quære* Whether s 85 of the Act requires such persons, whose rights are admitted, to be made parties. Where the decree omits to reserve such rights, it ought to be construed with reference to the admissions contained in the pleadings or made in the course of the case and ought not to be so construed as to grant a larger measure of relief than is prayed for or to negative rights admitted by all parties. SRINIVASA RAO SAHEB *v.* YAMUNABHAI AMMALL (1905) . . . . I. L. R. 29 Mad. 84

———— s. 86.

See ante, s. 2.
I. L. R. 12 Calc 436 ; 505 ; 583
I. L. R. 11 Calc 582
I. L. R. 6 All. 262
I. L. R. 14 Calc. 599

See DECREE—CONSTRUCTION OF DECREES —MORTGAGE . I. L. R. 20 Calc. 279

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.

See LIMITATION ACT, 1877, SCH II, ART. 135 . . . I. L. R. 12 Calc. 614

See LIMITATION ACT, 1877, SCH II, ARTS. 178 AND 179.
I. L. R. 24 All. 542

See PENALTY . I. L. R 31 Calc 138

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.
I. L. R. 13 Calc. 346

1. ———————— *Power of Court to make preliminary decree absolute when appeal is pending.* Pendancy of an appeal against a preliminary decree made under s. 86 of the Transfer of Property Act does not prevent the Court which passed the decree from making it absolute. MADAN MOHUN MITTER *v.* RAM HURI SAHU
1 C. W. N. 197

2. ———————— *Mortgage—Foreclosure—Prior and puisne incumbrancer—Transfer of Property Act (IV of 1882), ss 74, 83, 86—Decree obtained by prior mortgagee against mortgagor—Payment by puisne mortgagee—Puisne mortgagee, rights acquired by—If enforcible in execution—Civil Procedure Code (Act XIV of 1882), s. 244—Separate suit when lies—Form of foreclosure decree—Proper*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 86—*contd.*

form. A decree obtained by a prior mortgagee directed foreclosure in the event of the decretal amount not being paid into Court by the mortgagor within a specified time. The amount was paid by a puisne mortgagee, who was a party in the suit and was taken out by the decree-holder: *Held*, that under s. 74 of the Transfer of Property Act the puisne mortgagee acquired all the rights and powers of the prior mortgagee as such, but the rights so acquired were not such as could be worked out in execution of the decree made in favour of the prior mortgagee, that decree having been discharged by the payment. A separate suit to enforce those rights was not therefore barred by s. 244 of the Civil Procedure Code. The existence of a decree cannot, by the operation of s. 244 of the Civil Procedure Code, bar a fresh suit between the parties in respect of rights, which cannot be worked out without additions to the decree which the Court of execution has no power to make. The form of order given in s. 86 of the Transfer of Property Act contemplates a suit [illegible]

[illegible] of each case. For the purpose of making decree [illegible]

[illegible] DHAR (1905) . . . . 9 C. W. N. [illegible]
s.c. L. R. 32 I. A. 123

3. ———— ss. 86, 87—*Order absolute for foreclosure without notice to defendant in foreclosure suit—Application to set order aside.* A plaintiff in a foreclosure suit obtained a decree for foreclosure under s. 86 of the Transfer of Property Act, and, the time limited for redemption by the defendant having expired without being extended, the plaintiff obtained, under s. 87, but without notice to the defendant, an order absolute debarring the defendant from redeeming, and also for delivery of possession of the mortgaged property. On the contention being raised, on appeal, that the order was null and void for want of notice to the defendant :—*Held*, that the view of the majority of the Court in *Mallikarjunadu Setti v. Lingamurty Pantulu, I. L. R. 25 Mad. 244*, which related to proceedings under s. 89, was applicable to proceedings under s. 87 and that such proceedings are proceedings in execution of the decree passed under s. 86. In the present case, the application had been made within one year of the date of the decree, and, in consequence, under s. 248 of the Code of Civil Procedure, no notice was necessary to the defendant. *Narayana Reddi v. Papayya, I. L. R. 22 Mad. 133*, proceeds upon the view that the defendant could

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 86—*contd.*

apply for an execution of the time for redemption only if and when the plaintiff applies for an order absolute under the second paragraph of s. 87—a view which has been dissented from, by the Full Bench in *Vedapuratti* v *Vallabha Valiya Rajah, I L R 25 Mad 300* PANDU PRABHU v JUJE LOBO (1903)

I. L. R. 27 Mad. 40

4. ———— *Mortgage—Suit for foreclosure—Appeal—Application for order absolute for foreclosure—Limitation—Execution of decree-* ... *178*

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but it was in respect of three villages only. As to these the decree provided for foreclosure in default of payment by the defendants of a sum of R39,584-6 8 on or before the 19th of December 1899 The plaintiff did not ask for an order absolute for foreclosure in respect of this decree, but appealed against the dismissal of his suit as regards the two remaining villages This appeal was dismissed on the 4th of August 1902 No part of the mortgage-money was paid ; and on the 15th of September 1903, the decree-holder appealed under s 87 of the Transfer of Property Act, 1882, for an order absolute for foreclosure. *Held,* that the decree-holder's application was not barred by limitation. The nature of proceedings for foreclosure is such that a mortgage ...

Lal, I. L. R 13 All. 278, discussed and doubted *Mul Chand* v. *Mukta Pal, All Weekly Notes, (1896) 100,* and *Mahabir Prasad* v. *Sital Singh, I. L. R. 19 All. 520,* referred to SHAM SUNDAR v. MUHAMMAD IKTISHAM ALI (1905)

I. L. R. 27 All. 501

Raj Kumar Singh v. *Sheo Narain Sahu, 12 C W. N. 364* s c. *I. L. R. 35 Calc. 431,* distinguished. SHAFFAR KHAN v. SATYANUNDA DAS GUPTA (1908) 13 C. W. N. 743

———— ss. 86 and 88.

See DECREE . I. L. R. 34 Calc. 157
I. L. R. 35 Calc. 221

See INTEREST . I. L. R. 29 All. 322

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 86—*concld*

———— *Construction of decree—Decree for sale on a mortgage—Interest after date*

v *Rani Kanno Dei, L. R. 28 I A. 35 ; I. L. R. 23 All 18,* followed. BALWANT SINGH v. AMOLAK RAM (1905) . . I. L. R. 28 All. 223

———— ss. 86, 88, 89.

See MORTGAGE . I. L. R. 31 Calc. 863

———— *Sale of mortgaged property—Execution of decree—Right to redeem—*

not merely to the passing of the order absolute

although an order absolute for sale may have already been passed *Mallikarjunadu Setti* v. *Lingamurti Pantulu, I.L R. 25 Mad 244 ; Krishnaji* v. *Mahadev Vinayak, I. L R 25 Bom. 104 ; Raja Ram Singhji* v. *Chuni Lal, I. L. R 19 All. 205,* and *Shyam Kishan* v. *Sundar Koer, I. L. R. 31 Calc 373,* followed. *Jogendra Nath Mukerjee* v. *Methana Abraham, 6 C. W. N. 769,* and *Popple* v. *Sylvester, L. R. 22 Ch D 98,* referred to. BIBIJAN BIBI v. SACHI BEWAH (1904)

I. L. R. 31 Calc 863

———— s. 87.

See APPEAL—DECREES.
I. L. R. 12 All. 61
I. L. R. 14 All. 520

See DECREE—CONSTRUCTION OF DECREES—MORTGAGE I. L. R. 20 Calc 279
I. L. R. 25 Calc. 311

See LIMITATION ACT, 1877, SCH. II, ART. 147 . . . . I. L. R. 16 Mad. 64

See LIMITATION ACT, 1877, SCH. II, ARTS. 178 AND 179.
I. L. R. 25 All. 542

See LIMITATION ACT, 1877—ART. 179—PERIOD FROM WHICH LIMITATION RUNS—DECREES FOR SALE.
I. L. R. 20 All. 357

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION . I. L. R. 25 All. 231

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 87—*concld.*

FORECLOSURE—RIGHT OF FORECLOSURE. **6 C. W. N. 654**

DEMAND AND NOTICE OF FORECLOSURE . **I. L. R. 29 Calc. 644**

REDEMPTION—RIGHT OF REDEMPTION . **I. L. R. 16 Calc. 246**
I. L. R. 20 All. 358 ; 446
I. L. R. 19 Mad. 40
I. L. R. 19 All. 180
I. L R. 22 Mad. 133
I. L. R. 27 Calc. 705

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY. **I L R 13 Calc. 346**

———— ss. 87, 89—*Foreclosure—Sale—Notice to mortgagee—Order absolute for sale.* Where an order absolute has been made under s 87 or s 89 of the Transfer of Property Act without notice

from. TASLIMAN *v.* HARIHAR MAHTO (1905) **I. L. R. 32 Calc. 253**
s.c. 9 C. W. N. 81

———— s. 88.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE. **I. L. R. 16 All. 259**

See DECREE—CONSTRUCTION OF DECREE—GENERAL CASES **I. L. R. 20 All. 397**

See DECREE—CONSTRUCTION OF DECREE—MORTGAGE . **I L R. 20 Mad. 78**
I. L. R. 25 Calc. 311
5 C. W. N. 137

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT . **I. L. R. 25 All 541**

See HINDU LAW—ALIENATION—ALIENATION BY FATHER **I. L. R. 15 All. 75**

See INTEREST—MISCELLANEOUS CASES—MORTGAGE . **6 C. W. N. 769**

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—CONTRACTS.

See LIMITATION ACT, 1877, SCH II, ART. 179—STEP IN AID OF EXECUTION—SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER **I. L. R. 24 Mad. 695**

See LIS PENDENS . **I. L. R. 23 All. 331**

See MORTGAGE—SALE OF MORTGAGED PROPERTY — RIGHT OF MORTGAGEES. **I. L. R. 18 All. 31**

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 88—*contd.*

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES. **I. L. R. 22 Mad. 286**

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE — IRREGULARITY . **I. L. R. 23 Calc. 682**

1. ———— *Mortgage—Sale of mortgaged property in execution of a simple money-decree—Subsequent sale of same property in execution of a decree on the mortgage—Rights of the two auction-purchasers inter se* Certain property subject to a mortgage was sold by auction in execution of a simple money decree, and the purchasers were put into possession. Subsequently

parties. *Held*, on a suit by the purchaser at the sale held in virtue of the mortgage-decree asking for payment of the amount due under the mortgage or in default for possession of the mortgaged property, that the defendants must be allowed to redeem upon payment of what was found due upon the mortgage at the time the mortgage-decree was passed, but if they did not pay within the time fixed by the decree, then the plaintiff was entitled to a decree for foreclosure of the defendants' rights and possession of the property.

2 ———— *Execution of decree—Civil Procedure Code, s 231—Certificate of satisfaction of decree filed by one of two joint decree-holders—Application by the other for an order absolute for sale* One of two joint holders of a decree under s 88 of the Transfer of Property Act cannot alone certify satisfaction of the whole decree so as to bind the other decree-holder though he may certify satisfaction in respect of his own interest therein. Hence, where one of such decree-holders purported to certify satisfaction of the whole decree, it was *held* that the other decree-holder, who had refused to recognise the certificate, was entitled to obtain an order absolute for sale of the mortgaged property in respect of one-half of the mortgage-debt. *Bibi Budhun v. Hafeah, 4 C. L. R 70,* followed. TAMMAN SINGH *v* LACHHMIN KUNWARI (1904) **I. L. R. 26 All. 315**

3. ———— *Decree for sale—Mortgagor can pay decretal amount at any time after decree and before sale completed—Right to make such payment not lost at the expiry of the period limited—S 244 of the Civil Procedure Code—Court executing may put mortgagor so paying in possession under s 244 of the Civil Procedure Code—Interest, rate of, to be allowed to mortgagee

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd*

———— s. 88—*contd.*

A decree for sale under s. 88 of the Transfer of Property Act in a final decree; and all subsequent proceedings are proceedings in execution of that decree and the provisions of the Code of Civil Procedure apply to them so far as they are applicable In the absence of anything to the contrary in the decree the judgment-debtor is entitled to stop execution by payment of the debt at any time after the decree is passed, and before the sale in execution is complete; and it is not finally complete, until he has had an opportunity of obtaining its rescission under s. 310 (A) of the Code *Mallikarjunadu Setti* v. *Lingamurti Pantulu, I L R 25 Mad 244*, followed. *Bibijan Bibi* v *Sachi Bewah, I. L R 31 Calc 863*, followed. The provision in a decree for sale at the suit of a mortgagee for delivery of possession in the event of payment within time need not, to that extent, be necessarily considered as a decree or order in favour of the mortgagor with all the incidents of a decree for redemption in a suit brought by the mortgagor himself. The provision may well be regarded as laying down the conditions on which the mortgagee is to receive payment. Even if regarded as a decree in favour of the defendant mortgagor, a decree forced on him by the mortgagee It is not easy to see why the mortgagee by forcing this decree on the mortgagor should be enabled to convert his decree for sale into one for foreclosure The mortgagor as decree-holder may waive the benefit of the decree thus forced on him; his right as judgment debtor to pay the debt, into the execution Court and have satisfaction entered up will remain unaffected *Vallabha Valia Rajah* v *Vedupuratti, I L R. 19 Mad. 40*, considered The rule of law laid down that a mortgagor, who has obtained a decree for, redemption, cannot apply for execution of the decree after expiry of the time limited, must be confined to a decree for redemption passed at the suit of the mortgagor. The right of the mortgagor to possession on payment of the decretal amount raises a question relating to the satisfaction of the decree within the meaning of s 244 of the Code, and must be determined by the Court executing the decree He is not bound to bring a separate suit for possession. The deed of usufructuary mortgage on which the suit was brought provided for redemption in the month of May The decree contained no restrictions as to the date of payment and the mortgagor paid the money into Court in November and ousted the mortgagee In determining the amount to which the mortgagee was entitled as interest:— [illegible]

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 88—*concld.*

awarded interest at the Court rate of 6 per cent. after the period fixed for redemption. ADIPURANAM PILLAI *v.* GOPALASAMI MUDALI (1907)

I. L. R. 31 Mad. 354

4. ———— *Transfer of Property Act (IV of 1882), ss. 52, 88, 89—Lis pendens, applicability of, to mortgage suit heard ex parte—"Contentious suit"—Mortgage decree nisi, mortgagor selling the mortgaged property after, but before decree absolute—Duty of the purchaser to apply to be made party—Subsequent purchaser in execution of the mortgage-decree—Priority* Where after the passing of an *ex parte* preliminary mortgage decree under s 88 of the Transfer of Property Act but before that decree was made absolute under s 89 the mortgagor sold his interest in the property —*Held*, that after the passing of the decree under s. 88, all that the mortgagor could convey was his equity of redemption as bound by that decree and therefore all that the purchasers got by the sale was that equity of redemption which could not entitle them to prevent the sale of the mortgaged property in execution of the mortgage-decree without redeeming the mortgage That it was not incumbent upon the mortgagee decree-holder to make the purchasers parties to the proceedings even if the decree-holder was aware of the sale But it was the duty of the purchasers to apply to be made parties to the proceedings and, in those proceedings, to claim under their purchase the right to redeem the mortgage That not having done so their purchase did not confer on them any right in the mortgaged properties as against the mortgagee decree-holder who subsequently purchased the properties in execution of the mortgage-decree. *Semble* The doctrine of *lis pendens* applies to *ex parte* decrees and in mortgage suits. BROJO KISHOREE BASHNAVI *v.* MEAJAN BISWAS (1909)

13 C. W. N. 1138

———— ss. 88 and 89.

See CIVIL PROCEDURE CODE, 1882, s. 244—QUESTIONS IN EXECUTION OF DECREE.
I. L. R. 18 Calc. 139
I. L. R. 25 Calc. 133

See CIVIL PROCEDURE CODE, 1882, s. 257A
I. L. R. 19 All. 186

See EXECUTION OF DECREE—PROCEEDINGS IN EXECUTION.
I. L. R. 13 All. 278

See LIMITATION ACT, 1877, SCH. II, ART. 179—PERIOD FROM WHICH LIMITATION RUNS—DECREES FOR SALE.
I. L. R. 19 All. 520
I. L. R. 20 All. 302; 357

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.
I. L. R. 18 All. 31
I. L. R. 19 All. 205
I. L. R. 20 All. 354

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— **ss. 88 and 89**—*contd.*

1. ———— *Application for order for decree absolute—Appeal—Civil Procedure Code (Act XIV of 1882), ss. 244, 540—Sale of mortgaged property in execution of mortgaged decree—Proceeding in execution* An appeal lies from an order passed upon an application made under s. 89 of the Transfer of Property Act. *Per* SIR ARNOLD WHITE, *C J.*, and MOORE, *J.*—Such an order is not an order made in a proceeding in execution, and is not appealable as such. It, however, has the effect of a final decree, and an appeal lies therefrom under s. 540 of the Code of Civil Procedure. *Per* DAVIES, BENSON and BHASHYAM AYYANGAR, *JJ.*—An application made under s. 89 of the Transfer of Property Act is, in effect, an application for execution of the decree passed

SETTI *v.* LINGAMURTI PANTULU (1902)
I. L. R. 25 Mad. 244

2. ———— *Mortgage—Decree for sale on a mortgage—Prior and subsequent mortgagees—Rights of purchasers of the mortgaged property, who have paid off prior incumbrances.* Where a subsequent mortgagee is seeking to bring to sale the property mortgaged to him, and there are parties, defendants to the suit, who have purchased the property and paid off prior mortgages, the plaintiff is not entitled to an order absolute for sale, unless he pays, not merely the amount which such defendants paid in respect of the prior mortgages, but the full amount due on such mortgages But where such defendants had obtained possession of the mortgaged property, it was *held* that, having the usufruct, they were not entitled to interest after the date of such possession. *Dip Narain Singh* v *Hira Singh, I. L R 19 All 527,* and *Delhi and London Bank Ld* v. *Bhikari Das, I L. R 24 All. 185,* followed. SRI RAM *v* KESRI MAL (1904) **I. L. R. 26 All. 185**

3. ———— *Civil Procedure Code, s 235—Execution of decree—Limitation Act (XV of 1877), Sch. II, Arts. 178 and 179* *Held,* that an application, framed as an application under s 235 of the Code of Civil Procedure, for execution of a decree under s. 88 of the Transfer of Proper'
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fresh starting point for limitation. *Oudh Behari Lal v Nageshar Lal, I. L. R., 13 All. 278 ; Chunni Lal* v *Harnam Dass, I L R. 20 All 302 ; Ahmad Ali* v *Naziran, I. L. R 21 All., 542,* and *Udit Narain* v *Jagannath, 1 All L J. 15,* referred to BALDEO PRASAD *v* IBN HAIDAR (1905)
I. L. R. 27 All. 625

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— **ss. 88 and 89**—*concld.*

4. ———— *Execution of decree—Decree for sale on a mortgage—Civil Procedure Code, s. 248—Decree made absolute without notice being served under s. 248—Validity of decree.* So long as an order under s. 89 making absolute a decree for sale under s 88 of the Transfer of Property Act, 1882, subists, it is enforceable, and its operation cannot be impugned. If for any reason the order under s. 89 is defective, the remedy of the judgment-debtor is to get it set aside in accordance with law, but, until it is set aside, the decree, which it makes absolute, is capable of enforcement, and its validity cannot be questioned in execution proceedings. *Oudh Behari Lal* v. *Nageshar Lal, I L. R. 13 All. 278, Imam-un-nissa Bibi* v. *Liakat Husain, I L. R 3 All 424,* and *Sahdeo Pandey* v. *Ghasiram Gyawal, I. L R. 21 Calc 19,* distinguished. *Quære* · Whether non-compliance with the provisions of s 248 of the Code of Civil Procedure is anything more than a mere irregularity? *Tasadduk Rasul Khan* v. *Ahmad Husain, I. L. R 21 Calc, 66,* referred to. RAM JAS *v* SHEO PRASAD (1905) **I L. R. 28 All. 193**

5. ———— *Civil Procedure Code (Act XIV of 1882), s. 258—Execution of decree—Alleged payment out of Court not certified.* Applications for an order absolute for sale under s. 89 of the Transfer of Property Act (IV of 1882), are applications for the execution of the decree unde
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pursuance of the decree, unless such payme
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I. L. R. 30 All. 248

———— **ss. 88, 89, 90.**

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.

1. ———— *Decree for sale—Sale partly in India and partly in England—Limitation—Limitation Act (XV of 1877), Sch. II, Art 178* A mortgagee obtained a decree under s 88 of the Transfer of Property Act for sale of all the property included in the mortgage and in pursuance of the decree some of the mortgaged property was sold in India, and, at the request of the mortgagor, to enable a better price to be obtained, some of it was subsequently sold in England The mortgagee then applied for a decree under s. 90. *Held,* that the sale which took place in England must be treated as a sale

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— ss. 88, 89, 90—*concld*

had in connection with the decree passed in this

Weekly Notes (1899) 208 and *Badri Das* v. *Inayat Khan, I L R. 22 All 404*, referred to *Held*, further, that limitation must be held to run from the date of the sale in England GAJADHAR LAL v. ALLIANCE BANK OF SIMLA I. L. R. 28 All. 660

2. ———————— *Personal liability of mortgagor, if adjudicated in suit, not to be treated as a nullity* S 90 of the Transfer of Property Act read with ss. 88 and 89, show that the proper procedure to follow in mortgage suits is to postpone the consideration of personal liability for the amount decreed until the need for it arises when the sale-proceeds of the mortgaged property prove insufficient to pay the decree amount It does not necessarily follow however that where, with the consent of the parties, the Court had decided the question in the course of the suit, such decision is to be considered a nullity The reopening of the question under s. 90 will be barred by *res judicata* ABBAKKI v KRISHNAYA (1909) I. L. R. 32 Mad. 534

1. ———— ss. 88, 90—*Execution—Mortgage*

the decree-holder proceeds to execute it for the realization of the balance, after the mortgaged property has been sold, the provisions of s 230 of the Civil Procedure Code shall apply, and an application for execution after the expiry of twelve years from the commencement of proceed-

CHOWDHRY v AMBICA CHURAN DUTTA (1904) I. L. R. 31 Calc. 792

2. ———————— *Execution of decree —Decree to be executed a combination of a decree for sale and a personal decree.* Where a decree in a suit for sale of hypothecated property is both a decree for sale of the property under s. 88 and a personal decree under s 90 of the Transfer of Property Act, 1882, there is no need for the decree-holder to apply for a separate decree under s 90, and if he does so and his application is rejected, this will not operate as a bar to his executing

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— ss. 88, 90—*concld.*

the decree against the judgment-debtor personally. SADHO SINGH v. THE MAHARAJA OF BENARES (1906) . . . . I. L. R. 29 All. 12

3. ——— ———————— *Mortgage decree under s 88 cannot impose personal liability for costs—Such liability should be enforced under s 90.* It will be contrary to the scheme of the Transfer of Property Act and to the practice of the English

R. 7 Ch. 507, referred to A decree under s 88 of the Transfer of Property Act must not order the defendants personally to pay the costs. It may contain a declaration of the personal liability of defendant for principal or costs, but such a declara-

KAMALAMMA v. KOMANDUR NARASIMHA CHARLU (1907) . . . I. L. R. 30 Mad. 464

———— ss. 88 and 89—*Decree-holder holding a decree for sale on a mortgage and also a simple money-decree against the same judgment-debtor—*

decrees. BEHARI BHARTHI v BHAGWAN GIR (1908) . . . . I. L. R. 31 All. 114

———— s. 89.

See ante, s 88

See post, s. 90, AND s. 89.

See CIVIL PROCEDURE CODE, 1882, s. 108
I. L. R. 25 All. 42

See CIVIL PROCEDURE CODE, 1882, s. 244 —QUESTION IN EXECUTION OF DECREE
I. L. R. 24 Calc. 473

See CIVIL PROCEDURE CODE, 1882, s 310A
I. L. R. 31 All. 346

See DEKKAN AGRICULTURISTS ACT, s. 44
I. L. R. 23 Bom. 644

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT . I. L. R. 21 Calc. 818
I. L. R. 25 Mad. 537

See INTEREST—MISCELLANEOUS CASES—MORTGAGE . . 6 C. W. N. 769

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 89—*contd.*

See INTEREST—OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED —CONTRACTS . **I. L. R. 17 All. 581**
I. L. R. 18 All. 316
I. L. R. 19 All. 174
I. L. R. 24 Calc. 766

See LIMITATION ACT, 1877, SCH. II, ART. 122 . . . **I. L. R. 24 Calc. 473**

See LIMITATION ACT, 1877, SCH. II, ART. 178 . . . . **I. L. R. 16 All. 23**
I. L. R. 22 Calc. 924

See LIMITATION ACT, SCH. II, 1877, ART. 179. LAW APPLICABLE TO EXECUTION.
I. L. R. 23 Bom. 644

See LIMITATION ACT, 1877, SCH. II, ART. 179—STEP IN AID OF EXECUTION—SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER.
I. L. R. 24 Mad. 695

See LIS PENDENS . **I. L. R. 23 All. 331**

See MORTGAGE . **I. L. R. 31 Calc. 863**
I. L. R. 34 Calc. 886

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.
I. L. R. 25 Mad 506

SETTING ASIDE SALE—GENERAL CASES
I. L. R. 25 Bom. 104

1. ——— *Mortgage—Order absolute for sale of mortgaged property, application for—Decree—Execution—Uncertified payment to decree-holder—Appeal Civil Procedure Code (Act XIV of 1882), ss 244, 258, 540, 578—Court-fee, insufficiency of—Error affecting merits or jurisdiction.* Proceedings under s. 89 of the Transfer of Property Act are not proceedings in execution of a decree, but in continuation of the original suit; and an appeal from an order absolute made under that section lies, under the provisions of s. 540 of the Code of Civil Procedure, as an appeal from an original decree. *Tiluck Singh* v. *Parsotein Proshad, I. L. R 22 Calc. 925,* and *Tara Prosad Roy* v. *Bhobodeb Roy, I. L. R 22 Calc 931,* relied upon. The decision of the majority of the Full Bench in *Mallikarjunadu Setti* v. *Lingamurti Pantulu, I L. R. 25 Mad. 244,* dissented from, and that of the minority (SIR ARNOLD WHITE, *C.J.*, and MOORE, *J.*) followed. In an application under s 89 of the Transfer of *Property Act for an order absolute for sale of the* mortgaged property, s. 258 of the Civil Procedure Code is no bar to an inquiry into the plea of payment of the mortgage-debt. PRAMATHA CHANDRA ROY v KHETRA MOHAN GHOSE (1902)
I. L. R. 29 Calc. 651

2. ——— *Prior and subsequent incumbrances—Rights of puisne mortgagee who has satisfied in part a prior mortgage.* A prior mortgagee obtained a decree for sale upon his mortgage in a suit to which the puisne mortgagee was a party, though the Court refused to let an account be taken in that suit of what was due to the second mortgage. The prior mortgagee's decree being partly satisfied the puisne mortgagee paid the balance of what was due under that decree and then proceeded to apply for an order absolute *for sale not only of the property comprised in the* prior mortgage, in respect of which a decree had been obtained, but of the property comprised in his own mortgage. *Held,* that the applicant was not entitled to any order in respect of his own mortgage. *Bansi Dhar* v. *Gaya Prasad, I. L. R. 17 All 179,* referred to JAMNA DAS v MISRI LAL (1904) . . . . **I. L. R. 26 All. 504**

3. ——— *Civil Procedure Code, s 310A—Mortgage—Order for sale—Discharge by third party* Where a mortgage-debt, for the payment of which a sale has been ordered, is satisfied by a third party, who obtains a security for the advance made by him, such security is not extinguished by s. 89 of the Transfer of Property Act, and the incumbrance, in respect of which the sale was ordered, enures for the benefit of the party making the payment. *Quære.* Whether s. [illegible] under the [illegible] perty Act [illegible] *Calc. 863;* [illegible] *etti, I. L. R. 29 Mad. 37,* and *Tufail Batma* v *Fitola, I. L. R. 27 All 400,* referred to. SHIAM LAL v BASHIR-UD-DIN . . **I. L. R. 28 All. 778**

4. ——— *Effect of order absolute for sale—Mortgagee, paying prior incumbrancer after sale, right of.* It is settled law that, in the absence of clear proof to the contrary, it is to be taken that, when the money of a person in- [illegible] for instance, [illegible] sne [illegible] en- [illegible] the cumbrance affecting it, the presum[illegible] anterior encumbrance enures to the advantage of the party making the payment, if it is for his benefit so to treat it; and this rule will apply in favour of a person who, after the sale of the properties [illegible] mortgage, [illegible] rties [illegible] ch a [illegible] lure. [illegible] s, I. [illegible] ned. [illegible] 89 of the Transfer of Property [illegible] mortgage- [illegible] construed [illegible] inciple im- [illegible] te for sale had been made on the ground that such order extinguished the security *Dinobundhu Shaw Choudhry* v. *Jogmaya Dasi, L. R. 29 I. A. 9,* referred to and followed in principle. VANMIKALINGA MUDALI v. CHIDAMBARA CHETTY (1906)
I. L. R. 29 Mad. 37

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 89—*contd.*

5. ——— *Refusing to make order absolute for sale—Ground for—Appeal from preliminary decree, pendency of—Time, extension of* The pendency of an appeal against a decree under s. 88 of the Transfer of Property Act is of itself no ground for refusing to make an order absolute for sale under s. 89 of the Act A Court has no power, of its own motion, to extend the time provided in s. 89 for making an order absolute. RAM GOLAM LAL SAHU *v* CHOWDHRY BABU BARSATI SINGH (1902) . **10 C. W. N. 910**

6. ——— *Limitation Act (XV of 1877), Sch II, Art 179—Application under s 89 of the Transfer of Property Act is an application for execution and s 235 of the Code of Civil Procedure applies to it—Unverified application substantially in accordance with law sufficient to save limitation* An application for an order absolute under s. 89 of the Transfer of Property Act is an application for execution of the decree and is subject to the provisions of s 235 of the Code of Civil Procedure and falls within Art 178 or 179 of Sch. II of the Limitation Act. Such an application, when defective, cannot be treated as a mere step in aid of execution, neither can it, when no notice is prayed for or issued, be treated as an application for issue of notice under s 248, which, as a step in aid of execution, will save the bar of limitation. When such an application, unverified, but filed with the decree, does not fully comply with the requirements of s. 235 of the Code of Civil Procedure and is defective only in minor particul

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Art. 179 of Sch. II of the Limitation Act. RAMAYYAN *v.* KADIR BACHA SAHIB (1907) **I. L. R. 31 Mad. 68**

7. ——— *Mortgage suit—Decree nisi—Interest not allowed after period of grace—Order absolute—Subsequent application for*

plication made after the order absolute was passed, make an order granting such further interest. MOHA PROSAD SINGH *v.* RAMANI MOHAN SINGHA (1908) . . . **13 C. W. N. 744**

1. ——— ss 89, 90—*Mortgage, release of portion of mortgaged property—Mortgagee's right*

decree under s 90 of the Transfer of Property Act can only be made, where the net proceeds of the sale under s 89 are insufficient to pay the amount due on the mortgage. A mortgagee may release

leased substantial portions of the mortgaged property and the purchasers of those portions from

from RAM RANJAN CHAKRAVARTI *v.* INDRA NARAIN DAS (1906) **I. L. R. 33 Calc. 890 s c. 10 C. W. N. 882**

2. ——— *Execution of decree—Mortgage—Order absolute for sale of part only of the mortgaged property—Property sold insufficient to satisfy the mortgage-debt—Application for personal decree against mortgagor* A mortgagee in a suit for sale of the mortgaged property obtained a decree for sale of the whole: but when applying subse-

I. L. R. 28 All. 19

3. ——— *Two separate suits on two mortgages held by same person—Sale under the decree on the first mortgage—Paid off first mortgage and part of second mortgage—Application under section 90—No decree absolute.* A person held two mortgages over the same property brought two separate suits on those mortgages and obtained two decrees. The first decree was made absolute and in execution thereof the decree-holder himself purchased the property. The sale-proceeds discharged the decree on the first mortgage in full and the second decree in part. He then applied for a decree under s. 90, Transfer of Property Act, to realise the balance due under the second decree *Held*, that no decree under s. 90, Transfer of Property Act, could be passed, as the second decree had not been made absolute under s. 89, Transfer of Property Act, and no sale had taken place in execution thereof, the proceeds

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 89—*concld*

of which had proved insufficient to discharge the second mortgage *Muhammad Akbar* v. *Munshi Ram. All. Weeki* [illegible] v. *Inayat Khan*, KAMTA PRASAD [illegible]
I. L. R. [illegible] All. [illegible]

——— ss. 89, 92

See RES JUDICATA.
I. L. R. 34 Calc. 223

——— ss. 89, 104—*Civil Procedure Code (Act XIV of 1882), ss. 244, 258—Preliminary mortgage-decree—Payment before decree absolute—Adjustment of decree—Limitation Act (XV of 1877), Sch. II, Art. 173A.* A Court to which an application is made under s 89 of the Transfer of Property Act has full power to ascertain what balance of the mortgage-debt is really outstanding at the time of the application and to make the order absolute for the realisation of that amount only. S 258 of the Civil Procedure Code does not apply to an application made under s. 89 of the Transfer of Property Act, that section not having been made applicable by any rule issued by the High Court under s. 104 of the Transfer of Property Act; consequently Art. 173A of Sch II of the Limitation Act does not apply to the case of any payment made before a decree absolute is made. Any question that arises as to an order absolute for sale is not a question relating to the execution of the decree *Kedar Nath Raut* v *Kali Churn Ram, I. L. R 25 Calc. 703; Tiluck Singh* v. *Parsotein Proshad, I L. R 22 Calc 924; Akikunnissa Bibee* v. *Roop Lall Das, I. L R. 25 Calc. 133;* and *Ajudhia Pershad* v. *Buldeo Singh, I L R. 21 Calc. 818*, relied on. HATEM ALI KHUNDAKAR v ABDUL GAFFUR KHAN (1904) . . 8 C. W. N. 102

——— s. 90

See ante, ss 88, 89, 90.

See CIVIL PROCEDURE CODE, 1882, s 291
I. L. R. 28 All. 28

See COSTS—SPECIAL CASES—MORTGAGE.
I. L. R. 23 All. 439
I. L. R. 35 Calc. 431

See DECREE, EX PARTE
I. L. R. 35 Calc. 767

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION, AND POWERS OF COURT . . I. L. R. 25 All. 541

See INTEREST—OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED
I. L. R. 24 Calc. 766

See LIMITATION . I. L. R. 34 Calc. 672

See LIMITATION ACT, 1877, SCH II, ART. 178 . . I. L. R 21 All. 453

See LIMITATION ACT, 1877, SCH. II, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATES . . I. L. R. 18 All. 371

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s 90—*contd*

1. ——— *Decree for sale on a mortgage—Mortgaged property—Sale in execution of a decree held by a different mortgagee.* In order to make the remedy provided by s 90 of the Transfer of Property Act available, it is necessary that the mortgaged property should have been sold in execution of the decree held by the [illegible]

2. ——— and ss. 88 and 89—*Decree for sale of mortgaged property—Decree not satisfied by sale—Recovery of balance due on mortgage* The decree contemplated by s 90 of the Transfer of Property Act (IV of 1882) can be made in the suit in which the decree for sale was passed; and it is not necessary to institute a fresh suit to obtain such decree. RAJ SINGH v. PARMANAND
I. L. R. 11 All. 486

3. ——— *Mortgage-decree—Order under s. 90 not necessary when decree is a personal one* S 90 of the Transfer of Property Act contemplates the making of a supplemental decree in the special case provided for by that section, namely, the net proceeds of any sale of the mortgaged property proving insufficient to pay the amount due for the time being on the mortgage and does not apply to a case where the original decree is a personal one against the mortgagor, under which the mortgagee can, in execution, proceed against any property of the mortgagor other than that comprised in the mortgage. No supplemental decree under s 90 is necessary in such a case *Held*, upon a construction of the decree in this case, that it was a mortgage-decree as well as a personal decree against the defendant. DINA NATH MITTER v. BEJOY KRISHNA DAS (1903)
7 C. W. N. 744

4. ——— *Mortgage—Decree for sale—Half of mortgaged property exempted from sale on suit by a third party—Remainder insufficient to satisfy the mortgage-debt.* A mortgagee held a decree for sale and an order absolute for sale of the property comprised in his mortgage. Before, however, the sale could be carried out, a third person succeeded in establishing his title to one half of the property mortgaged. The decree-holder brought to sale the remaining half of the property covered by his decree, but the amount realised proved insufficient to satisfy the mortgage-debt. *Held*, that, under such circumstances, there was [illegible] holder obtaining a decree [illegible] property of the [illegible] of Property [illegible] *Munshi Ram*, [illegible] *Badri Das* v. [illegible] distinguished.
[illegible] 26 All. 25

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 90—*contd.*

5. ——— *Mortgage—Suit for sale—Premature suit decreed in part on confession of judgment by some of the defendants—Subsequent suit for balance of the mortgage-debt—* In a usufructuary mortgage of a shop, a separate dwelling-house was hypothecated as collateral security. The dwelling-house was subsequently sold to third parties. Before the expiry of the term of the mortgage the mortgagee brought a suit to recover the mortgage-debt with interest, and the cost of certain repairs to the shop by sale of both the shop and the dwelling-house. This suit was decreed as against the representatives of the mortgagor, who confessed judgment, but dismissed as against the purchasers of the house as premature. After the expiry of the term of the mortgage, the plaintiff brought a second suit asking for sale of the dwelling-house. *Held*, that this second suit was not barred. The defendants' purchasers, having formerly pleaded that the plaintiff's suit was premature, could not now plead that his present claim ought to have been included in it; and neither s. 90 of the Transfer of Property Act, 1882, nor s. 244 of the Code of Civil Procedure applied. GANGA RAM *v.* KANHAIYA LAL (1905)

I. L. R. 27 All. 254

6. ——— *Limitation—Decree—Execution of—Mortgage Decree—Limitation Act (XV of 1877), Sch. II, Art. 179, cl. 4—Personal decree—Applying in accordance with law—Application which Court is not competent to grant.* [illegible]

[illegible] Court was not competent to grant, is not one in accordance with law within the meaning of Art 179, cl 4, Sch. II, of the Limitation Act *Per* MOOKERJEE, J.—An application for execution of a decree made under s. 90 of the Transfer of Property Act cannot save from limitation an application for execution of the decree for sale. *Lalla Tirhini Sahai* v. *Lalla Hurruk Narain, I. L. R. 21 Calc. 26, Dina Nath Mitter* v. *Bejoy Krishna Das, 7 C. W. N. 744,* referred to. *Durga Das* v. *Bhagwat Prasad, I. L R 13 All 356,* and *Ram Sarup* v. *Ghaurani, I. L. R. 21 All. 453,* dissented from. [illegible] I. L. R. [illegible] MAN- [illegible]

[illegible] Calc. 867

7. ——— *"Proceeds of any such sale."* In a suit for sale on a mortgage the property sold was described in the decree and order under ss. 88 and 89 of the Transfer of Property Act as *haq zemindari*, whereas the property actually mortgaged comprised only *malikana* rights. The plaintiff claimed a personal decree under the terms of the mortgage. *Held*, that the words "such sale" in s. 90 of the Transfer of Property Act mean a sale of the property directed [illegible]

I. L. R. 28 All. 674

8. ——— *Mortgage—Mortgaged property totally incapable of being sold—Decree under s 90 not obtainable.* Where property mortgaged was property which the mortgagee could by no possibility bring to sale in execution of a decree under his mortgage, it was *held* that no decree under s 90 of the Transfer of Property Act, 1882, could be granted. *Kedarnath* v. *Chandumal, I L R, 26 All, 25,* distinguished. PIRBHU NARAIN SINGH *v.* BALDEO MISRA (1906)

I. L. R. 29 All. 260

9. ——— *Decree for sale on a mortgage—Property ordered to be sold in part not susceptible of sale—Abandonment of claim to sell such part* *Held*, that on the true construction of the provisions of the Transfer of Property Act, 1882, a mortgagee is entitled to any stage to aban- [illegible] *v. Muhammad Kifayatullah Khan, I. L R. 28 All. 19,* referred to. PIRBHU NARAIN SINGH *v.* AMIR SINGH (1907)

I. L. R. 29 All. 283

10. ——— *Civil Procedure* [illegible] *of ownership and removal of attachment.* A decree on a mortgage directed that on default of payment of the mortgage-money within six months the property should be sold, and, if the sale proceeds were insufficient to pay the amount due on the mortgage, the balance was to be recovered from the defendant-mortgagor personally. *Held*, that the decree was passed in contravention of the provisions of s. 90 of the Transfer of Property Act (IV of 1882) in so far as it directed personal payment by the mortgagor. [illegible]

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 90—*contd.*

from attachment *Held*, further, that the personal decree was contingent on the ascertainment of the balance and only became operative and capable of execution when the balance was ascertained.

being unascertained, the minor was entitled to establish any circumstance which affected the validity of the attachment against his interest in the property. DAMODAR *v* VYANKU (1906)

I. L. R. 31 Bom. 244

11. ——— *Mortgage—Sub-mortgage—Purchaser from mortgagor—Mortgage-money part of sale consideration—Personal liability of purchaser—Sale of mortgage rights* A mortgaged certain property to *B* and sub-mortgaged certain other property by the same deed. He subsequently sold the whole of this property to *C* and left with him the bulk of the sale consideration for redemption of the mortgage and sub-mortgage. *B* obtained a decree for sale of the mortgaged property, but not of the sub-mortgaged property The proceeds of the sale of the mortgaged property proving insufficient, the decree-holder applied for a decree under s 90 of the Transfer of Property Act against *C* and the personal representative of *A* *Held*, that by retaining in his hands parts of the purchase-money and expressly or impliedly agreeing to pay the amount to *B*, *C* did not be...
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12. ——— *Mortgage—Construction—Unconditional promise to pay, if implies personal liability* If a person promises to pay a certain sum of money with interest and hypothecates certain property as security without any express covenant that he would be personally liable or without stating any mode of payment, he is personally liable, and a decree under s 90 of the Transfer of Property Act should be passed in ...

L. R. 16 Calc 540, referred to. RAM KISHORE GIR *v.* SURAJDEO PERSHAD SINGH (1908)

13 C. W. N. 138

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 90 and s. 89—*Execution of decree—Mortgage—Decree for sale of part only of the mortgaged property—Property sold insufficient to satisfy the mortgage-debt—Application for decree over, under s 90.* A mortgagee holding a simple mortgage, by which certain immoveable property was hypothecated sued for, and obtained, a decree for the sale of part only of the mortgaged property Such portion having been sold, and the net proceeds of the sale having proved insufficient to satisfy the mortgage-debt, the decree-holder applied for a decree over, under s 90 of the Transfer of Property Act, against the unhypothecated property of the mortgagor. *Held*, that the original ...

debt, there was, under the circumstances, no objection to the mortgagee obtaining a decree over, under s 90. *Semble* That there is nothing to prevent a mortgagee relinquishing his claim against a ...

unhypothecated property of the mortgagor. SHEO PRASAD *v.* BEHARI LAL (1902)

I. L. R. 25 All. 79

——— ss. 90, 92 and 93—*Prior and subsequent incumbrancers—Redemption of mortgage—Execution of decree.* A puisne mortgagee of certain property sued the prior mortgagees for redemption. A decree was passed for redemption or sale. The plaintiff did not pay the amount decreed, and the property was sold, but it failed to realize the amount of the debt and costs due to the prior mortgagees *Held*, that the decree, so ...

I. L. R. 26 All ...

——— ss. 90, 100—*Suit to enforce vendor's lien by sale—Determination in that suit of vendee's personal liability.—Application for decree under s 90—Res judicata* In a suit for enforcement of a vendor's lien by sale of the property the Court decided that "the defendants cannot, either personally or in their other properties, be held liable for any part of the amount claimed. The property sold to them can alone be liable." Subsequently the plaintiffs applied for a decree under s. 90 of the Transfer of Property Act, 1882. *Held*, that it was within the competence of the Court to determine the personal liability or otherwise of the defendants at the stage at which it decided it, and that the matter so determined was *res judicata* in respect of their subsequent application. *Musaheb Zaman*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 90—*concld*

Khan v *Inayat ullah, I L R. 14 All 513, Raj Singh* v *Parmanand, I L R 11 All, 486, Durga Das* v *Bhagwat Prasad, I L R. 13 All, 356, Miller* v. *Digambari Debya, All Weekly Notes, (1890) 142*, referred to, and it was none the less *res judicata* because the finding as to the personal liability of the defendants was not embodied in the decree. *Jamait un-nissa* v *Lutf-un-nissa, I L R 7 All 606*, referred to UTTAM ISHLOK RAI *v* RAM NARAIN RAI (1906) . . I L. R. 28 All. 365

——— s. 91.

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION I. L. R. 25 All. 446
5 C. W. N. 83
11 C. W. N. 495

——— cl. (f).

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS
I. L. R. 23 All. 467

1. ——— *Mortgage—Prior and subsequent incumbrancers—Effect of acquisition by mortgagees of equity of redemption in part of the mortgaged property* The owners of shares in five separate properties mortgaged first all the five shares to one set of mortgagees, and subsequently four out of the five shares to a second set of mortgagees The prior mortgagee without

[illegible]

decree for sale, which decree was purchased from them by Shib Lal The proceeds of the sale by the first mortgagees of lots 1, 2, and 4 being insufficient to satisfy their decree, lots 3 and 5 were caused to be put up for sale. Shib Lal thereupon instituted a suit for a declaration that this property could not be sold without giving him an opportunity to redeem, and a decree was passed in his favour. The prior mortgagees then brought a

[illegible]

the whole of the property mortgaged, notwith-

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 91—*contd.*

standing that the puisne mortgagees were not mad

[illegible]

Mahtab Singh v *Misree Lall, N.-W. P. H. C. Rep. (1876) 98*, referred to. SHIB LAL *v.* BHAWANI SHANKAR (1904) . . I. L. R. 26 All. 72

2. ——— *Mortgage-Redemption—Who may redeem—Perpetual lessee.* In a suit for redemption of a mortgage the plaintiff was a perpetual lessee of the mortgaged premises from the mortgagor, holding under a lease granted upon payment of a premium of R800, with a yearly rental of R40 odd By the terms of the lease the lessee was not liable to be ejected, even for non-payment of rent, while if the title of the lessors proved defective, the lessee was entitled to a refund of the premium *Held*, that the lessee was under the above circumstances entitled to redeem. *Paya Malathil Appu* v. *Kovamel Amina, I. L. R 19 Mad. 151; Radha Pershad Misser* v. *Monohur Das, I. L R. 6 Calc. 317; Jugal Kissore Lal Singh Deo* v. *Kartic Chundra Chattopadhya, I. L R 21 Calc. 116; Kasumunnissa Bibee* v. *Nilratna Bose, I L R 8 Calc. 79, Girish Chundra Dey* v. *Juramoni Dey, 5 C. W. N. 83;* and *Ram Subhag* v *Nar Singh, I L. R 27 All. 472*, referred to. RAGHUNANDAN PRASAD *v* AMBIKA SINGH (1907)
I. L. R. 29 All. 679

3. ——— *Mortgage—Fixed-rate tenant—Suit by zamindar to redeem a mortgage made by a fixed-rate tenant on the death of the tenant without heirs. Held*, that the zamindar

[illegible]

Bahadoor L. R. 39 I. A 92, referred to. RAM DIHAL RAI *v.* MAHARAJA OF VIZIANAGRAM (1908)
I. L. R. 30 All. 488

4. ——— *Redemption of mortgage—Reversionary heirs of deceased husband of Hindu widow not entitled to redeem mortgage made by husband. Held*, that the reversionary heirs of the deceased husband of a Hindu widow in possession as such of her husband's property are not persons who, within the meaning of s. 91 of the Transfer of Property Act (IV of 1882), have such an interest in the mortgaged property as would entitle them during the lifetime of the widow to redeem a mortgage made by the husband. RAM CHANDAR *v* KALLU (1908) I. L. R. 30 All. 497

——— s. 91 (b)—*Redemption of mortgage—Right of sub-mortgage to redeem a prior mortgage.* In 1884 *G* and others, the owners of the mortgaged property, executed a usufructuary mortgage in

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 91—*concld.*

favour of *R D* and others to secure a principal sum of R349. In the mortgage it was provided that the property might be redeemed in *Chait* of any year. *In April 1900 the same mortgagors* executed a further mortgage of the same property in favour of one *B L* to secure a principal sum of R899. This mortgage contained a provision that

redeem the mortgage of 1884 and obtain possession of the mortgaged property; and in the

tors of the mahal. *Held*, that the sub-mortgagees mort- *Lall,* *al v.* *158,* overruled. *Munu Bijia Raghunatha Ramachandra Vacha Mahali Thurai* v. *Venkatachallam Chetti, I. L. R. 20 Mad. 35,* and *Mata Din Kasodhan* v. *Kasim Husain, I. L R 13 All. 432,* referred to. RAM SUBHAG *v* NAR SINGH (1905)
I. L. R. 27 All. 472

——— s 92.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s 43 . I. L. R. 30 All 225

See RES JUDICATA—ESTOPPEL BY JUDGMENT . . I. L. R. 24 All. 44

ADJUDICATIONS. I. L. R. 25 Mad. 300

——— ss. 92 and 93.

See EXECUTION OF DECREE—DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW . . I. L. R. 15 Mad. 170

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION—
REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM—REDEMPTION AFTER EXPIRY OF TIME.
I. L. R 26 Bom. 121

See RES JUDICATA—CAUSE OF ACTION.
I. L. R. 11 All. 386
I. L. R. 15 Mad. 366
I. L. R. 17 Mad. 96
I. L. R. 19 All. 202

1. ——— *Mortgage—Redemption—Application for enlargement of time—Application to be made to the Court of first instance, not to the Appellate Court* Where a decree for redemption under s. 92 of the Transfer of Property Act, 1882, has been made by an Appellate Court an application under the last para-

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 92—*concld*

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followed. Oudh Behari Lal v. Rajendra Lal, I. L R. 13 All. 278, referred to. SHEONARAIN *v.* CHUNNI LAL (1900) I. L. R. 23 All 88

2. ——— *Usufructuary mortgage—Redemption—Form of decree in a suit for redemption.* An order declaring that the plaintiff's right to redeem shall be extinguished upon non-payment within the time limited by a decree fo ... found to be due is r ... sought to ... Neverthe ... and the ... the time limited and the decree has been allowed to become final, the plaintiff cannot thereafter bring a second suit for redemption. *Sitaram* v. *Madho Lal, I. L. R. 24 All 44,* referred to LACHMAN SINGH *v.* MADSUDAN (1907)
I. L. R. 29 All. 481

3. ——— *Application for enlargement of time—Application to be made to Court of first instance, not to an Appellate Court* An application under s. 93 Transfer of Property Act, 1882, for extension of time for payment of mortgage-money in a decree passed under s. 92 of that Act by an Appellate Court must be made to the Court of first instance. *Sheo Narain* v. *Chunni Lal, I. L R. 23 All, 88,* followed; ... 903, ... 28

——— ss. 92 and 94. *Mortgage—Redemption—Subsequent suit for profits received by mortgagee barred.* In a suit for redemption there ought to be a complete and final settlement of all accounts between the mortgagee right up to the time of actual redemption or sale, as the case may be. A mortgagor, therefore, who has obtained a decree for redemption and paid in what was found by the decree to be due from him, cannot subsequently sue for profits realized by the mortgagee in possession, which might and ought to have been taken into account at the time of passing the decree *Vinayak Shivrao Dighe* v. *Dattatraya Gopal, I. L. R. 26 Bom. 661,* referred to. KASHI *v.* BAJRANG PRASAD (1907) . I. L. R. 30 All. 36

——— s. 93.

See CIVIL PROCEDURE CODE, 1882, s. 244.
I. L. R. 33 Bom. 273

See DECREE . I. L. R. 33 Bom. 273

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT . I. L. R. 23 Mad. 521

See MORTGAGE—REDEMPTION—MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE I. L. R. 16 Mad. 214
I. L. R. 33 Bom. 273

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 93—*concld*

See RES JUDICATA—ESTOPPEL BY JUDGMENT . . I L R. 24 All. 44

1. ——— *Mortgage—Redemption—Decree for payment and redemption within six months—Application for execution of decree after six months had expired* S 93 of the Transfer of Property Act (IV of 1882), under which a mortgagor, who has obtained a decree for redemption, may show cause for extending the time allowed by the decree for redemption, does not apply to decrees made before the Act was put in force CHENNAYA *v* MALKAPA . .

I. L. R 20 Bom. 279

2. ——— *Failure to pay money on date fixed—Court's power to enlarge time for payment* The failure to pay money on or before the date mentioned in the redemption decree does not absolutely bar the mortgagor's right to obtain possession of the mortgaged property:

date of the decree produced in Court the decretal amount and prayed for possession of the mortgaged property. *Held,* that such an application could be treated as one for enlargement of time under s. 93 of the Transfer of Property Act ISWAR LING *v* GOPAL JIVAJI (1904)

I. L. R. 28 Bom. 102

3. ——— *Right to redeem, after the time allowed—Court accepting money before the order absolute—Such acceptance, effect of.* A person, who does not deposit the redemption money within the time allowed, can redeem afterwards, before a final order is made under s 93 of the Transfer of Property Act BEPIN BEHARY SHAHA *v* MOKUNDA LAL GHOSH (1908)

I L. R. 36 Calc. 122

——— s. 95.

See LIMITATION ACT, 1877, SCH. II, ART. 148 . I. L. R. 8 All 295

1. ——— *Suit for contribution—Plaintiff not in possession of mortgaged property—Interpretation of Statute—Limitation Act, 1877, Sch II, Art 132. Held,* that s. 95 of the Transfer of Property Act, 1882, cannot be interpreted absolutely according to the letter of the section,

fore, a person, who had a mortgagor's interest in a decree for sale on a mortgage, satisfied the decree and then brought a suit for contribution against

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 95—*concld.*

red to. BHAGWAN DAS *v*. HAR DEI (1904)

I. L R 26 All. 227

2. ——— *Joint mortgage-bond in ordinary form—Payment of one mortgagor and redemption of whole property mortgaged—Charge on property of co mortgagors—Failure of plaintiff in suit for money paid on mortgage to prove that he executed bond as surety only—Right to contribution—Pleadings—Relief* The fact that a plaintiff has

Property Act (IV of 1882) should not limit its operation to mortgages under which possession passes, and therefore on redemption properly repasses · the better way is to construe it distribu-

the plaintiff and defendants jointly executed a bond in the ordinary form, each pledging immoveable property as security. The plaintiff eventually

from each of them *Held,* that the plaintiff's failure to prove that he was merely a surety on the bond did not preclude him from recovering a proportionate share from each of the defendants; and that under s 95 of the Transfer of Property Act, he was entitled also to a charge for such amount on the defendant's interests in the property respectively mortgaged by them. AHMAD WALI KHAN *v* SHAMS-UL JAHAN BEGAM (1905)

I. L R. 28 All. 482

s c. L. R. 33 I. A. 81

10 C. W. N. 626

——— s. 96.

See MORTGAGE—POWER OF SALE.

I. L R. 25 Mad. 108

——— ss. 96, 97.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.

I. L. R. 30 Calc. 953

——— *Civil Procedure Code, s. 295—Mortgage—Suit for sale of entire property by holder of usufructuary and simple mortgages over the*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 96—*concld.*

Same property A mortgagee held several simple mortgages over properties A and B, and also a usufructuary mortgage of prior date over property B. *Held*, that the mortgagee was not entitled to bring to sale the property covered by his simple mortgages, subject to the usufructuary mortgage held by him, nor could he bring to sale the whole property for the aggregate amount of his mortgages, simple and usufructuary. BHAGWAN DAS *v.* BHAWANI (1904) . . . I. L. R. 26 All. 14

——— s. 98.

See MORTGAGE—FORM OF MORTGAGES.
I. L. R. 27 Bom. 600
I. L. R. 12 All. 203
I. L. R. 21 Mad. 1

CONSTRUCTION. I. L. R. 26 Bom. 252

——— s. 99.

See CIVIL PROCEDURE CODE, 1882, ss. 232, 233 . I. L. R. 31 Mad. 33

See LIMITATION ACT, 1877, s 8
I. L. R. 16 Mad. 436

See LIMITATION ACT, 1877, SCH II, ART 179—NATURE OF APPLICATION—IRREGULAR AND DEFECTIVE APPLICATIONS
I. L. R. 12 All 64

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION I. L. R. 22 Bom 624
I. L. R. 23 Bom. 119
I. L. R. 22 Mad. 347; 372
I. L. R. 23 Mad. 377
I. L. R. 30 Mad. 313; 362

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.
I. L. R. 26 Bom 88

See PUBLIC DEMANDS RECOVERY ACT (BEN ACT VII OF 1880), ss 2, ETC
I. L. R. 29 Calc. 537

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM
I. L. R. 25 Bom. 161

See RES JUDICATA—COMPETENT COURT—GENERAL CASES.
I. L. R. 18 Mad. 481

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.
I. L. R. 18 All. 325

See SALE FOR ARREARS OF RENT
I. L. R. 33 Calc. 11

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY
I. L. R. 24 All 549
11 C. W. N. 1011
I. L. R. 35 Calc. 61

See SURETY—ENFORCEMENT OF SECURITY.
I. L. R. 30 Calc. 1060

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 99—*contd.*

1. ——— *Hindu law—Personal decree against managing member of joint family not impleaded as such—Effect of sale in execution of such decree—Sale of mortgaged property in execution of decree on a money-bond for interest due on the mortgage.* The managing member of a [illegible]

a suit on the money-bond, and, having obtained a personal decree against the two brothers merely, brought to sale in execution part of the mortgaged property which was purchased by a third person. *Held*, that the sale did not convey the interest of [illegible]

SAMI . . . . . I. L. R. 12 Mad. [illegible]

2. ——— *Money-decree "on the responsibility of" mortgaged premises—Attachment and sale of mortgaged premises—Purchase by mortgagee* A usufructuary mortgagee left the mortgaged premises in the possession of the mortgagor under a rent agreement in 1878. The rent [illegible] the mortgagee sued the [illegible]

in execution, and having brought them and purchased them himself, he sued for possession *Held*, that the sale was invalid under the Transfer of Property Act, s. 99 DURGAYYA *v.* ANANTHA
I. L. R. 14 Mad. 74

See VIGNESWARA *v* BAPAYYA
I. L. R. 16 Mad. 436

3. ——— *Usufructuary mortgage—Suit by usufructuary mortgagee for sale of equity of redemption of mortgaged property in execution of a decree for mesne profits and costs.* Certain usufructuary mortgagees, not having been put in possession of the mortgaged property by the mortgagor, sued and obtained a decree for possession with mesne profits and costs. Under this decree, the mortgagees were put in possession of the mortgaged property They then applied [illegible] sale of the mortgaged property [illegible] ts and [illegible] e mort- [illegible] uity of [illegible] serving

their rights and interests under the mortgage. *Held*, that such a suit would not lie as being opposed to the intention of s. 99 of the Transfer of Property Act, 1882. *Azim-ullah* v. *Najm-un-nissa*, *I. L. R 16 All. 415*, and *Jadub Lall Shaw Chow-*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 99—*contd.*

dhry v *Madhub Lall Shaw Chowdhry, I L R. 21 Calc 34,* referred to MAHABIR SINGH v SAIRA BIBI . . . . I. L. R. 17 All. 520

4. ——— and s. 2—*Suit to set aside sale by mortgagee prior to coming into force of the*

effect, so as to invalidate an order for sale which constituted a legal relation between the defendants passed before that Act came into force NARANAPPA v SAMACHARLU . I L. R 19 Mad 382

5. and s. 67—*Sale of mortgaged property in execution of money-decree—Sale by mortgagee of mortgaged property to satisfy a claim not arising under the mortgage* A mortgagee cannot sell the mortgaged property in execution of an ordinary money-decree in satisfaction of a claim not arising under the mortgage S 99 of the Transfer of Property Act limits the right of a decree-holder in such a case, and provides that he shall not bring the mortgaged property to sale otherwise than by instituting a suit under s 67 of that Act *Quære* Whether the suit to be instituted under s 99 is a suit on the mortgage or is one on the charge created by attachment JADUB LALL SHAW CHOWDHRY v MADHUB LALL SHAW CHOWDHRY . . . I L R 21 Calc. 34

6. ——— s 99 and s 67—*Usufructuary mortgage—Lease by mortgagee to mortgagor of mortgaged premises—Suit for recovery of rent—Attempt to sell mortgaged property in execution of money-decree for rent* *Held,* that a usufructuary mortgagee who had leased the mortgaged premises to

7. ——— *Sale of mortgaged property—Zur-i-peshgi mortgage—Purchase by the mortgagee* S 99 of the Transfer of Property Act (IV of 1882) applies to zur-i peshgi mortgages, and a purchase of the mortgaged property by the mortgagee in execution of a decree for rent due by the mortgagor under a kathina lease of the property was held to be not merely irregular, but absolutely void SHEODENI TEWARI v RAMSARAN SINGH . . . . I. L. R. 26 Calc 164

MOTI RAM TEWARI v RAM LAKHAN SINGH 3 C. W. N 290

8. ——— s 99 and s. 67—*Application for the attachment and sale of mortgaged property in execution of a decree obtained not in accordance with the Transfer of Property Act, though suit instituted after the passing of the Act.* A mortgagee obtained a decree on the 15th February 1883 upon a mort-

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 99—*contd.*

gage-bond dated the 18th January 1879. The

of another of the mortgaged properties *Held,*

brought, and the procedure prescribed by the

I. L. R. 22 Calc. 813

9. ——— *Mortgage-decree—Transfer of Property Act (IV of 1882), decree regarded as mortgage-decree under—Sale of mortgaged property in execution of decree.* In a suit for recovery of mortgage-money by sale, brought after the Transfer of Property Act (IV of 1882) had come into force, the decree of the Court was · "That a decree be passed in favour of the plaintiffs in respect of R387-10-13, together with costs and interests at the rate of 6 per cent. per annum up to the date of realization, and that the mortgaged properties be made liable (*pae band kea jae*) for realization of the decretal money "

distinguished LAL BEHARY SINGH v HABIBUR RAHMAN . . . I. L. R. 26 Calc. 166

10. ——— and s. 67—*Landlord becoming mortgagee to tenant—Power to sell tenure in execution of rent-decree.* When a landlord has taken a mortgage of the holding of a tenant he is debarred by s 99 of the Transfer of Property Act

11. ——— *Mortgage—Sale of mortgaged property—Money-decree—Transfer of Property Act (IV of 1882), ss. 67, 99—Execution—Purchase by the mortgagee, effect of—Mortgagee,*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 99—*contd.*

liabilities of—Account. A mortgagee, in execution of a decree obtained against the mortgagor on account of another debt, sold the mortgaged properties, purchased the equity of redemption himself, and obtained possession through the Court. And, in a subsequent suit upon the mortgage for sale of the mortgaged properties, the defence, *inte*

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of Property

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was bound to account for the period he was in possession of the mortgaged property *Held*, that, having regard to the provisions of s 99 of the Transfer of Property Act, the purchase by the mortgagee was null and void, and possession obtained by him was not in accordance with law, and he was therefore liable to render account of moneys realized from the mortgaged properties during the term of his possession *Durgayya* v *Anantha, I. L. R. 24 Mad., 74,* followed *Sri Raja Papamma Rao* v. *Sri Vira Pratapa Ramachandra Razu, I. L R. 19 Mad 249,* referred to SHIB DASS DASS *v* KALI KUMAR ROY (1903)

I. L. R. 30 Calc 463
s.c. 7 C. W. N. 532

12. ——— *Civil Procedure Code, s 43—Sale of mortgaged property in execution of money decree held by mortgagee—Sale set aside —Subsequent suit for sale on the mortgage.* Where a mortgagee had brought the mortgaged property

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s *held*

that the mortgagee was not debarred from sub

v MUHAMMAD SADIQ (1904) I. L. R. 26 All. 223

13. ——— *Mortgage of land —Subsequent sale of equity of redemption in execution of decree in favour of third party—Purchase of equity of redemption by mortgagee—Subsequent suit by mortgagor to redeem—Maintainability.* In 1882, plaintiff's father mortgaged certain immoveable property belonging to the tarwad now represented by plaintiff, and, subsequently the mortgagee purchased the equity of redemption of the lands at a sale, which was held in execution of a decree in favour of a third party. Both the mortgage and the sale were binding on the tarwad. Plaintiff now sued to redeem the lands contending that she was entitled to do so, inasmuch as the sale of the equity of redemption had not been effected in a suit for sale by the mortgagee on his mortgage. *Held,* that plaintiff was not entitled to redeem. *Erusappa Mudaliar* v. *Commercial and Land Mortgage Bank, Limited, I. L R. 23 Mad.* 377, not followed IKHOTHA *v* CHAKKIAMMA (1904) . . . . I. L. R. 27 Mad. 428

14. ——— *Civil Procedure Code, s. 233—Mortgagee holding also a simple money decree against mortgagor—Transfer of decree—Rights of transferee.*

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thereby. *H* transferred this simple money decree to *M*. *Held*, that there was nothing to prevent *M* from bringing to sale in execution of this

Chundra

I. L. R

MANNI

All. 450

15. ——— *Mortgage—Sale of equity of redemption by mortgagor—Purchase of equity of redemption by mortgagee in execution of a decree against mortgagor's vendees—Effect of such purchase—Suit by mortgagor's vendees for redemption—Parties* The equity of redemption in certain mortgaged property was sold by the mortgagor to third parties. In execution of a decree for costs and mesne profits the mortgagee brought the equity of redemption in the hands of the purchasers to sale and purchased it himself Years after this the purchasers of the equity sued to redeem the mortgaged property, treating the sale to the mortgagee as a nullity. They did not implead in this suit the representatives of the original mortgagee *Held*, that the suit must fail for want of proper parties. But in any case the purchase by the mortgagee of the equity of redemption was voidable only and not void, and could not after the lapse of some twenty years be impeached *Tara Chand* v *Imdad Husain, I. L. R.*

Paluran, I. L

Dasm,

v. *Shama-*

Marland v.

Tewari

4, referred

RAI (1905)

I. L. R. 27 All. 517

16. ——— *Mortgage—Suit*

The suit was compromised, and the mortgagee took a money decree, in which, however, the property originally hypothecated to him was set out as being charged. *Held*, that the mortgagee decree-holder could not bring the mortgaged property to sale in execution of his decree, but, if he wished to do so, he would have to institute a suit under s. 67 of the Transfer of Property Act on the decree. *Aubhoyessury Dobee* v. *Gouri Sunker Panday, I. L. R. 22 Calc. 859,* followed. HEM BAN *v*. BEHARI GIR (1905) I. L. R. 28 All. 58

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd*

———— s. 99—*contd*

17. ———— *Not merely declaratory of old Law—Purchase by mortgagee of equity of redemption in execution of decree not based on mortgage—Effect of on the rights of sons of mortgagor.* S. 99 of the Transfer of Property Act is not merely declaratory of what was accepted and en-

When the mortgagee, at a Court sale perfected before the passing of the Act, and brought about in respect of a claim independent of the mortgage, purchases the right of redemption in the mortgaged property, such purchase passes to him the whole interest as effectually against the sons of the judgment-debtor as against the judgment-debtor himself and the sons cannot sue to redeem the property so sold or their share therein NANNUVIEN *v* MUTHUSAMI DIKSHADAR (1905)

I. L. R. 29 Mad. 421

18. ———— *Rights of purchaser—Landlord having a mortgage of the holding.* The sale of a holding in execution of a decree for rent obtained by a landlord, who also held a mortgage of the holding, is void, and the purchaser at the sale acquires no title against another mortgagee of the holding, who has purchased it under a decree on his mortgage *Sheodeni Tewari* v. *Ram Saran Singh, I L R 26 Calc 164,* followed. BASIRUDDIN *v* KAILAS KAMINI DEBI (1905)

I. L. R. 33 Calc. 113

19. ———— *Money decree obtained by mortgagee against mortgagor—Transfer of the decree—Assignee bound by the provisions of*

20. ———— *Civil Procedure Code (Act XIV of 1882), s. 316—Mortgage—Simple money decree accepted by mortgagee—Sale of mortgaged property in execution of such decree* Even though the mortgagee disclaims all interest in his mortgage and asks for and obtains a simple

But if such a sale does in fact take place and is confirmed and a certificate is granted to the auction-purchaser, the sale cannot afterwards be impeached upon the ground that it was in violation of s. 99 of the Transfer of Property Act *Madan Mukund Lal* v. *Jamna Kaulapuri, All Weekly Notes (1907)*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 99—*concld.*

48, Raj Kishore De Sarkar v. *Dina Nath Chandra, 12 C. W. N. lx, Thaleri Pathumma* v *Thandora Mammad, 10 Mad L. J 110; Durga Charan Mandal* v *Kali Prasanna Sarkar, I. L. R. 26 Calc. 727,* and *Umed* v. *Jas Ram, I. L. R. 29 All. 612,* referred to. *Sonu Singh* v. *Bihari Singh, I. L R 33 Calc. 283,* dissented from. KISHAN LAL *v* UMRAO SINGH (1908) I. L. R. 30 All. 146

———— ss. 99, 67—*Holder of usufructuary mortgage attaching mortgaged property for a decree on an independent claim may sue under s 67 on the mortgage.* Where a usufructuary mortgagee, who had no right to sue for his mortgage amount, obtained a decree against the mortgagor on a claim

of Property Act to bring a suit on his mortgage under s. 67 of the Act. The decree in such a suit should be one for the sale of property free from the mortgage claim and for the application of the sale-proceeds in satisfaction of the mortgages on the property, the balance, if any, to be applied towards the claim under attachment. GOVINDA BHATTA *v* NARAIN BHATTA (1906)

I. L. R. 29 Mad. 424

———— s. 100.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY. I. L. R. 14 All. 273

See LIMITATION ACT, 1877, SCH II, ART. 148 . . I. L. R. 8 All. 295

See MORTGAGE—CONSTRUCTION. I. L. R. 13 All. 28

See MORTGAGE—FORM OF MORTGAGE I. L R. 9 All. 158

1. ———— *Charge on immoveable property—Mortgage—Construction of document—Limitation* Under s. 100 of the Transfer

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— **s. 100**—*contd.*

August 1885 to recover the R99 *Held*, that the document did not amount to a mortgage, nor did it create a charge under s. 100 of the Transfer of Property Act, and that the suit was barred by limitation, three years being the period applicable. MADHO MISSER *v.* SIDH BENAIK UPADHYA *alias* BENA UPADHYA . **I. L. R. 14 Calc. 687**

2. ———— **and s. 58**—*Hypothecation-bond, suit on.* The period of limitation for suits upon hypothecation-bonds which contain no power of sale or effect no transfer of property, executed before the Transfer of Property Act came into operation, is twelve years under Sch. II, Art 132, of the Limitation Act of 1877 *Aliba* v. *Nanu, I. L R. 9 Mad. 218*, followed. *Per* MUTTUSAMI AYYAR, J.—" The transaction in suit appears to be of the kind described in s 100 of the Transfer of Property Act, which defines how a charge is created;" but " it seems to me that the Transfer of Property Act does not invest all prior hypothecations with the rights and liabilities arising from simple mortgages, whether or not those transactions satisfy the requirements of the definition it contains of simple mortgages." RANGASAMI *v.* MUTTUKUMARAPPA . **I. L. R. 10 Mad. 509**

3. ———— **and s 68**—" *Charge* "—*Bengal Tenancy Act, s 65.* The Provisions of s 68 of the Transfer of Property Act are not amongst those made applicable by s 100 of that Act to a person having a charge within the meaning of the latter section. *Semble* The " charge " referred to in s 65 of the Bengal Tenancy Act (VIII of 1885) is not such a " charge " as that defined by s. 100 of the Transfer of Property Act. *Lolit Mohun Roy* v. *Bindodai Dabee, I L. R 14 Calc 11*, explained FOTICK CHUNDER DEY SIRCAR *v* FOLEY **I. L. R. 15 Calc 492**

4. ———— *Mortgage—Suit by sons against father for partition—Subsequent mortgage of suit property by father—Consent-decree in partition suit—Subsequent decree in a suit on the mortgage against the father alone—Liability of property in execution—Effect of instrument intended to be a mortgage but defective in form—Charge.* Plaintiffs, who were the sons of first defendant, had, on 18th March 1893, instituted a suit against their father for partition. On 24th July 1893, their father executed a deed ...

... conveyed to plaintiffs the whole of his interest in the immoveable family property, retaining only sufficient money to satisfy certain incumbrances which existed on the property. These were in fact paid off, and the plaintiff took ...

a sale in execution thereof; and obtained possession through the Court. Plaintiffs then applied, under s. 332 of the Code of Civil Procedure, for an order restoring them to possession, and, as that application was dismissed, filed the present suit. *Held*, that plaintiffs were entitled to recover possession. As against the plaintiffs, the decree obtained by defendants Nos 2 and 3 must be regarded as merely a personal decree against the father on his covenant to pay; and the house was not available in execution of it, inasmuch as it was the separate property of the plaintiffs, under the decree in the partition suit, at the time when the decree was obtained. *Quære*, Whether an instrument which ...

5. ———— *Mortgage decree—Payment by one of several representatives of deceased mortgagor—Charge—Contribution.* A mortgagee having obtained a decree on his mortgage the decretal amount was paid off by one of several ... *Held*, ...

visions of s 95 and s 82 of the Transfer of Property Act do not apply to such a case *Bhagwandas* v. *Hardei, I L. R 26 All 227*, disapproved *Danappa* v. *Yamnappa, I. L R 26 Bom. 379*, distinguished. *Upendra* v. *Girindra, I. L. R. 25 Calc 565*, referred to JAHAN ARA BEGAM *v* MIRZA SHUJAUDDIN BUKHT BAHADUR (1905) . **9 C. W. N. 865**

6. ———— *Documents executed in the mofussil—Contracts of the people of India—* ...

regard to all the circumstances of a transaction there remains no doubt that the documents are sufficient and do show an intention to make the land security for the payment of the debt mentioned therein, the documents create a charge. JANARDAN *v.* ANANT (1908) . **I. L. R. 32 Bom 386**

———— **s. 101.**

See BENGAL TENANCY ACT. **9 C. W. N. 451**

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 101—*concld*

REDEMPTION—RIGHT OF REDEMPTION . . I. L. R. 23 All. 1

See SALE FOR ARREARS OF RENT—INCUMBRANCES . . 6 C. W. N 834

——— *Lien on mortgaged property—Mortgagee, joint purchase of mortgaged property by—Mortgagor, objection to sale by* Where the mortgagee purchases the mortgaged property along with other properties and jointly with other persons in undivided shares, his lien upon the property is not extinguished, but is existing, it being for his benefit within the meaning of s 101 of the Transfer of Property Act A mortgagor is precluded from raising the objection that the sale of the mortgaged property in execution of the decree in

——— s. 103.

See MORTGAGE—REDEMPTION—MISCELLANEOUS CASES . I. L. R. 27 Bom. 23

——— s. 104, rules framed under—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.
I. L. R. 25 Calc. 703
4 C. W. N. 474

——— *Rules made by High Court under s. 104, effect of—Applicability of Code of Civil Procedure to sales in execution of mortgage-decrees.* S 104 of the Transfer of Property Act is an enabling section, and the rules made by the High Court (Circular Order No 13, dated 27th April 1892) under the provisions of s. 104 of the Transfer of Property Act do not limit the applicability of the provisions of the Code of Civil Procedure as regards sales held in execution of mortgage-decrees. *Kedar Nath Raut v Kali Charan Ram, I. L R 25 Calc. 703,* explained. DAKSHINA MOHAN ROY *v.* BASUMATI DEBI
4 C. W. N. 474

——— s. 105.

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . . L. R. 29 I. A. 138

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE
I. L. R. 24 Calc. 440
2 C. W. N. 292

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— ss. 105, 106—*Lease from month to month—Lessee to give his services as family doctor in lieu of rent—Lease for other than agricultural or manufacturing purpose—Termination of lease—Notice to quit, fifteen days', if sufficient* Where it was agreed that, instead of paying rent, a lessee was to give his services as a family doctor to the lessor,

——— ss. 105, 107.

See LEASE . . I. L. R. 30 Mad. 322

——— s 106.

See FISHERY, RIGHT OF.
I. L. R. 20 Calc. 446

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT
I. L. R. 7 All. 596 ; 899
I. L. R. 17 All. 45
I. L R. 20 Bom. 759
I. L. R. 22 Bom. 754
2 C. W. N. 383
4 C. W. N. 572 ; 790
8 C. W. N. 454
13 C. W. N. 513

See LEASE . I. L. R. 30 Mad. 109

See ONUS OF PROOF—LANDLORD AND TENANT . . I. R. R. 13 Mad. 60

——— ss. 106, 107.

See LEASE . . 11 C. W. N. 1124

——— ss. 106, 111.

See LANDLORD AND TENANT
I. L. R. 33 Calc. 339

——— ss. 106, 116.

See NOTICE TO QUIT
I. L. R. 32 Calc. 128

——— *Lease for other than agricultural or manufacturing purposes—Term of three years—Holding over—Termination—Notice to quit, fifteen days,' if sufficient.* Where immoveable

——— s. 107.

See EVIDENCE—PAROL EVIDENCE VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . . L. R. 29 I. A. 138

See REGISTRATION ACT (III OF 1877), ss 3 AND 17 . . I. L. R. 27 All. 462

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 107—*concld.*

See REGISTRATION ACT, s. 17, CL. (*d*).
I. L. R. 17 Mad. 275
I. L. R. 21 Mad. 109
I. L. R. 24 Mad. 421

See REGISTRATION ACT, s. 18
I. L. R. 24 Calc. 20

1. ———— *Hât, lease of—* [illegible]

[illegible] jumma of Rs10. The defendants denied the settlement The first Court found for the plaintiff; but on appeal an objection having been raised by the defendants that the verbal lease was illegal under the Transfer of Property Act, the suit was dismissed. *Held,* that a hât is a benefit arising out of land, and therefore within the definition of "immoveable property" as given in s. 2, cl 5, of the General Clauses Act (I of 1868). The lease of a hât comes within s 107 of the Transfer of Property Act (IV of 1882), and can be effected only by a registered instrument. SURENDRA NARAIN SINGH *v.* BHAI LAL THAKUR
I. L. R. 22 Calc. 752

2. ———— *Lease of immoveable property—Kabuliat not to lease.* *Held,* by BLAIR, J. (BANERJI, J., *dubitante*), that a kabuliat, though registered, cannot be considered as a lease of immoveable property by a registered instrument within the meaning of s. 107 of the Transfer of Property Act, 1882 NAND LAL *v* HANUMAN DAS (1904) . . . . I. L. R 26 All. 368

3. ———— *Lease of immoveable property—Kabuliat not a lease* Where a lease of immoveable property is for a period of more than one year, it must be made by means of a duly executed and registered patta; such a lease cannot be created by or proved by the production of a *kabuliat* only *Nand Lal* v. *Hanuman Das, All. Weekly Notes (1904) 46,* referred to. KASHI GIR *v.* JOGENDRO NATH GHOSE (1905)
I. L. R. 27 All. 136

4. ———— *Lien—Charge—* [illegible]

[illegible] instrument (*i e.,* a lease) conduct themselves towards each other as if they were landlord and tenant and moneys pass from one to the other in pursuance of that conduct upon the understanding that it would be repaid in a certain event, there shall be no right to recover that money. In such a case the right to recover arises not upon the lease because according to law no lease exists, but upon an independent equity arising from the conduct of the parties and founded upon the law of estoppel ARDESIR BEJONJI *v* SYED SIRDAR ALI KHAN (1908) . . . . I. L. R. 33 Bom. 610

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— s. 108.

See LANDLORD AND TENANT—BUILDINGS ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS.
I. L. R 22 Calc. 820

See LANDLORD AND TENANT—DAMAGE TO PREMISES LET . I. L. R. 17 Mad. 98
I. L. R. 23 Bom. 15

See LANDLORD AND TENANT—FORFEITURE —DENIAL OF TITLE.
I. L. R. 24 Calc. 440

See LANDLORD AND TENANT—TRANSFER BY TENANT . I. L. R. 17 Mad. 293
I. L R. 22 Calc. 494
4 C. W. N. 574

See MINERAL RIGHTS.
I. L. R. 34 Calc. 358

See ONUS OF PROOF—LANDLORD AND TENANT . . I. L. R. 13 Mad. 80

———— s 108, cl. (c)

See LANDLORD AND TENANT—OBLIGATION OF LANDLORD TO GIVE AND MAINTAIN TENANT IN POSSESSION.
I. L. R. 25 Bom. 269

See LEASE . . I. L. R. 33 Calc. 203

———— cl. (g).

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES
6 C. W. N. 336

———— cls. (h), (o)—

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND.
I L. R. 24 Mad. 47
I. L R. 33 Calc. 54

———— cl. (j).

See LEASE, ASSIGNMENT OF.
I. L. R. 30 Mad 410

1. ———— *Transfers before passing of Transfer of Property Act.* S. 108 of the Transfer of Property Act does not apply to transfers which took place before the passing of the Act. HARI NATH KARMAKAR *v* RAJ CHANDRA KARMAKAR
2 C. W. N. 122

2. ———— *Removal of buildings during continuance of lease—Rule of common law in India—Buildings erected by tenant.* Certain land was leased in 1875 to a tenant for twenty [illegible]

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 108—*concld.*

not been removed during the continuance of the lease). On its being contended that the tenant was entitled to be paid the value of the building, which he had erected on the land before he could be evicted: *Held*, that it is established that the maxim "*quicquid ædificatur solo, solo cedit*" does not generally apply in India and even in cases to which the English law as such was applicable, the Indian Legislature, by *Act XI of 1885*, departed from that maxim in the cases specified in s. 2 of that Act (corresponding to s. 51 of the Transfer of Property Act). Both under the Hindu and the Muhammadan law (as well as under the common law of India) a tenant, who erects a building on land let to him, can only remove the building and cannot claim compensation for it on eviction by the landlord. *Mahalatchmi Ammal v. Palani Chetti, 6 Mad. H. C. 245*, discussed. ISMAI KANI ROWTHAN v. NIZARALI SAHIB (1904)

I. L. R. 27 Mad. 211

——— s. 111.

See FORFEITURE . I. L. R. 35 Calc. 807

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT

I. L. R. 7 All. 596; 899
I. L. R. 20 Bom. 759

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE

I. L. R. 20 Bom. 354
I. L. R. 24 Calc. 440

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R. 26 Mad. 488

See LEASE—CONSTRUCTION

I. L. R. 17 All. 826

——— cl. (d)

See PATNI TENURE.

I. L. R. 28 Calc. 744

——— cl. (g)

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS

I. L. R. 26 Mad. 15

——— s. 114

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—IMMOVEABLE PROPERTY . I. L. R. 17 Mad. 216

the 24th May of each year, and if any arrears

amongst others that the rent due on the 24th May 1898 was not paid by the 24th August 1898:—*Held*,

——— s. 114—*contd.*

affirming the decree of the lower Appellate Court

lease allows a reasonable period of grace. NARAINA NAIKA v. VASUDEVA BHATTA (1905)

I. L. R. 28 Mad. 389

——— s. 116.

See BENGAL, NORTH-WESTERN PROVINCES AND ASSAM CIVIL COURTS ACT s. 21 . . . 9 C. W. N. 705

See HOLDING OVER 9 C. W. N. 340

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.

I. L. R. 20 Bom. 759

See LANDLORD AND TENANT—HOLDING OVER AFTER TENANCY.

See LIMITATION ACT, 1877, SCH. II, ARTS. 139, 144 . . I. L. R. 31 Mad. 163

——— *Forfeiture—Denial of landlord's title—Pleading.* Where the tenants could not obtain possession of the whole area leased to them and on reference to their lessors got no satisfaction from them, and then took a lease of the portion, of which they could not get possession from a stranger, whom they found in possession:—*Held*, that there was no renunciation by the tenants of their character as such so as to entail forfeiture. FARMAN BIBI v. TASHA HADDAL HOSAIN (1908) . . . 12 C. W. N. 587

——— ss. 116, 117.

See LANDLORD AND TENANT—HOLDING OVER AFTER TENANCY.

I. L. R. 28 Calc. 227

——— s. 117.

See BENGAL TENANCY ACT, SCH. III, ART. 2 . . I. L. R. 27 Calc. 205

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE.

I. L. R. 20 Bom. 354

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND

I. L. R. 24 Mad. 47

See LEASE—CONSTRUCTION.

I. L. R. 17 Mad. 98

——— s. 118.

See EXCHANGE . . 11 C. W. N. 342

See PRE-EMPTION—CONSTRUCTION OF WAJIB-UL-URZ . I. L. R. 7 All. 626

See TRANSFER OF PROPERTY.

I. L. R. 11 Mad. 459

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 118—*concld.*

1. ——————— *Exchange or partition—Transfer, without writing or registration.* Where plaintiff and defendants Nos 4 to 6 were

entirety :—*Held*, that the transaction was an exchange under s 118 of the Transfer of Property Act, and not a partition, and was invalid in not being in writing and registered. *Gyannessa* v. *Mobarakannessa, I L. R. 25 Calc 210*, distinguished. RAJ NARAIN *v* KHOBDARI RAI (1901)
5 C. W. N. 724

2. ——————— *Landlord and Tenant—Transfer of Property Act (IV of 1882), ss. 118, 119—Exchange.* Where a tenant voluntarily surrendered certain leasehold rights, and took from the landlord leasehold rights of some other property :—*Held*, that the transaction was not an exchange. WALIUL HASSAN *v* GOPAL SARUN NARAIN SINGH (1902) . . 6 C. W. N. 905

3. ——————— *Exchange—Partition.* Some of the co-owners possessing an undivided share in several properties took by arrangement a specific property in lieu of their shares in all the properties *Held*, that this transaction was not an exchange within the meaning of s 118 of the Transfer of Property Act, but the completed transaction amounted to a partition which is not required by law to be effected by an instrument in writing. *Firth* v. *Osborne, L R. 3 Ch. D. 618*, referred to. GYANNESSA *v* MOBARAKANNESSA
I. L. R. 25 Calc. 210
2 C. W. N. 91

——— s. 119.

See ante, s. 118 . . 6 C. W. N. 905

1. ——————— *Exchange—Mutual covenants subsequently entered into to support title—Maxim "expressum facit cessare tacitum"* The plaintiff and defendant effected an exchange of land; subsequently they executed to each other documents, of which that executed by the defendant recited the exchange and continued, "If any claim or dispute arises, I hereby bind myself to

plaintiff, alleging that he had been ousted from the land conveyed to him, now sued to recover the land which he had given in exchange *Held*, that the operation of the Transfer of Property Act, s. 119, was excluded by the express covenant in the document quoted above SUBRAMANIA AYYAR *v.* SAMINATHA AYYAR . I. L. R. 21 Mad. 69

2. ——————— *Breach of condition constituting cause of action under s. 119 of the Transfer of Property Act, arises at date of final decree on appeal—Limitation Act (XV of 1877), s. 10—Does not apply in suits against assignees for valuable consideration.* *A*, the trustee of a temple, exchanged certain temple lands with *B* and obtained certain lands from *B* in exchange. *C* brought a suit against *A* to recover the land obtained by *A* in exchange from *B* and possession was decreed in favour of *C*, and *A* was deprived of possession in execution of the decree on 18th December 1890. *A* preferred appeals successively to the District Court and to the High Court and the decree was confirmed on second appeal on the 23rd February 1892. On the 22nd February 1904, *A's* successor

to have taken place only when the decree for possession ... appeal, ... 10 of ... The

section proceeds upon the well-known distinction between transfers for valuable consideration and voluntary transfers, and the transfer in this case is not the less a transfer for valuable consideration because the consideration subsequently failed. S. 10 does not deprive transferees for valuable consideration of the benefits of the Statute. *Bassu Kuar* v. *Dhum Singh, I. L. R. 11 All 47*, followed. *Hanuman Kamat* v. *Hanuman Mandur, I. L. R. 19 Calc. 123, Tulsiram* v. *Murlidhar, I. L. R. 26 Bom 750*, distinguished RAJAGOPALAN *v.* KASIVASI SOMASUNDARA THAMBIRAN (1907)
I. L. R. 30 Mad. 316

——— ss. 122, 123.

See GIFT . I. L. R. 20 All. 392

——————— *Gift of immoveable property—Acceptance of the gift—Registration of the deed subsequent to acceptance—Remand—Examination of witness on commission—Practice.* A gift of immoveable property duly made and accepted is not invalid merely because the registration of the deed of gift took place after the death of the donor. *Nand Kishore Lal* v *Suraj Prasad, I. L. R. 20 All. 392*, followed. On registration the deed of gift would operate as from the date of execution. On remand by the High Court for the ... the District Court ... order that ... the evidence ... *Held*, that the defendant was in no wise aggrieved by the procedure followed. KHASHABA BIN MANSING *v* CHANDRABHAGABAI (1908)
I. L. R. 32 Bom 441

——— s. 123.

See ASSIGNMENT . 10 C. W. N. 717; 755

See ATTACHMENT—SUBJECTS OF ATTACHMENT—ANNUITY OR PENSION.
I. L. R. 6 All. 634

See GIFT . . I. L. R. 19 Mad. 439

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd*

———— **s. 123**—*concld.*

See HINDU LAW—GIFT—REQUISITES FOR GIFT . . I. L. R. 25 All. 358

See HINDU LAW—MAINTENANCE 10 C. W. N. 1074

See MAHOMEDAN LAW—GIFT I. L. R. 24 Mad. 513

1. ———— *Hindu law—Gift—Delivery of possession—Immoveable and moveable property* Assuming that delivery of possession was essential under the Hindu law to complete a gift of immoveable property, that law has been abrogated by s 123 of the Transfer of Property Act The first paragraph of that section means that a gift of immoveable property can be effected by the execution of a registered instrument only, nothing more being necessary *Semble* The same is the case under that section with regard to moveable property, provided that a registered deed (and not the alternative mode of delivery) be adopted as the mode of transfer DHARMODAS DAS *v* NISTARINI DASI . . I. L. R. 14 Calc. 446

BAI RAMBAI *v.* BAI MANI I. L. R. 23 Bom. 234

2. ———— *Registration Act (II of 1857), s 35—Gift, if must be registered by* [illegible]

[illegible]

she herself was the donee under the document being immaterial *Nand Kishore Lal* v *Suraj* [illegible] *Kun-* [illegible] BHABA- [illegible] N. 717

3. ———— *Gift—Registered* [illegible]

[illegible] sions of s. 123 of the Transfer of Property Act. *Dharmodas Dass* v *Nistarini Dasi, I. L. R. 14 Calc. 446, Bai Rambai* v *Bai Mani, I L R 23 Bom 234* and *Puhl Chand* v. *Lakhu, I. L R 25 All 358,* followed BALBHADRA *v* BHOWANI (1907) . . . . I. L. R. 34 Calc. 853

———— **ss. 123 and 129.**

See HINDU LAW—GIFT—REQUISITES FOR GIFT . . I L. R. 16 Calc. 446
I. L. R. 20 Calc. 464
I. L. R. 23 Bom. 234

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

———— **ss. 123, 129**—*concld.*

See MAHOMEDAN LAW—GIFT. I. L. R. 31 Calc. 319

See REDEMPTION I. L. R. 28 Bom. 153

———— **s 127.**

See GIFT . . I. L. R. 20 Mad. 147

———— **s. 130.**

See ACTIONABLE CLAIM.
I. L. R. 30 Mad. 235
I. L. R. 34 Calc. 289

See ASSIGNMENT OF DEBT. I. L. R. 30 Mad. 75

———— **s. 131.**

See LAND REGISTRATION ACT, s 78 I. L. R. 23 Calc. 87

1. ———— *Transfer of debts—Notice of transfer—Assignment of mortgagee—Mortgagor, liability of, to assignee of mortgagee when no notice of assignee given* An Assignment is perfectly valid, though the notice referred to in *s 131 of the Transfer of Property Act has been* given, though the title of the assignee as against third parties not complete until such notice has been given, the object of such notice being the protection of the assignee. S 131 of the Transfer of Property Act makes no alteration in the law as it obtained in England previous to the passing of [illegible]

[illegible]

an assignee of a mortgagee brought a suit on the mortgage against the mortgagor and the mortgagee and no notice of the assignment had been given to the mortgagor under s. 131 of the Transfer of Property Act :—*Held,* that the Court was wrong in dismissing the suit merely on the ground that no notice was served, as after the suit was instituted the mortgagor became aware of the assignment, and the transfer accordingly came into operation *on the date when he thus became aware of it.* LALA JUGDEO SAHAI *v.* BRIJ BEHARI LAL I. L. R. 12 Calc. 505

2. ———— *Decree—Debt.* A *decree is not a "debt" within the meaning of* that word as used in s 131 of the Transfer of Property Act A "debt" under that section means an actionable claim, and not a claim which has already passed into a decree. AFZAL *v.* RAM KUMAR BHUDRA . . I. L. R. 12 Calc. 610

3. ———— *Transfer of debt—Notice to debtor. Held,* that an assignment by endorsement of a registered bond hypothecating certain crops was not void by reason that notice thereof was not proved to have been given to the obligor, inasmuch as the effects of s. 131 of the Transfer of Property Act was merely to suspend the operation of the assignment up to the time

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 118—*concld*

1. ——— *Exchange or partition—Transfer, without writing or registration.* Where plaintiff and defendants Nos. 4 to 6 were joint owners of certain property, and plaintiff alone was owner of other property, and by an oral arrangement plaintiff got the former property in its entirety:—*Held,* that the transaction was an exchange under s. 118 of the Transfer of Property Act, and not a partition, and was invalid in not being in writing and registered. *Gyannessa* v. *Mobarakannessa, I. L. R. 25 Calc 210,* distinguished. RAJ NARAIN *v.* KHOBDARI RAI (1901)
5 C. W. N. 724

2. ——— *Landlord and Tenant—Transfer of Property Act (IV of 1882), ss. 118, 119—Exchange.* Where a tenant voluntarily surrendered certain leasehold rights, and took from the landlord leasehold rights of some other property:—*Held,* that the transaction was not an exchange. WALIUL HASSAN *v* GOPAL SARUN NARAIN SINGH (1902) . . **6 C. W. N. 905**

3. ——— *Exchange—Partition* Some of the co-owners possessing an un- [illegible]

transaction amounted to a partition which is not required by law to be effected by an instrument in writing *Firth* v. *Osborne, L. R. 3 Ch D. 618,* referred to GYANNESSA *v* MOBARAKANNESSA
I. L. R. 25 Calc. 210
2 C. W. N. 91

——— s. 119.

See ante, s. 118 . . **6 C. W. N. 905**

1. ——— *Exchange—Mutual covenants subsequently entered into to support title—Maxim "expressum facit cessare tacitum."* The plaintiff and defendant effected an exchange of land; subsequently they executed to each other documents, of which that executed by the defendant recited the exchange and continued, "If any claim or dispute arises, I hereby bind myself to settle it." If I do not so get the dispute settled I hereby bind myself to pay an amount not exceeding R4,014-8-6 at the rate of R1-4-0 per kuli of land for lands which go out of your possession. The plaintiff, alleging that he had been ousted from the land conveyed to him, now sued to recover the land which he had given in exchange *Held,* that the operation of the Transfer of Property Act, s. 119, was excluded by the express covenant in the document quoted above. SUBRAMANIA AYYAR *v* SAMINATHA AYYAR . **I. L. R. 21 Mad. 69**

2. ——— *Breach of condi-* [illegible]

Does not apply in suits against assignees for valuable consideration. A, the trustee of a temple, exchanged certain temple lands with *B* and obtained certain lands from *B* in exchange. *C* brought a suit against *A* to recover the land obtained by *A* in exchange from *B* and possession was decreed in favour of *C*, and *A* was deprived of possession in execution of the decree on 18th December 1890 *A* preferred appeals successively to the District Court and to the High Court and the decree was confirmed on second appeal on the 23rd February 1892. On the 22nd February 1904, *A's* successor brought a suit against *B* to recover the lands got by *B* from *A*:—*Held,* that the dispossession of plaintiffs which entitled him to bring a suit under s. 119 of the Transfer of Property Act must be held to have taken place only when the decree for possession against him was confirmed on second appeal, by the High Court. *Held,* further, that s. 10 of the Limitation Act did not apply to the suit. The section proceeds upon the well-known distinction between transfers for valuable consideration and voluntary transfers, and the transfer in this case is not the less a transfer for valuable consideration because the consideration subsequently failed. S. 10 does not deprive transferees for valuable consideration of the benefits of the Statute. *Bassu Kuar* v *Dhum Singh, I. L. R. 11 All. 47,* followed *Hanuman Kamat* v. *Hanuman Mandur, I L R 19 Calc. 123, Tulsiram* v. *Murlidhar, I. L R 26 Bom. 750,* distinguished. RAJAGOPALAN *v.* KASIVASI SOMASUNDARA THAMBIRAN (1907)
I. L. R. 30 Mad. 318

——— ss. 122, 123.

See GIFT . . **I. L. R. 20 All. 392**

——— *Gift of immoveable property—Acceptance of the gift—Registration of the deed subsequent to acceptance—Remand—Examination of witness on commission—Practice.* A gift of immoveable property duly made and accepted is not invalid merely because the registration of the deed of gift took place after the death of the donor. *Nand Kishore Lal* v. *Suraj Prasad, I. L. R. 20 All. 392,* followed. On registration the deed of gift would operate as from the date of the execution On remand by the High Court for the determination of a certain issue the District Court sent down the case to the first Court in order that the evidence might be taken then. The evidence of the plaintiff was taken on commission *Held,* that the defendant was in no wise aggrieved by the procedure followed KHASHABA BIN MANSING *v* CHANDRABHAGABAI (1908)
I. L. R. 32 Bom. 441

——— s. 123.

See ASSIGNMENT . **10 C W. N. 717; 755**

See ATTACHMENT—SUBJECTS OF ATTACHMENT—ANNUITY OR PENSION
I. L. R. 6 All. 634

See GIFT . . **I. L. R. 19 Mad. 439**

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd*

——— s. 123—*concld*

See HINDU LAW—GIFT—REQUISITES FOR GIFT . . **I. L. R. 25 All. 358**

See HINDU LAW—MAINTENANCE **10 C. W. N. 1074**

See MAHOMEDAN LAW—GIFT **I. L R. 24 Mad. 513**

1. ——— *Hindu law—Gift—Delivery of possession—Immoveable and moveable property* Assuming that delivery of possession was essential under the Hindu law to complete a gift of immoveable property, that law has been abrogated by s. 123 of the Transfer of Property Act The first paragraph of that section means that a gift of immoveable property can be effected by the execution of a registered instrument only, nothing more being necessary *Semble* The same is the case under that section with regard to moveable property, provided that a registered deed (and not the alternative mode of delivery) be adopted as the mode of transfer DHARMODAS DAS *v* NISTARINI DASI . . **I. L. R. 14 Calc. 446**

BAI RAMBAI *v.* BAI MANI **I L. R. 23 Bom. 234**

2. ——— *Registration Act (II of 1887), s 35—Gift, if must be registered by donor—Death of donor—Admission of execution by representative—Gift to wife—Admission by wife* It

it was a valid deed of gift within the provisions of s. 123 of the Transfer of Property Act The widow

Prasad, I. L R. 20 All 392, and *Pokran* v. *Kunhammed, I. L R. 23 Mad 580,* referred to BHABATOSH BANERJEE *v* SHAIKH SOLEMAN (1906) **I. L. R. 33 Calc. 584 s c. 10 C. W. N. 717**

3. ——— *Gift—Registered*

Calc. 446 ; Bai Rambai v *Bai Mani, I.L. R 23 Bom 234* and *Puhl Chand* v. *Lalkhu, I. L. R. 25 All 358,* followed BALBHADRA *v.* BHOWANI (1907) . . . . **I. L. R. 34 Calc. 853**

——— ss. 123 and 129.

See HINDU LAW—GIFT—REQUISITES FOR GIFT . . **I L. R. 16 Calc. 446**
I. L. R. 20 Calc. 464
I. L. R. 23 Bom. 234

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— ss. 123, 129—*concld.*

See MAHOMEDAN LAW—GIFT **I. L R. 31 Calc. 319**

See REDEMPTION **I. L. R. 28 Bom. 153**

——— s. 127.

See GIFT . . **I. L. R. 20 Mad. 147**

——— s. 130.

See ACTIONABLE CLAIM. **I. L. R. 30 Mad. 235**
I. L. R. 34 Calc. 289

See ASSIGNMENT OF DEBT **I. L. R. 30 Mad. 75**

——— s. 131.

See LAND REGISTRATION ACT, s 78 **I. L. R. 23 Calc. 87**

1. ——— *Transfer of debts—Notice of transfer—Assignment of mortgagee—Mortgagor, liability of, to assignee of mortgagee when no notice of assignee given.* An Assignment is perfectly valid, though the notice referred to in s. 131 of the Transfer of Property Act has been given, though the title of the assignee as against third parties not complete until such notice has been given, the object of such notice being the

first portion of the section merely fixing the time when the section comes into operation and the latter providing for the protection of the debtor if he deals with the debt before that time. Where, therefore,

perty Act"—*Held*, that the Court was wrong in dismissing the suit merely on the ground that no notice was served, as after the suit was instituted the mortgagor became aware of the assignment, and the transfer accordingly came into operation on the date when he thus became aware of it. LALA JUGDEO SAHAI *v* BRIJ BEHARI LAL **I. L. R. 12 Calc. 505**

2. ——— *Decree—Debt.* A decree is not a "debt" within the meaning of that word as used in s. 131 of the Transfer of Property Act A "debt" under that section means an actionable claim, and not a claim which has already passed into a decree. AFZAL *v.* RAM KUMAR BHUDRA . . **I. L R. 12 Calc. 610**

3. ——— *Transfer of debt—Notice to debtor. Held,* that an assignment by endorsement of a registered bond hypothecating certain crops was not void by reason that notice thereof was not proved to have been given to the obligor, inasmuch as the effects of s. 131 Transfer of Property Act was merely to the operation of the assignment up to

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 131—*concld.*

when such notice was received; that in this case

notice and sold the property to *bonâ fide* transferees for value without notice either of the charge created by the bond or the assignment, such transferees would be protected from liability. *Lala Jugdeo Sahai v. Brij Behari Lal, I. L. R, 12 Calc 505,* referred to KALKA PRASAD v. CHANDAN SINGH . . . . I. L. R. 10 All. 20

4. ——— and s. 135—*Notice—Assignment of actionable claim—Rights of transferee for value.* A sued for principal and interest due on a mortgage assigned to him for value by the mortgagee. No notice of the assignment was given to the mortgagors before the plaintiff's demand The sum

plaintiff on it; to the tled to

a decree for the whole amount due on the assigned mortgage. SUBBAMMAL v. VENKATARAMA I. L. R. 10 Mad. 289

5. ——— "*Debt*"—*Transfer of a debt—Assignment of decree—Notice of assignment—Civil Procedure Code (Act XIV of 1882), s. 232.* A decree is not a "debt" within the meaning of that word as used in s. 131 of the Transfer of Property Act so as to make a transfer

——— s. 132.

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS I. L R 12 Mad. 500

——— *Assignment of debt—Notice to debtor of assignment—Service of the summons in suit for debt—Stat 37 Vict, c 60, s 132.* Under s 132 of the Transfer of Property Act (IV

L R. 12 Calc 505; Subbammal v. *Venkatarama, I. L R. 10 Mad. 289;* and *Kalka Prasad* v. *Chandan Singh, I. L R. 10 All. 20,* followed RAGHO v NARAIN . . . . I. L. R 21 Bom. 60

——— s. 135.

See LIMITATION ACT, 1877, SCH. II, ART. 120 . . I L. R. 15 Mad. 382

See N.-W. PROVINCES RENT ACT (XII OF 1881), ss 42, 95 AND 206. I. L R. 24 All. 517

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 135—*contd.*

1 ——— *Transferee of a claim for smaller value—Recovery of full amount of debt.* It is not the object of s 135 of the Transfer of Property Act absolutely to prevent a transferee, who has purchased a claim at a smaller value, from recovering the full amount of the debt due from the debtor. GRISH CHANDRA v. KASHISAURI DEBI . . . . I. L. R. 13 Calc 145

2 ——— *Right of suit—Suit to set aside a document—Actionable claim.* The co-sharers of a Hindu family, one of whom was a minor, owned certain immoveable property in Munshigungo near Dacca. In 1873 a perpetual lease of this property, executed by all the co-sharers except the minor, was granted to certain persons hereinafter called the lessees. On the minor's behalf the lease was executed by his elder brother as guardian of the minor. In May 1882 the minor, who had previously attained his majority, sued the lessees and his co sharers for a declaration of his right to, and for possession of, his share in the said property, alleging that the perpetual lease was not binding on him On the day after the institution of the suit the plaintiff sold ... for R600. *Held,* that within the perty Act HARI MOHAN GUHA . . . Calc 470

3. ——— and s. 52—*Sale of immoveable property by person out of possession—Actionable claim.* A transfer of ownership of immoveable ... al- not in 8 sold

share. *Held,* that the transaction was a ... to which the s. 52 of the Transfer of Property Act, to which the provisions of Ch. VIII of the Act, specially those of s 135, were inapplicable. *Semble* S. 135 refers to claims for money of some kind or the like, although the money claim may be a charge on immoveable property. MUDUN MOHUN DUT v. FUTTARUNNISSA . . I. L. R. 13 Calc 297

4 ——— *Transfer of a ... entitled to* S. 135 (*d*) 882) means actionable ... another has put into court and has been ... defend- ment ... of or ... litiga- ... er no ... plaint- ... y the ... bility

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 135—*contd.*

15. ——— *Assignment of an actionable claim—Suit by the assignee—Recovery of the full amount of debt.* P owed a sum of R483 to G, who assigned the debt to the plaintiff for R200 The plaintiff sued P to recover the whole amount. *Held*, that, under s. 135 of the Transfer of Property Act (IV of 1882), the plaintiff was entitled to recover the whole amount of the debt VISHNU MAHADEV SONAR *v* DAGADU

I. L. R. 19 Bom. 290

16 ——— *Actionable claim —Mortgage—Transfer of a claim for an amount less than its value—Recovery of amount actually paid with interest and incidental expenses* Where the debtor without denying the claim offers to pay the purchaser the actual price paid by him with interest and expenses of the sale and merely disputes the amount of these items:—*Held*, that such a case does not come under the exception in cl. (*d*) of s 135 of the Transfer of Property Act and the first paragraph of that section applies *Held*, also, that it is not necessary to deposit the money in Court in order to gain the benefit of s. 135 of the Transfer of Property Act. DEBENDRA NATH MULLICK *v.* PULIN BEHARY MULLICK

I. L. R. 23 Calc. 713

17. ——— *Actionable claim —Tender.* When the plaintiff, as an assignee of an actionable claim, brought a suit for its enforcement without having previously given a notice to the defendants of his purchase, and on the suit being called on for hearing the latter prayed to be discharged from liability by paying the price paid by the plaintiff in purchasing the same with costs and all incidental expenses and asked for a month's time to pay the money :—*Held*, that the plaintiff was entitled to a decree for the full amount of his claim, and not simply the amount at which he purchased the bond in question with costs and incidental expenses, inasmuch as there was neither any payment before judgment was delivered nor was any tender of payment made at the time. PUNDIT CHARAN SIRKAR *v.* GANGADHAR DAS . . . . 2 C. W. N. 147

18. ——— *Actionable claim —Assignment of simple mortgage before due date.* The term "actionable claim," as used in s 135 of Act IV of 1882, means a claim in respect of which a cause of action has already matured, and which subject to procedure, may be enforced by suit. *Held*, that the assignment for value of a simple mortgage before the due date of the mortgage is not a sale of an actionable claim within the meaning of s. 135 of Act IV of 1882 *Rani* v *Ajudhia Prasad, I. L. R. 16 All 315*, referred to and explained. SHIB LALL *v.* AZMAT-ULLAH

I. L. R. 18 All. 265

19. ——— *Mortgage—Actionable claim—Transfer of Property Act, s 84—Transfer of a claim for an amount less than its value—Recovery of amount actually paid with interest and incidental expenses* A debtor claiming the benefit of s 135 of the Transfer of Property Act (IV of 1882) is discharged of his liability if he pays or offers to pay at any time before final judgment the amount actually paid with interest and incidental expenses *Muchiram Barik* v. *Ishan Chandra Chuckerbutti, I L. R 21 Calc 568*, followed The amount of interest is governed by s 84 of the Transfer of Property Act DEBENDRA NATH MULLICK *v* PULIN BEHARY MULLICK

I. L. R. 24 Calc. 763

20 ——— and s 139—*Insolvent Act (Stat. 11 & 12 Vict, c 21), s 86—Purchaser of scheduled debts—Right of purchaser to be paid full amount of such debt.* An insolvent, having filed his schedule in April 1881, obtained his personal discharge in September 1881, and on the same day judgment was entered up against him for the amount of his scheduled debts under s 86 of the Insolvent Act (11 & 12 Vict, c 21) The schedule contained the names of thirteen creditors The insolvent afterwards settled with four of them. The remaining nine, whose aggregate claims amounted to R1,180-7-0, sold their claims. Certain assets belonging to the insolvent's estate having subsequently come into the hands of the Official Assignee, the purchasers claimed to be paid the full amount of the scheduled debts which they had bought. It appeared that the debts in question were debts incurred on certain promissory notes passed by the insolvent The insolvent contended that under s. 135 of the Transfer of Property Act (IV of 1882) the purchasers were only entitled to the amount which they had actually paid for the debts they had bought. *Held*, that they were entitled to be paid the full amount of the scheduled debts If the debts at the time [illegible]

[illegible] I. L. R. 21 Bom. [illegible]

21. ——— *Assignment of mortgage by mortgagee—Suit by assignee—Payment into Court by defendants (representatives of mortgagor) of price paid to the assignor (mortgagee) without admitting the mortgage or assignment—Interest—Payment in grain—Damdupat* In a suit by the assignee of a mortgage to recover the amount due on it, the defendants (who were re- [illegible]

[illegible] did not admit the assignment to the plaintiff or the assignor's right to the mortgage, but that they were willing that the amount should be paid to the plaintiffs if he proved that he was the person entitled to recover the mortgage-debt. *Held*, that the plaintiff was

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 135—*contd.*

in it as against an attaching creditor of the obligors *Held*, that there had been no adjudication on the claim to exclude the rule in the Transfer of Property Act, s 135, and accordingly the plaintiff was entitled to recover only the sum paid by him for the assignment with interest from the date of payment to the date of the decree RAMACHANDRA *v.* VENKATARAMA **I. L. R 13 Mad. 516**

10. ——— *Actionable claim —Transfer of claim for an amount less than its value —Suit by transferee to enforce claim—Defendant not entitled to plead that terms of transfer were unconscionable* A mortgagee by conditional sale having obtained an order for foreclosure under Regulation XVII of 1806, his heirs, who were out

property A suit for that purpose was brought by the assignee, the defendants being the conditional vendors, and also the assignors under the deed above-mentioned. The latter made no defence, but admitted the justice of the claim, and a decree was passed in favour of the plaintiff against them as well as against the other defendants. *Held*, that the answering defendants, the conditional vendors, could not take advantage of the terms of the assignment for the purpose of defeating the claim, on the ground that the assignment was an unconscionable bargain, so unfair that the Court should not enforce it If a person who has in actionable claim against another chooses to sell it cheap, that is no reason why that other is to stand cleared and discharged of his liability to the assignor *Held*, also, that the answering defendants were entitled to the benefit contained in the first paragraph of s 135 of the Transfer of Property Act (IV of 1882), and would be entitled to take the bargain off the plaintiff's hands by paying to him the price and incidental expenses of the sale with the interest on that price from the day that the plaintiff paid it to the date of its repayment to him *Jani Begam* v *Jahangir Khan, I L R 9 All 476*, followed *Grish Chandra* v *Kashisauri Debi, I L. R 13 Calc 145*, and *Khoshdeb Biswas* v *Satar Mondol, I L. R 15 Calc. 436*, dissented from HAKIM-UN-NISSA *v.* DEONARAIN . **I. L. R. 13 All. 102**

11. ——— *Actionable claim*

Where an actionable claim has been assigned, the debtor may be discharged from all liability by

TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.*

——— s. 135—*contd.*

payment to the buyer of the price and incidental expenses of the sale, with interest on the price from the day that the buyer paid it; provided that such payment is made at any time before a judgment of a competent Court has been delivered affirming the claim, or before the claim has been made clear by evidence and is ready for judgment; ... the period

... judgment

—The pro-

... a state of

things existing at the time of the assignment, and not at the time of the enforcement of the payment of the debt. *Jani Begam* v. *Jahangir Khan, I L. R. 9 All. 476*, and *Nilakanta* v. *Krishnasami, I L. R. 13 Mad 225*, approved of *Rajendra Narain Bagchi* v. *Watson & Co, I. L R 18 Calc 510*, referred to. *Per* O'KINEALY, *J.*—Cl. (*d*) of s. 135 refers to circumstances arising before the transfer of the actionable claim, and cls. (*a*), (*b*) and (*c*) refer to circumstances coming into existence at the time of the transfer. MUCHIRAM BARIK *v.* ISHAN CHUNDER CHUCKERBUTTY **I. L. R. 21 Calc. 568**

12. ——— *Mortgage—Actionable claim—Assignment of mortgage—Liability of mortgagor—Steps to be taken by mortgagor to obtain benefit of s. 135* A mortgage is an actionable claim under s 135 of the Transfer of Property Act In order to obtain the benefit of that section, the mortgagor must pay "the price and incidental expenses, etc, with interest" into Court either or before the action. *Muchiram Barik* v *Ishan Chunder Chuckerbutti, I. L. R. 21 Calc. 568*, followed. Where a mortgagor some months after suit was brought tendered the amount due, on the assignment of the mortgage to the assignee, and the tender was refused and no actual payment was made into Court:—*Held* (by PETHERAM, *C.J.*, NORRIS and O'KINEALY, *JJ.*, affirming the judgment of HILL, *J.*), that, under the circumstances, the mortgagor was not entitled to the benefit of s. 135. RUSSICK LALL PAL *v.* ROMANATH SEN **I. L. R 21 Calc. 782**

13 ——— *Assignment of mortgagee's rights under his mortgage—Actionable claim.* An assignment of a mortgagee's rights under a mortgage is not an assignment of an "actionable claim" within the meaning of s 135 of the Transfer of Property Act (IV of 1882) MOTI RAM *v.* JETH MAL . **I. L. R. 16 All. 313**

14. ——— *Actionable claim —Rights of usufructuary mortgagee whose mortgagor ... the mortgaged ... rights The ... whose mort- ... ion of the ... such mort-* mortgaged property of his ... gagee against his mortgagor, is a transfer of an actionable claim within the meaning of s. 135 of the Transfer of Property Act (IV of 1882) RAM ... *v* AJUDHIA PRASAD . **I. L. R. 16 All 315**

TRANSFER OF PROPERTY ACT (IV OF 1882)—*concld.*

——— **s. 135**—*concld.*

apply where there are directions to the contrary by the testator Under the English law, interest is payable on demonstrative legacies from the expiry of one year from the testator's death. *Mullins v Smith, 1 Drew. & Sm 204*, approved and followed *Lord Londesborough v. Somerville, 19 Bear 295*, approved and followed The same is the law in India and the absence of a distinct provision in ss 128, 130 and 131 of the Probate and Administration Act with respect to interest on such legacies does not imply an intention to disallow interest in such cases CHINNAM RAJAMANNAR *v.* TADIKONDA RAMACHENDRA RAO (1905)
I. L. R 29 Mad. 155

1. ——— **s. 136**—*Purchase of elephant with authority to recover the same from a stranger.* The owner of certain land, in consideration of a sum of money, transferred to the plaintiff, a pleader, the right to elephants caught in pits in the owner's land and the right to sue for the recovery of such elephants from any person in possession of them The plaintiff sued the defendants to recover possession of an elephant which had been trapped and was in defendant's possession at the time of the transfer to plaintiff. The suit was dismissed on the ground that the plaintiff had brought an actionable claim within the meaning of s. 136 of the Transfer of Property Act, 1882 *Held*, that the section was not applicable. RAMAKRISHNA *v.* KURIKAL . **I. L R. 11 Mad. 445**

2 ——— *Purchase of actionable claim by officer of Court—Jurisdiction, meaning of term.* S 136 of the Transfer of Property Act, 1882, provides that no officer connected with a Court of Justice can buy an actionable claim falling under the jurisdiction of the Court in which such officer exercises his functions The plaintiff, an officer in a District Court, having purchased the rights of the mortgagee in a bond, sued to recover R2,225 due upon it in the Court of the District Munsif *Held*, that, as the claim did not fall under the immediate jurisdiction of the District Court, s 136 was not applicable. SINGARACHARLU *v* SIVABAI
I. L. R. 11 Mad. 498

TRANSFER OF PROPERTY AMENDMENT ACT (III OF 1885).

——— **s. 3.**

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.
I. L. R. 19 Calc 623

TRANSFER OF TENURE.

——— **recognition of, by landlord—**

See LANDLORD AND TENANT
I. L. R. 34 Calc. 903

TRANSFER OF TITLE.

See SALE CERTIFICATE.
I. L. R. 35 Calc. 614

TRANSLATION.

See COPYRIGHT . **I. L. R. 14 Bom. 586**
I. L. R. 19 Bom. 557

TRANSPORTATION.

See SENTENCE—TRANSPORTATION.

——— **absence by reason of—**

See LIMITATION ACT, 1877, s 7.
1 B. L. R. S. N. 25

TRANS-SHIPMENT PERMIT.

See SEA CUSTOMS ACT, s 128.
I. L. R. 4 Bom. 447

TREASON.

See WAGING WAR AGAINST THE QUEEN.
7 B. L. R. 63

TREASURE TROVE.

See TREASURE TROVE ACT.

1. ——— **Beng. Reg. V of 1817**—*Hidden treasure—Duty of finder of hidden treasure—Rights of finder, zamindar, and Government.* Some persons, while digging a field in certain zamindari found an earthen pot containing money. The finder and the zamindar both claimed to be entitled to the treasure, but the provisions of Regulation V of 1817, with regard to the finding of hidden treasure, were not complied with by them, and on this ground the Judge *held* they were not entitled to it The Government claimed the money on

7 B. L. R. Ap. 3

s c OMA CHURN BANERJEE *v.* COLLECTOR OF HOOGHLY . . . . . **15 W. R. 525**

2 ——— **ss 6 and 2**—*Valuable property—Ornament* The owner of the house where

3. ——— **Mad. Reg. XI of 1832**—*Right to idols discovered—Right of owner of property—Right of trespasser—Omission to give notice to authorities* Certain idols and vessels of copper were discovered accidentally by one Shaik Mira and his brother, while digging for stones, in a masonry building underneath the ground in a rather elevated part of the bed of the tank of Anandur [illegible]
ganga, [illegible]
by the [illegible]
Subordin[illegible]
the polic[illegible]
the idol [illegible]
they were found. They were then sent by the Magistracy to the Court of the Principal Sudder

TREASURE TROVE—*concld.*

parties—first, by the Rani of Shivaganga, on the ground that she was trustee of the devastanams on her estate, on which the idols had been found; second, by the Stanikam of a temple in the village of Anandur and third, by the finder. The Principal Sudder Ameen adjudged the idols to be the property of the Rani, and directed that they should be delivered to her The finder appealed to the Civil Court, which reversed the decision of the Principal Sudder Ameen, and directed delivery to the appellant Against this order the Rani appealed to the High Court on the grounds—first, that Regulation XI of 1832 only applies to cases in which the ownership of the property is undiscovered, and that, in the present case, the Rani was presumably the owner of the property found; *second, that a trespasser could not benefit by* the finding. *Held,* that the Rani had no title to what had been hidden in former times in the soil now belonging to her; that it had been found that these idols were hidden in a stone chamber specially appropriated to that purpose, and that she could not therefore claim a title as owner. As to the objection that the finder, being a trespasser, could not benefit:—*Held,* that it was unnecessary to consider this objection unless the Rani had some right or title to the treasure, the same as she had in the soil of the tank; that she had not such right, and therefore that the contention as to the right to the property found lay between the finder and the State, which had made no claim. An objection, not before taken, was alleged to be argued at the hearing, *viz*, that the formalities prescribed by the Regulation had not been com-

TREASURE TROVE ACT (VI OF 1878).

See TREASURE TROVE.

———— *Right of a talukhdar in Gujarat to treasure trove—Rights of Government—Criminal Procedure Code, 1882, ss 523 and 524—Property placed at the disposal of Government.* A bag containing R248-2-0 and a gold ring was found buried in a field under circumstances which

found, he was entitled to the property His claim was rejected, and an order was passed under s 524 of the Code placing the property at the disposal of Government. The talukhdar then

TREASURE TROVE ACT (VI OF 1878) —*concld.*

sued the Secretary of State for India in Council to recover the property in dispute. The Joint Judge awarded the claim *Held,* reversing the decree of the lower Court, that, in the absence of any evidence to prove the talukhdar's right to treasure trove either by a grant or prescription, the property belonged to Government, the Indian Treasure Trove Act (VI of 1878) being inapplicable, as no notice was given by the finder, nor were any proceedings taken under it SECRETARY OF STATE FOR INDIA *v.* VAKTSANGJI MEGHRAJJI

I. L. R. 19 Bom. 668

———— s. 3—*Property not hidden is not treasure trove and belongs to the owner of the land, on which it is found* S. 3 of the Treasure Trove Act

on whose land they are found, unless they are found in a public place, in which case they belong to the finder. Under the English law the possession of land carries with it possession of everything which is attached to or under that land and in the absence of a better title the right to possess it also, except in the case of articles found in a public place. This is also the law in India. In England, where the article is hidden, the fact of its being so hidden is taken to show that the owner did not intend to abandon it, and when it is subsequently found hidden, and the owner is not forthcoming, the law gives it as *bonum vacuum* to the Crown. HAMPI SRI VIRU PAKSHA SWAMI TEMPLE *v.* LAMBANI GOLYA (1908) I. L. R. 31 Mad 397

TREATY.

See NATIVE STATE

I L. R 35 Calc. 478

1. ———— Tenure of territory in Bombay ... Governor Aungier's ... and ... 3rd June ... Portugal

considered. The treaty in 1664-65 by Sir Humphry Cook with the Viceroy of Goa was entered into without authorization by the Crown of England or the Crown of Portugal, was not ratified by either, was expressly repudiated by the former, and never was of any force *Doe d. De Silveira v. Texeira, 2 Mor Dig 250,* observed upon. NAOROJI BERAMJI *v.* ROGERS . . . 4 Bom. O C. 1

2. ———— Cession of Bombay and Salsette to Portuguese. The treaty made between Sultan Bahadur of Gujrat and the King of Portugal on the cession of Bassein and its dependencies (including Bombay and Salsette) to the Portuguese referred to. SECRETARY OF STATE FOR INDIA *v.* BOMBAY LANDING AND SHIPPING COMPANY

5 Bom. O. C. 23

See LOPES *v.* LOPES . . 5 Bom. O. C. 172

TREATY—*concld.*

3 — —— **Money settled upon members of Royal Family of Oudh and their heirs**—*Perpetual pensions by payments arranged between sovereign powers—Construction of the word "issue," as used in a treaty between them, and in subsequent correspondence* An arrangement between two sovereign powers, viz, the King of Oudh and the East India Company, whereby members of the Royal Family of Oudh had secured to them and to their issue pensions in perpetuity, although a settlement of pensions in perpetuity could not, under the Mahomedan law, be validly made by a private individual, took effect as a contract or treaty between the powers. *Held*, on the construction of a treaty made in 1838 between the King of Oudh and the East India Company, that it was the intention of the King thereby to provide pensions for certain members of the Royal Family

and that they meant persons who would be heirs according to Mahomedan law *Held*, also, that the King intended in 1842 to provide for the ancestress of the plaintiffs an additional pension of the same

to the rules of the Mahomedan Law of Inheritance. MARIAM BEGUM *v* MIRZA . WAZIR BEGUM *v* MIRZA
I. L. R. 17 Calc. 234
L. R 16 I A 175

TREES.

See BHAGDARI AND NARWADARI ACT, s. 3.
I. L. R. 31 Bom. 183

See BOMBAY REVENUE JURISDICTION ACT, s 4 . I L. R 18 Bom. 319

See INJUNCTION—SPECIAL CASES—CUTTING TREES

See LAND ACQUISITION ACT (I OF 1894), ss., 3 (*a*), 23 (2).
I. L R 30 Mad 151

See LANDLORD AND TENANT
I L R. 29 All 484
I. L R 30 All. 134

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND.

See LIMITATION ACT, 1877, s. 28 (1871, s. 29) . . I. L R 3 All. 435

See LIMITATION ACT, SCH. II, ART 144—IMMOVEABLE PROPERTY 2 Agra 300
4 N. W. 167
I. L R. 16 Bom. 353
I. L. R. 19 Bom. 207

See OWNERSHIP, PRESUMPTION OF.
22 W. R. 405
I. L. R. 16 Bom. 547

TREES—*contd.*

See PARTITION—MISCELLANEOUS CASES
I. L. R. 23 All. 291

See POSSESSION—EVIDENCE OF POSSESSION . . I. L. R. 24 All. 294

See PRESCRIPTION—EASEMENTS—TREES.
I. L R. 19 Bom. 420.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MOVEABLE PROPERTY.
3 Mad. 237
24 W. R. 394
I L. R 3 All. 168
I. L. R. 5 All. 564

———— **document giving right to cut and enjoy**—

See REGISTRATION ACT, 1877, s 17, cl. (*d*) . . I. L. R. 20 Mad. 58

———— **liability for cutting**—

See MASTER AND SERVANT.
I. L. R. 23 Calc. 922

———— **order to cut down**—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODES 5 B. L. R 131

———— **removal of, suit for**—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—N.-W. PROVINCES . . I. L R. 23 All 466
2 Agra, Part II, 183 I. L R. 8 All. 446
I. L. R. 9 All. 35
I. L. R. 20 All. 519

See LIMITATION ACT, 1877, SCH II, ART 32 . . I L R 8 All. 446
I. L R. 10 All. 634
I L R. 20 All. 519
I. L R. 24 Calc. 160

———— **restriction as to felling**—

See MADRAS RENT RECOVERY ACT, s. 11
I L. R. 15 Mad. 47

———— **right to cut**—

See FOREST ACT, ss 75 AND 76
I. L R. 18 Bom. 670
I. L R. 23 Bom. 518

See GRANT—CONSTRUCTION OF GRANTS.
I. L R. 23 Bom. 518

See PRESCRIPTION—EASEMENTS—TREES.
I. L. R. 19 Bom. 420

———— **value of**—

See LAND ACQUISITION ACT, s. 23
13 C W. N. 467

1. ———— **Standing timber**—*Mango tree—Custom of a locality—Registration Act (XX of 1866), s 3.* By the term "timber" is meant properly such trees only as are fit to be used in building and repairing houses. A mango tree, which is primarily a fruit tree, might not always come within the term "standing timber" used in the definition of immoveable property in s. 3 of the Indian Registration Act (XX of 1866). But

TREES—*concld.*

it may be classed as a timber tree where according to the custom of a locality its wood is used in building houses. KRISHNARAO v. BABAJI
I. L. R. 24 Bom. 31

2. ——— **Tree-pottah**—*Right to land on which trees stand—Tree-pottahdars, rights of.* *Held, per* DAVIES and MOORE, *JJ.*, affirming the judgment of BENSON, *J* (SUBRAMANIA AYYAR, *J.*, *diss.*), that persons holding a pottah for palmyra trees in Tinnevelly are not *ipso facto* entitled to an ordinary raiyatwari pottah for the land on which the trees stand. *Per* SUBRAMANIA AYYAR, *J.*—Land on which a man plants a palmyra tope is in his exclusive occupancy and possession as a raiyat of Government, subject to his liability to pay any assessment or assessments which the Government may from time to time be entitled to impose and subject also to all other lawful incidents attaching to a holding of that description. The rights of a tree-pottahdar and the nature of the revenue levied on such pottahdars considered THEIVU PANDITHAN v. SECRETARY OF STATE FOR INDIA
I. L. R. 21 Mad. 433

TRESPASS.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, 1888, s. 2 I. L. R. 21 Calc. 528

See CIVIL PROCEDURE CODE, 1882, s. 244 —QUESTIONS IN EXECUTION OF DECREE
3 B. L. R. A. C. 413
12 B. L. R. 208 note

See CIVIL PROCEDURE CODE, 1882, s. 424
I. L. R. 24 Calc. 584

See CONVERSION I. L. R. 22 Mad. 197

See COURT OF WARDS.
12 C. W. N. 1065

See CRIMINAL TRESPASS

See DAMAGES—SUITS FOR DAMAGES—TORTS . . 8 Bom. A. C. 177
7 N. W. 47
25 W. R. 548
I. L. R. 13 All. 98
I. L. R. 10 All. 198
I. L. R. 36 Calc. 433

See DEBTOR AND CREDITOR
2 Ind. Jur. O. S. 7

See EXECUTION OF DECREE—LIABILITY FOR WRONGFUL EXECUTION.
3 B. L. R. A. C. 413
12 B. L. R. 208 note

See INJUNCTION—UNDER CIVIL PROCEDURE CODE, 1882.
I. L. R. 22 All. 449

See LIMITATION . 9 C. W. N. 111

See LIMITATION ACT (XV OF 1877), SCH. II, ARTS. 139, 144
I. L. R. 31 Mad. 163

TRESPASS—*contd*

See MADRAS FOREST ACT, s. 21.
I. L. R. 12 Mad. 226

See MADRAS POLICE ACT, s. 21.
I. L. R. 17 Mad. 37

See MASTER AND SERVANT.
2 B. L. R. A. C. 227
2 B. L. R. O. C. 140

See MISJOINDER OF PARTIES.
I. L. R. 19 Mad. 335

See RAILWAYS ACT, 1871, s. 2.
I. L. R. 1 Bom. 25

See RECORDER OF MOULMEIN.
6 W. R. Civ. Ref. 4

See RECORDER OF RANGOON.
I. L. R. 20 Calc. 689

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.
I. L. R. 19 All. 153
I. L. R. 25 Bom. 248
9 C. W. N. 477

See RIOTING . I. L. R. 6 Mad. 245
10 C. L. R. 278
W. R. 1864, Cr. 21

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—TRESPASS.

See TORT . . 12 C. W. N. 973
I. L. R. 36 Calc. 433
13 C. W. N. 465

See WRONGFUL DISTRAINT.
5 W. R., Act X, 67
3 B. L. R. A. C. 261

——— **by cattle—**

See CATTLE TRESPASS, AND CATTLE TRESPASS ACTS.

See NUISANCE—UNDER CRIMINAL PROCEDURE CODES . 3 B. L. R. A. Cr. 45
9. B. L. R. Ap. 36

——— **on burial ground—**

See RELIGION, OFFENCES RELATING TO
I. L. R. 10 Mad. 126
I. L. R. 18 All. 395

——— **on immoveable property—**

See LIMITATION . I. L. R. 36 Calc. 141

1. GENERAL CASES.

1. ——— **Landlord and tenant**—*Damage to reversionary interests—Right of landlord to sue for damage—English law, non-applicability of.* Many of the tenures in India are in the nature of a partnership, in which he to whom the land belongs participates with the cultivators in the crop. Therefore the law of England, that a landlord who has parted with this possession to a tenant cannot sue in trespass for damage to the property, unless the wrongful act complained of imports a damage to the reversionary interests, does not apply to landlords in India. VENKATACHALAM CHETTI v. ANDIAPPAN AMBALAM
I. L. R. 2 Mad. 233

TRESPASS—*contd.*

1. GENERAL CASES.—*contd.*

2. ——— **Wrongful distraint of crops** —*Distraint without notice—Penal Code, s 79—*

and, in such a case, raiyats, who knowingly resisted the distraint, were held to be not protected by the Penal Code, s. 79 But if the zamindar's people enter upon crops with intention of distraining without notice, the raiyat owners are justified in considering such action as trespass QUEEN v KANHAI SHAHU . . . 23 W. R. Cr. 40

3 ——— **Land taken by Government without formality prescribed by Beng Reg I of 1825**—*Right of owner to maintain suit against Government for rent* Lands were occupied by the Government for the purpose of making an embankment without the observance of the formality required by Regulation I of of 1825 *Held*, that the owner of the land was entitled to maintain a suit against Government for the rent of the land during the time he was kept out of possession JOYNARAIN BOSE v COLLECTOR OF 24-PERGANNAS Marsh. 56

COLLECTOR OF 24-PERGANNAS v JOYNARAIN BOSE . . W. R. F B 18 . 1 Hay 122

4 ——— **Suit to prevent trespass**—*Suit to close doors—Cause of action—Possibility of injury* No suit can lie to close doors opened by a persor sibility the plai such tre the doo that the plaintiff would not be sufficiently compensated by money damages. GIBBON v ABDUR RAHMAN KHAN . . 3 B. L. R. A. C. 411

5. ——— **Sale for arrears of rent**—*Sale under defective notice—Reversal of sale for irregularity. A*, a zamindar, sold the right of *B*, his pantidar, for arrears of rent under Regulation VIII of 1819. This sale was subsequently set aside at the suit of *B* for irregularity *A* then sued *B* for the arrears under Act X of 1859, and *B* pleaded limitation. *Held*, that *A* was not guilty

s c SURNOMOYEE v. SHOOSHEE MOKHEE BURMONIA . . . . . 12 Moo I. A. 244
11 W. R. P. C. 5

6. ——— *Suit for arrears of rent for a period during which zamindar had been in possession as purchaser at a sale for arrears of rent afterwards set aside* In a suit by a zamindar against his patnidars for arrears of patni rent for the years 1294, 1295, and part of 1296, it appeared that the patnidars had been out of possession during a portion of that period when the zamindar himself had been in possession, having purchased the tenure at the sale held in proceedings instituted by him under the Regulation It appeared, however, that the sale had been set aside owing to the proceedings having been instituted against the predecessor of the patnidars who was then dead, and thereupon the zamindar gave notice to the patnidars to retake possession, which they accordingly did During the time he was in possession the zamindar himself collected some of the rent The lower Court dismissed the claim for rent for the period during which the plaintiff

Moyee v Shooshee Mokhee Burmonia, 2 B. L. R.

I. L. R. 16 Calc. 267

7 ——— **Trespass on burial ground**—*Penal Code, s. 297—Trespass by co-owner A, B, C*, and *D* were co-owners of a plot of land in which they were accustomed to bury their dead *A* and *B* opened a saw-pit close to the graves of *D's* relatives, but did not disturbed any of the graves *Held*, that they were wrongly convicted under s. 297 of the Penal Code. *In re* MUHAMMAD HAMIN KHAN . . . . I. L. R. 3 Mad. 178

8. ——— **Liability for trespass by defendants not actually committing it** —*Committee under Act XX of 1863 Held*, in a suit under Act XX of 1863, that where the evidence showed that certain acts of trespass by one of the defendants were for the benefit and on behalf of the members of the committee, and were afterwards adopt when they acts, the acts were VENKATASA NAIKER v SRINIVASSA CHARIYAR
4 Mad. 410

9. ——— **Court of Wards, powers of**—

1882), s 424—Notice of suit, whether necessary,

TRESPASS—*contd.*

1. GENERAL CASES—*concld.*

administration by the executrix of his estate, which consisted of immoveable property in Eastern

Act, declared its determination to take the estate under its charge as the property of the minor, and directed that possession be taken of the property on its behalf. Subsequent to this declaration the executrix purchased a house in Calcutta for the estate and out of the assets of the estate. The officers appointed by the Court of Wards proceeded to execute its directions, they collected and appropriated rents, the collection, however, being made in the name of the executrix as mutation of names had not been effected, and they took over the establishment of the executrix in the absence of the executrix, without her consent and in spite of her protest. On a suit being instituted without notice under s. 424 of the Code of Civil Procedure

estate of a minor, if he can be said to be its "proprietor" within the meaning of the Court of Wards Act. The residuary legatee does not become "proprietor" until, after administration has been completed, and the residue ascertained and made over to him. The Court of Wards has no power under its Act to override the wishes of testators and proprietors generally The Court of Wards has no power to determine whether there had been mal-administration by the executrix, and on its own determination to take possession of the property vested in the executrix Mal-administration by the executrix was no ground for taking possession by the Court of Wards In the circumstances

... ned ... res- ... to ... by way of injunction ... s. 424 of the Code of Civil ...

High Court may entertain an action in respect of immoveable property, provided a portion of such property is within the jurisdiction It is not necessary that the cause of action should arise within the local limits, or be specifically with reference to the portion of the property within those limits. An acquisition of property for the estate, by the executrix, by purchase out of the assets of the estate formed part thereof, although the purchase took place after the declaration of the Court of Wards taking over charge of the estate. A trespass committed by order of a higher official is in substance the act of that official, who can be sued as a trespasser. GANODA SUNDARY CHAUDHURANI *v.* NALINI RANJAN RAHA (1908)
I. L. R. 36 Calc. 28

TRESPASS—*contd.*

2. HOUSE-TRESPASS.

1. ———— **Breaking open chest in house by inmate of house**—*Penal Code, s. 457.* *T*, being an inmate of his uncle's house, broke open a chest and took out property from it. He was convicted of an offence under s. 457 of the Penal Code. *Held*, that he could not properly be convicted under that section. QUEEN *v* TASUDUK HOSSEIN . . . . . 6 N. W. 301

2. ————**Breaking open door in execution of decree**—*Penal Code, s 456.* Where the accused persons, execution-creditors, in company with an authorized bailiff, broke open complainant's door before sunrise with intent to ... convicted ... ht or ... were ... espass, ... as is ... at as criminal trespass is an essential ingredient of either of the offences with which they were charged, the conviction must be quashed *In the matter of* JOTHARAM DAVAY . . I. L. R. 2 Mad. 30

3. ———— **Cattle yard**—*Building used for custody of property—Penal Code, ss 442, 457.* The Court inclined to hold that a cattle yard which was originally walled on four sides, and in one side of which, fallen out of repair, there was a gap stopped with a thorn, was a building used as a place for the custody of property, within the meaning of s. 442 of the Penal Code QUEEN *v.* DULLEE . . . . . 6 N. W. 307

4. ———— **Entry into house with forged warrant of arrest**—*Penal Code, s 452* ... of arrest into

guilty of house-trespass, by putting ... fear of wrongful restraint, under s 452 of the Penal Code. QUEEN *v.* NUNDMOHUN SIRKAR
12 W. R Cr. 33

5. ———— **Right of wife to enter husband's** ... from caste ...

6. ———— **Entering lock-up with intent to convey food to prisoner**—*Penal Code, s. 442.* Where a person entered into a havalat with intent to convey or attempt to convey food to a prisoner under trial, such act on his part did not amount to house-trespass within the meaning of s. 442 of the Penal Code. EMPRESS *v.* LALAI
I. L. R. 2 All. 301

7. ———— **Search for arms by Magistrate, whether executive or judicial act**—*Bond —fides Protection of Judicial Officers Act (XVIII of 1850), s 1—Statutory powers of Executive*

TRESPASS—*contd.*

2. HOUSE-TRESPASS—*contd.*

Officers, how to be exercised—Indian Arms Act (XI of 1878), s 25—Provision "having first recorded

vious to the 27th April 1907, there had been a

had reason to believe that fire-arms were stored in certain cutcheries belonging to Hindu zamindars. In consequence, the District Magistrate accompanied by the District Superintendent of Police proceeded to search the cutcheries. Under the orders of the District Magistrate, the cutchery of the respondent was forcibly entered, boxes forced open and search made On an action in-

actionable trespass unless warranted by some Statute, and in the circumstances of the case, the search was warranted by no Statute When Executive Officers are invested with Statutory powers of a special and drastic nature, before exercising those powers, they must strictly comply with the provisions of the Act which created them. The search being a general search for arms, was not warranted by s 25 of the Arms Act of 1878, which required that before making the search, the Magistrate should first record the grounds of his belief, in terms of the section which was not done The words "having first recorded the grounds of his belief" in s 25 are mandatory. The search was not warranted by s. 105 of the Criminal Procedure Code, as, in the circumstances of the case, the Magistrate was not acting as a "Court." The search was not warranted by s. 165 of the Criminal

Criminal Procedure. The search must be taken

TRESPASS—*concld.*

2 HOUSE-TRESPASS—*concld.*

Jackariah & Co. v *Ahmed Mahomed, I L R 15 Calc. 109,* and *In re Lakhmidas Naranji, 5 Bom L R 980,* referred to CLARKE *v.* BROJENDRA KISHORE ROY CHOWDHRY (1909)
I. L. R. 36 Calc. 433

But see the Privy Council judgment in the same case, on appeal, reported in
I. L. R. 39 Calc. 953

TRESPASSER.

See CO-SHARERS—ENJOYMENT OF JOINT PROPERTY—ERECTION ON BUILDINGS
I. L. R. 18 All. 361

See EJECTMENT I. L. R 33 Bom 499

See MESNE PROFITS—RIGHT TO AND LIABILITY FOR.
I. L R. 24 All. 376
I. L. R. 19 Mad. 145

MODE OF ASSESSMENT AND CALCULATION . I. L. R. 23 All. 252

See POSSESSION—NATURE OF POSSESSION
I. L. R. 15 Bom. 238

See TITLE—EVIDENCE AND PROOF OF TITLE . . I. L. R. 19 Bom. 828

See TRESPASS I. L. R. 36 Calc. 28 ; 433

———— dispossession by—

See TRANSFER OF PROPERTY ACT, s. 68
I. L. R. 19 All. 191

———— effect of settlement with—

See SERVICE TENURE
I. L. R 18 Bom. 22

———— suit against—

See DECREE—FORM OF DECREE—TRESPASSER . . . 4 C. W. N. 105

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.
I. L. R 1 All. 448
I. L. R. 16 All. 325
I. L. R. 19 All. 452
I. L. R. 20 All. 520

See LANDLORD AND TENANT—EJECTMENT—GENERALLY I. L. R. 19 Bom. 138

See MESNE PROFITS—MODE OF ASSESSMENT AND CALCULATION
I. L. R. 1 All. 518
I. L. R. 20 All. 208

See ONUS OF PROOF—EJECTMENT.
I. L. R. 19 Bom. 803

See RIGHT OF SUIT—CHARITIES AND TRUSTS . . I. L. R. 18 Bom. 721

See WRONGFUL POSSESSION.
I. L. R. 4 Calc. 566

TRESPASSER—*concld.*

——— **suit by—**

See SPECIFIC RELIEF ACT, s. 9.
I. L. R. 15 Bom. 685

——— **Mandatory injunction**—*Removal of encroachment.* A mandatory injunction should not be granted against a trespasser compelling him to come on the land on which he had trespassed to remove an encroachment made thereon by him. NAVROJI MANEKJI WADIA *v.* DASTUR KHARSEDJI MANCHERJI (1904) . . **I. L. R. 28 Bom. 20**

TRIAL.

See JURY, TRIAL BY.

See CRIMINAL PROCEDURE CODE, 1898, s. 350 (*a*) . . **I. L. R. 32 Mad. 218**

——— **commencement of—**

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES
I. L. R. 25 Calc. 863

——— **difference in the modes of—**

See CRIMINAL PROCEDURE CODE, 1898, s. 269 . . **I. L. R. 33 Bom. 423**

TRIBUTARY MAHALS OF ORISSA.

——— *Jurisdiction—Mohurbhunj—Execution—Decree of Court in British India—Transmission of decree for execution by Court at Mohurbhunj—Civil Procedure Code (Act XIV of 1882), ss 229A, 229B.* There being no notification to that effect in the Gazette under ss. 229A and 229B, Civil Procedure Code, a Civil Court in British India has no jurisdiction to order its decree to be sent for execution by the Court at Mohurbhunj *Kasturchand Gajur v. Parshe Mahar, I. L R 12 Bom 230*, referred to. The Tributary Mahals of Orissa, of which Mohurbhunj is one, do not form part of British India. KHATOO SAHOO *v.* RATAN MAHANTI (1902)
I. L. R. 29 Calc. 400
s. c. 6 C. W. N. 573

TROVER.

See HUNDI—LIABILITY ON.
I. L. R. 18 Bom. 570

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—TROVER
I. L. R. 12 Bom. 573

——— **suit in—**

See HUSBAND AND WIFE.
I. L. R. 1 Calc. 285

1. ——— **Right of stoppage in transitu**—*Contract for goods free on board—Insolvency* Goods contracted to be sold and delivered "free on board," to be paid for by cash or bills at the option of the purchasers, were delivered on board, and receipts taken from the mate by the lighterman employed by the sellers, who handed the same over to them. The sellers apprised the purchasers of the delivery, who elected to pay for the goods by a bill, which the sellers having drawn, was duly accepted by the purchasers. The sellers retained the mate's receipts for the goods, but the master signed the bill of lading in the purchasers' names, who, while the bill they accepted was running, became insolvent. In such circumstances, *held* by the Privy Council (reversing the decision of the Supreme Court at Bombay), that trover would not lie for the goods, for that on their delivery on board the vessel they were no longer *in transitu* so as to be stopped by the sellers; and that the retention of the receipts by the sellers was immaterial, as after their election to be paid by a bill the receipts of the mate were not essential to the transaction between the seller and purchaser FRAMJEE COWASJEE *v* THOMPSON
3 Moo. I A. 422

2. ——— **Conversion**—*Assignment of goods in certain warehouses on advances—Seizure of goods—Advance and assignment not simultaneous—Incomplete assignment.* A bill of sale and assignment of goods as described as being in certain warehouses belonging to *A* was given by him for the loan of a sum expressed to have been paid on the day of the date thereof Upon an action of trover brought against the assignee of *A*, who had seized the goods, it appeared in evidence that a portion only of the goods was in the warehouse specified at the date of the sale, and that no part of the loan was paid on that day, the same being discharged by instalments a few days afterwards: whereupon the Judges of the Supreme Court held that there had been no valid transfer and consequently no conversion, and gave an interlocutory judgment in accordance with such view. *Held*, by the Judicial Committee on appeal from that decision, and from an order refusing a new trial, that the decision was not justified by the evidence, and must be reversed and a new trial granted. MUTTYLOLL SEAL *v* O'DOWDA
4 Moo. I. A. 382

3. ——— **Suit to recover notes lost by gambling**—*Act XXI of 1848—Illegal consideration—Bonâ fide holder for value—Trust for specific purpose* The plaintiff, the manager of the Oriental Bank, placed in the hands of *D*, a broker, thirteen Government Currency notes for R1,000 each on *D's* representation that there was some company's paper at a certain place which he could procure at a more reasonable rate than in the Calcutta market, if the money were given him to purchase it If the Company's paper was not procurable, the notes were to be returned to the plaintiff *D* did not go to the place stipulated to purchase the Company's paper, but, meeting the defendant and others, he went into a house hired for gambling, and lost at cards and paid away to the defendant some of the notes he had received from the plaintiff. The plaintiff now sued the defendant to recover the notes so entrusted to *D*, on the allegation that they had been entrusted by him to *D* for a specific purpose, and that the defendant was not a *bonâ fide* holder for value. He (the plaintiff) stated in evidence

TROVER—*concld.*

"that if the paper had been bought, he would [illegible]

below, and *per* NORMAN, J., on appeal.—The notes were especially entrusted to *D* for the purchase of the Company's paper. *Per* PHEAR, J.—Upon the case put forward by the plaintiff, the transaction was a short loan, and not a bailment, and did not bear the character of a trust. But upon the evidence the notes were the property *of the bank, and remained so in D's hands,* and therefore the plaintiff was entitled to recover on behalf of the bank BULDEO NARAIN *v.* SCRYMGEOUR . . . . . **6 B. L. R. 581**

TRUST.

See ADMINISTRATION **9 C. W. N. 239**

See CIVIL PROCEDURE CODE, 1882, s. 539.

See DEED—CONSTRUCTION.
I. L. R. 20 Bom. 310

See ECCLESIASTICAL TRUST
2 Ind. Jur. O. S. 12

See ENGLISH LAW—TRUST, DECLARATION OF . . . . . **4 Mad. 460**

See EXPRESS TRUST
I. L. R. 31 Bom. 418

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY
I. L. R. 8 Mad. 266

See HINDU LAW—ENDOWMENT—CREATION OF ENDOWMENT
1 Ind. Jur. N. S. 14
14 B. L. R. Ap. 175
I. L. R. 4 Calc. 56
I. L. R. 9 Bom. 169
I. L. R. 12 Bom. 247
I. L. R. 10 All. 18
I. L. R. 25 Calc. 112

See HINDU LAW—PARTITION—AGREEMENTS NOT TO PARTITION, ETC.
I. L. R. 6 Calc. 106
I. L. R. 12 Mad. 287

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS AND REMOTENESS.

See JURISDICTION—SUIT FOR LAND—TRUSTS.

See LIMITATION ACT, 1877, s. 10.

See LIMITATION ACT, 1877, SCH. II, ART. 113 (1871, ART. 113)
I. L. R. 2 Calc. 323

See MAHOMEDAN LAW . **9 C. W. N. 625**

See MAHOMEDAN LAW—ENDOWMENT.

See MORTGAGE . . **9 C. W. N. 914**

TRUST—*contd.*

See RELIGIOUS ENDOWMENT
I. L. R. 30 All. 111

See RES JUDICATA—ESTOPPEL BY JUDGMENT . . **I. L. R. 19 All. 277**
L. R. 24 I. A. 10

See RIGHT OF SUIT—CHARITIES AND TRUSTS.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—TRUSTS.

See TRUST DEED.

See TRUST PROPERTY.

See TRUSTEE.

See TRUSTEES ACTS.

See TRUSTS ACT.

See WILL—CONSTRUCTION.
I. L. R. 4 Calc. 420
I. L. R. 9 Mad. 325
1 Ind. Jur. O. S. 86
I. L. R. 15 Mad. 424
I. L. R. 31 Mad. 283

See WILL—CONSTRUCTION—CHARITABLE GIFT . . **6 C. W. N. 321**

——— **breach of—**

See EXECUTOR . **I. L. R. 26 Bom. 301**

——— **constructive—**

See CIVIL PROCEDURE CODE, 1882, ss. 30, 539 . . **10 C. W. N. 866**
I. L. R. 33 Calc. 905

See DEBUTTER **10 C. W. N. 738; 1000**

See ESTOPPEL . . **10 C. W. N. 747**

——— **declaration of—**

See STAMP ACT, 1879, SCH. I, ART. 36.
I. L. R. 12 Mad. 89

——— **deed of—**

See LIMITATION ACT, 1877, s. 10.
I. L. R. 20 Bom. 511

See STAMP ACT, 1879, SCH. I, ART. 54
I. L. R. 20 Bom. 210

——— **disavowal of—**

See LIMITATION ACT, 1877, SCH. II, ART. 144 (1871, ART. 145)—ADVERSE POSSESSION . . **I. L. R. 1 All. 403**

——— **for benefit of creditors—**

See BILL OF EXCHANGE
I. L. R. 3 Calc. 174

See DEBTOR AND CREDITOR.
11 Moo. I. A. 317
3 Agra 104, 321
1 Bom. 233
8 Bom. A. C. 245
I. L. R. 7 Bom. 101
I. L. R. 16 Bom. 1
I. L. R. 19 Bom. 12
I. L. R. 20 Mad. 91
I. L. R. 25 Calc. 642

TRUST—*concld.*

———— for benefit of creditors—*concld.*

See Insolvency Act (11 and 12 Vict, c. 21)—

s. 9 . . I. L. R. 26 Bom. 476

ss. 9 and 24. I. L. R. 26 Bom. 765

———— for specific purpose—

See Limitation Act, XV of 1877, s 10 (1871, s 10).
I. L. R. 4 Calc. 455 ; 897
12 C. L. R. 370
I. L. R. 6 Mad. 402
I. L. R. 14 Bom. 476
I. L. R. 32 Bom. 394

See Trover . . 6 B. L. R. 581

See Will . I. L. R 32 Bom. 214

———— giving power to sell land in mofussil—

See Jurisdiction—Suits for Land—Trusts.

———— instrument of—

See Stamp Act, 1879, Sch I, Art. 50.
I. L. R. 15 Mad. 386

———— notice of—

See Limitation Act, 1877, Sch. II, Art 1834 (1871, Art. 134).
I. L. R. 1 Bom. 269

———— precatory trust—

See Will—Construction.
I. L. R. 2 All. 55
I. L. R. 4 All. 500
L. R. 9 I. A. 70
I. L. R. 15 Mad. 448

———— revocation of—

See Onus of Proof—Trust, Revocation of . . . . 10 B. L. R. 19
14 Moo. I. A. 289

———— scheme of management for—

See Endowment. I. L. R. 21 Calc. 556

———— suit relating to—

See Right of Suit—Charities and Trusts

See Small Cause Court, Mofussil—Jurisdiction—Trusts

———— suit to set aside—

See Limitation Act, Sch II, 1877, Art 120 . . I. L. R. 20 Bom. 511

————to perform Muktad ceremonies—

See Muktad Ceremonies.
I. L. R. 33 Bom. 122

1. ———— Creation of trust—*Owner of property constituting himself trustee—Father opening an account in name of his son.* In order that the owner of the fund may constitute himself a trustee, of it, he must either expressly declare himself a trustee, or must use language which, taken in connection with his acts, shows a clear intention on his part to divest himself of all beneficial interest in it, and to exercise dominion and control over it exclusively in the character of a trustee. From the single circumstance that an account has been opened by a father in his books in the name of his son, in which money is credited to the son, no presumption can be raised in India that the father intended to create a trust, in favour ... the account.

... 9 Bom. 115

2. ———— *Subsequent disposition by settlor—Disposition out of income.* *Held*, that where a trust has been once perfectly created although there may have been no transmutation of possession, it cannot be defeated by any subsequent act of the settlor, and apparent dispositions of portions of the property afterwards made by him to particular members of a family, the individuals constituting which have, as a class, a beneficial interest in the whole, must be regarded not as gifts to them for creations of new trusts in their favour which he had no power to make, but as the acts of a trustee, and available only to the extent of the shares to which such persons may be entitled. But this applies only to dispositions out of the principal of the fund, and not to payments made out of its income to particular members of the family for their maintenance, or other expenses, as there may be circumstances which would render it inequitable to take an account of the latter, so as to charge such persons with what they may have received beyond their respective shares. Jamsetji Jijibhai *v* Sonabai . . 2 Bom. 130 : 2nd Ed. 133

3. ———— *Invalid declaration of trust—Intended transfer of property—Incomplete gift—Evidence of interested parties.* The plaintiff, *H*, was the daughter of one *K*. deceased. *K* some two years before his death in 1866 contemplated conferring a bounty to the extent of R5,000 on each of his daughters, *M* and *H* For *M* he bought a house at Zanzibar and settled it on her by a formal deed of settlement with various limitations. For *H*, too, he at first intended to buy a house; but finding houses in Bombay were too dear, he purchased a Government promissory note of the nominal of R5,000. The note was purchased in his own name, and a separate account of it opened in his books, headed "The account of one promissory note bearing 5 per cent. interest." This account he debited with all expenses over and above the R5,000 incurred in and about the purchase of the note, such as for premium, carriage hire, etc. charging, moreover, 9 per cent interest on these items of debit (which interest he carried as a gain to his general interest account) and he credited the account with the interest collected on the note from time to time, allowing interest at 6 per cent. on these items of credit. He kept also a separate

TRUST—*contd.*

account of the proceeds of the note, headed, "The account of interest on one promissory note for R5,000" The plaintiff stated that on the day when the note was bought her father *K* brought it and showed it to her, saying, "This is your note; take it when you want it;" and that she left it in his custody, saying, "I will take the note

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her sums, equivalent to the proceeds of the note, with more or less regularity down to the date of his death. The note itself, however, he sold without communicating with the plaintiff, and appropriated to himself the sum realized by the sale, although he continued the account of interest on the note, and even headed that account in *H's* name Later still, after the death of *K's* son, his grandsons, the defendants, made similar payments for some time, but irregularly, and finally they refused to pay anything further The plaintiff sued for the note or its value, and for arrears of interest accrued due thereupon, asserting that the evidence established a declaration of trust in respect of the note. *Held*, that the evidence was insufficient to establish a valid declaration of trust, for while *K's* books of account might very well be held to corroborate the testimony of a trust which was itself of a satisfactory description, they were insufficient of themselves to establish such a trust; while the oral testimony—which, if taken together and accepted as reliable, might well suffice to establish the acknowledgment of a trust—contained such discrepancies and was so generally misty and uncertain in character that it ought not to be accepted unless corroborated by undisputed facts in the case incapable of being explained except on the hypothesis advanced by the plaintiff *Per* SARGENT, C J.—The equitable doctrine of the transfer of ownership by acknowledgment of trust, when it is sought to establish it by oral evidence, requires to be

which took place seventeen years ago without the corroboration derived from other evidence pointing irresistibly in the same direction would be

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H should have the benefit of the R5,000—to which, however, he had failed to give effect—being clear HIRBAI *v* JAN MAHOMED KHALAEDINA

I. L. R. 7 Bom. 229

TRUST—*contd.*

4. ——————— *Gift—Requisites to complete gift—Donor constituting himself trustee for donee—Enforcement of trust by representative of donee—Trustee, liability of.* The plaintiffs, *M* and *R*, were Parsis, and were married in the year 1851. The defendant was the widow of *B M*, who was the father of the plaintiff *R*. The plaintiffs sued to recover from the defendant certain Government promissory notes which they alleged had been presented by *B* to *M* at her marriage for her sole and separate use They alleged that the said notes, then of a nominal value of R1,500, were endorsed in the name of the said *B*, and had been deposited by him for safe custody with *M's* grandfather *J*; that the said *B* during his life used from time to time to receive the same notes from *J* and draw the interest thereon for *M*; that *B* died in 1864, and that after his death the defendant, who was his widow and executrix, used to draw the interest for *M*; that in 1869 she obtained possession of the said notes, and had ever since continued in possession thereof, informing

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to hand over the notes and the accumulated interest, which she refused to do The defendant denied that her husband *B* had ever presented *M* with Government notes for her separate use She alleged that the notes which had been deposited by *B* with *J* were her own separate property, and not *M's*, that she and her husband had dealt from time to time with them, and that no interest was ever paid to the plaintiffs, or either of them, or for their benefit She further stated that some of the notes which had been deposited with *J* had been disposed of by *B* in his lifetime with her consent, that in 1869 she obtained the remaining notes from *J* and sold them, and applied the proceeds to her own benefit At the hearing it was proved that, on the occasion of the plaintiff's marriage, presents were made to *M* both by her own family and by that of the bridegroom *R* Two accounts were then opened in the books of the firm of *J N & Co*, of which *M's* grandfather *J* was a partner, one of which showed her acquisitions from her own family and the other her acquisitions from the family of her husband. The latter account contained an entry (under date August 1854) to the effect that *B*, the father-in-law of *M*, had bought two Government notes for R1,500 in *M's* name, and had obtained the interest on them, which was duly credited to her Other documents were produced, proved to be in the handwriting of *B* and *J*, in which the said Government notes were alluded to as the property of *M*, and as having been purchased with her moneys. In 1864 *B* died without having endorsed the notes over to *M* or to any one in her behalf, and they remained in his name in the hands of *J* until 1869, when the defendant got possession of them. *Held*, that *B* was liable to answer for the notes as a trustee

TRUST—*contd*

and after *B* the defendant as his executrix and representative. *In the documents put in evidence, B* alluded to the notes as *M's* property. His placing them, as he did, with *M's* grandfather was itself an acknowledgment, according to the practice of the class to which he belonged, that the benefit was to be hers and her children's. He thus sufficiently admitted an obligation as trustee. The legal ownership was his, but he had acknowledged with sufficient clearness an obligation to hold and use the ownership for the benefit of another. Such a purpose clearly manifested constitutes a trust, and burdened with a trust the property passed from *B* to the defendant as his representative, and could be enforced against

PEROZEBAI . I. L. R. 5 Bom. 268

5. ———————— *Parol trust—Trustee—Executor de son tort—Donatio mortis causâ—Appeal as to costs—Limitation* One *T C*

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account the Assistant Registrar found (*inter alia*) in his report that R1,975 had been paid to *S* by the defendant, and that the balance R5,298-1 had been taken over by the defendant by arrangement with *S* (the first payment being time barred) *Held*, that a good trust in favour of *S* for the whole debt due to her was created in respect of the moneys which reached the defendant's hands applicable under the terms of the mandate to him for the payment of her claim; that no question arose as to limitation; and that it was unnecessary to consider whether the defendant, if acting as an executor *de son tort*, had power to pay it though barred. *Held*, also, that the trust was not in the nature of a testamentary disposition, though it was created in anticipation of death, and could not after the death of *T C* be recalled by his representatives *Peckham* v *Taylor, 31 Beav. 250*, followed *Quære* Whether as to the application of the surplus after payment of the specified debts the defendant was in the position of an executor *de son tort*, and that practically it may in some cases be difficult to avoid the application to Hindus of the principles upon which executorship *de son tort* rests. *Jogendra Narain Deb Roykut* v *Temple, 2 Ind. Jur. N. S. 234*, referred to. *Semble* That even upon the findings of the lower Court the order as to costs would have to be altered materially in favour of the defendant. SUDDASOOK KOOTARY v. RAMCHUNDER . I. L. R. 17 Calc. 620

TRUST—*contd.*

6. ———————— *Trust created for specific purpose—Surplus after performance of trust.*

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titled to hold the trust estate :—*Held*, that a decree having been made against the trustee personally, the corpus of the trust estate could not be sold to satisfy the claim of the judgment-creditor, nor could any specific portion of the corpus of

after the performance of the trusts, belong to the trustee personally. BISHEN CHAND BASAWAT v. NADIR HOSSEIN . I. L. R. 15 Calc. 329
L. R. 15 I. A. 1

7. ———————— *Improvements of estate—Rights of tenant for life and remainderman as to sums expended* A testator conveyed his property which consisted of extensive coffee estates to trustees upon trust as to part thereof for certain persons for life and then upon trust for their children absolutely. A suit having been filed for the administration of the trusts of the will, a receiver was appointed. On the application of the receiver, and with the consent of all parties, the Court sanctioned the extension of the estate This was done by raising a loan on pledge of the profits of the estate, out of which, when realized, the loan was paid off. By the will, the trustees were empowered to raise money for the purpose of managing the estate at their absolute discretion, either by using the profits or by pledging or selling the corpus. The tenants for life claimed that the loan might be declared a charge on the estate *Held*, that the extension was within the powers of the trustees, but that, as between the life-tenants and the remaindermen, the former were entitled to have the sums expended on the improvements charged on the corpus, they keeping down the interest. OUCHTERLONY v OUCHTERLONY I. L. R. 11 Mad. 360

8. ———————— *Application by trustees to raise money by mortgage of trust-property—Sanction of Court.* A testator by his will devised

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to erect a larger and more substantial building than the former one. They expended the surplus R19,000 which was on their hands, but found that to complete the work a further sum of R20,000

TRUST—*contd.*

was necessary. This they proposed to raise by mortgaging the trust-property They calculated that the whole mortgage-debt would be paid off out of the surplus rents of the trust-property within three years. They filed this suit, praying that the Court would sanction the proposed mortgage The Court, however, refused its sanction, and dismissed the suit DINSHAW NOWROJI BODE *v* NOWROJI NASARWANJI BODE . . . **I. L. R. 20 Bom. 46**

9. ——— Suit for declaration of trust—*Possession of trust property—Breach of duty* In a suit for declaration of trust with reference to lands, it must be shown that the party against whom the trust is prayed must have obtained a more or less rightful possession of the lands, but impressed with the obligation of a trust that in a suit such as last mentioned, it must be shown that some duty *primâ facie* fell on the defendants, of which they were committing a breach MUZHUR HOSSAIN *v* DINOBUNDO SEN **Bourke O. C. 8 : Cor. 94**

10. ——— Recognition of trust—*Deed of gift, validity of—Oudh Estates Act (I of 1869), s 8.* A talukhdar, deceased before annexation, had provided by will for the succession of his five widows, one at a time, to his estate, with remainder to a son of his nephew. Settlement was made with the senior widow after the mutiny, a sanad granted to her as talukhdar, with full power of alienation, and her name was afterwards

had undertaken the trust of carrying out the provisions of the will, and that a deed of gift made by her transferred only her interest, which was an estate for life. RAMANUND KUAR *v* RAGHUNATH KUAR. ANUNT BAHADUR SINGH *v* RAGHUNATH KUAR . **I. L. L. 8 Calc. 769 : 11 C. L. R. 149 L. R. 9 I. A. 41**

11. ——— Cessation of trust—*Cessation of performance by congregation of particular form of worship—Commencement of different form of worship.* If the congregation of a church as a body cease to follow the observances of a particular form of worship, and in preference for forty years follow those of a different from of worship, there would be no one left for whom and by whom the original form of worship can be

12. ——— Suit to enforce trust—*Suit for enforcing religious or charitable trusts—Right of suit—Pleading—Security for costs* The representatives of a testator, who has created trusts for religious or charitable purposes, in which the representatives are not personally interested, may institute proceedings to have abuses in the

TRUST—*contd.*

trust rectified, there being no officer in this country who has such power of enforcing the due administration of religious or charitable trusts by information at the relation of some private individual, as is possessed by the Attorney General in England. A suit for this purpose should not be admitted unless the plaintiff gives sufficient security for costs In order that a decree for an account may be made in favour of the plaintiff in such a suit, he must allege substantially in his plaint that which must be a distinct breach of trust; it is not sufficient for him to make out a case of mere suspicion, or to rely on particular passages in the defendant's written statement BROJOMOHUN DOSS *v*. HURROLOLL DOSS **I. L. R. 5 Calc. 700**

13. ——— Religious and charitable trust—*Mortgage of trust property—Right of trustee to impeach acts of his predecessor in office—Endowment for charitable purposes* : Property granted for religious and charitable purposes is inalienable, except under special circumstances. No person, other than the duly authorized trustee, can alienate by sale or mortgage the property of a religious trust. When a trustee does any act in breach or repudiation of the trust, such act is not binding on his successor in the trust. On the death of *D*, the hereditary trustee of a devasthan (or religious endowment), disputes arose between *G* and *C* as to the succession. *G* claimed to succeed as *D's* adopted son *C* denied the adoption and claimed as *D's* heir and nearest kinsman. *C* obtained a decree against the widow of *D* for possession of the savasthan property and took possession in 1874 *G*, in the same year, obtained a decree against *D's* widow, awarding him possession and management of the property. He sought to execute this decree, but was successfully resisted by *C*, who had already got possession under his decree. Pending this litigation, the widow of *D*, the deceased trustee, who was *de facto* manager, mortgaged two villages forming part of the devasthan property. To pay off this mortgage, *G* mortgaged the villages to the plaintiff in 1875. The mortgagee sought to take possession of the

mortgaged villages and some other property belonging to the devasthan were assigned to *G* and his heirs in perpetuity. In 1884 the plaintiff sued to enforce his mortgage lien by sale of the mortgaged villages. *Held*, that the villages being trust property, it lay upon the mortgagee to prove circumstances justifying a charge on such property. *Held*, also, that, even assuming that the mortgage-money was actually applied to the purposes of the endowment, the mortgage could not be enforced against the property, as the mortgagor was not a duly authorized trustee. *Held*, further, that the award made between *C* and *G* was not binding on *C's* successor in the trust,

TRUST—*contd.*

GAVKAR . . . I. L. R. 16 Bom. 626

14. ———— **Assignment of religious trust**—*Delegation of trust—Appointment by trustee of an agent for nine years.* A person holding land on trust to supply a temple with rice, etc., out of the income of the land placed the defendant in possession of it under a lease and subsequently in 1888 demised it to the plaintiff for nine years under an instrument which provided that the plaintiff should collect the income, pay part of it to the executant of the instrument, and with the rest perform the trusts above-mentioned In a suit for rent the defendant denied the plaintiff's title, questioning the validity of the instrument of 1888 *Held*, that the instrument was valid, as it merely appointed the plaintiff an agent, and did not amount to an assignment of the trust. KRISHNAMACHARLU *v* RANGACHARLU

I. L. R. 16 Mad. 73

15. ———— **Charitable trust**—*Will—Deeds not carrying out will—Misapplication of funds—Mistake—Liability of trustees—Limitation Act (XV of 1877), s 10, and Sch. II, Art. 120—Fraud—Accounts—Discretion of Court to order accounts—Jurisdiction of High Court where charity established by will is outside the jurisdiction—Advocate-General, right of—Decree in prior suit brought by trustees of charity—Civil Procedure Code, 1882, s. 43.* One *B R*, a Jain, died in February 1863, leaving a will. His widow *P* (defendant No. 1) obtained letters of administration with the will annexed. The testator died possessed (*inter alia*) of a half share of certain property in Bombay known as the "Bhimpura property" The remaining half share belonged to two other persons, *viz*, *H D* and *M T*. By his will the testator directed that a moiety of the rental of his half share should be spent on the sadharm (charitable or religious) endowment of a temple at Jackho in Cutch, and the other moiety thereof in establishing two sadavarats, one at Jackho and the other in Paltana. He also set apart a sum of R1,26 000, of which R1,01,000 were to be expended in building a temple at Jackho, and the balance of R25,000 in erecting a market near the temple at Jackho, or, if that was impossible, it was to be spent in Paltana The plaint complained that of the R1,26.000 about R60,000 had been spent in buying a property in Bombay, called the "school property," for the purpose of establishing a school there, and about R50,000 had been expended in erecting a temple at Jackho, but that nothing had been done with the balance, nor had a market been established at Jackho All that had been done there was to erect three shops which cost about R2,000. The plaintiff further stated that in 1868 *P* (defendant No. 1) had made over the "school property" and the "Bhimpura property" to three trustees on trusts not strictly in accordance with

TRUST—*contd.*

the testator's will as above set forth. Under this deed the trustees were to apply one moiety of the net rents (1) in sadavarat or alms-giving at Jackho and Paltana; (2) in feasting the caste people in Bombay and Jackho annually; (3) in the worship called satarbhadi at the derasar

other half to charities at such places as the trustees should think fit. In the following year, *viz*, on the 17th April 1869, *P* (defendant No. 1) and the owners of the other moiety of the "Bhimpura property" conveyed the whole of that property to trustees, who were to apply a moiety of the rents (which was to be considered as rent from *P's* shar

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worship of the derasar called satarbhadi, and in the entertainment and clothing of the gorib (poor) in Bombay and Jackho. The deed also directed the application of the rents of the other moiety of the "Bhimpura property" part of which was to

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second deed did not recite or in any way refer to the first. At the date of suit all the trustees named in the deeds were dead except the second defendant. By subsequent deeds, however, new trustees had been appointed and they were all parties to the present suit. Defendants Nos. 2, 3, 4, 5, 6, and 7 were trustees of the Bhimpura property, and defendants Nos. 8, 9, 10, and 11 of the school property. The plaint filed on the 10th March 1892, at the relation of two members of the Jain community of Cutch, prayed that the charitable trusts of the testator's will might be carried out, and sought for accounts against the widow of the testator and the trustees of both the deeds, and for a scheme, etc. *Held*, that the High Court of Bombay had jurisdiction to make a decree declaring the trusts upon which the trustees of the deed of October 1868 held the property comprised in that deed and for rectifying the deed in accordance with such declaration, but that the Court could not go further in settling a scheme *Semble*: When money is bequeathed for the purpose of founding a charity outside the jurisdiction, the Court hands the money to the trustees named by the testator, leaving it to the Courts of the country in which the charity is to be established to settle the scheme. *Held*, also, that the suit was not barred by limitation It was not one for rectification of the deed of 1868, but rather one against *P* (defendant No. 1) and her

TRUST—*contd.*

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and proved subsequently in the course of taking accounts. Where the trust-deed of a charity, executed subsequently to the death of a testator under whose will the charity was established, does not strictly conform to the provisions of the will, it is not the practice of the Court, when the discrepancy has been made by mistake, to visit the past consequences of the mistake upon the trustees. The plaintiff in this suit demanded an account from *P* of the Bhimpura property from the testator's death to the execution of the deed of the 13th October 1868, and of the school house property from the date of its purchase to the same time, and also an account against the trustees of the deed of 17th April 1869, of the income of the Bhimpura property, and of its application. *Held,* that accounts ought not to be required from *P*. She had made over the property in question to trustees in 1868 There was no evidence that she had ever used any of the income for her own purposes, and the presumption was that she had faithfully discharged her duty The account was probably barred by Art 120 of the Limitation Act (XV of 1877) The trustees of the deed of 1869 had paid over the income received by them to the trustees of the earlier deed of 1868, who were entitled to receive it and therefore no account would be decreed against them The plaintiff further prayed for an account against the representatives of *R B*, who had been trustee of the deed of 1868, from the date of its execution to his death in 1889 Under a decree passed in a previous suit (No 113 of 1889), dated the 10th August 1893, brought by the trustees, they had received from *R B's* estate the balance which in that suit they had claimed to be due from him to the charity. In that suit the trustees had not asked for an account against him. *Held,* that the Advocate-General as plaintiff in the present suit was barred by the decree in that suit under s. 43 of the Civil Procedure Code (Act XIV of 1882) The trustees,

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GENERAL OF BOMBAY *v* BAI PUNJABAI

I. L. R. 18 Bom. 551

16. ———— **Transfer of property on trust**—*Transfer of property by convict sentenced to transportation* *B*, having been sentenced to transportation for life, presented a petition in the Revenue Court, in which, stating that he owned a certain zamindari estate, that he had been so sentenced and that it was necessary to make arrangements for the payment of the Government revenue and the management of the estate, he prayed that his name might be removed from the revenue registers, and that of *P* be recorded in its stead. *Held,* that the transfer of the property by *B* to *P* was in the nature of a trust. *Durga Prasad* v. *Asa Ram, I. L. R 2 All 361,* referred to HAIT RAM *v* DURGA PRASAD

I. L. R. 5 All. 609

17. ———— **Property held on trust**—*Assignment by trustees—Limitation.* In 1870 the purchasers and recorded proprietors of a four-biswas share of a certain village caused a statement to be recorded in the village record-of-rights to the effect that *B* claimed to be the proprietor of a moiety of such share, and that they were willing to admit his right whenever he paid them a moiety of the sum which they had paid in respect of the arrears of revenue due on such share. In 1843 *M* purchased such share and became its recorded proprietor. In 1877 *K*, the son of *B*, sued the representative of *M* for possession of a moiety of such share, alleging, with reference to the statement recorded in the record-of-rights, that such moiety had vested in *M's* assignors in trust to surrender it to *B* or his heirs on payment of a moiety of the sum they had paid on account of revenue, and paying into Court a moiety of such sum *Held,* that that statement could not be regarded as evidence of the alleged trust, and that, assuming that the alleged trust existed, the suit was barred by limitation, *M* having purchased without notice of the trust and for valuable consideration. KAMAL SINGH *v.* BATUL FATIMA

I. L. R. 2 All. 460

18. ———— *Holder of missing person's estate—Possession.* The possession by the widow, or some other member of the family, of a missing person's estate may, in the absence of an indication of its being adverse, be considered to be that of a trustee until the expiry of the term fixed for his return. NARAIN SAHAI *v.* POSOO

2 Agra 78

19. ———— *Absconding shareholder—Custom for his share to be considered as* [illegible]

twelve years only. *Held,* that, as the father of the plaintiffs did not reclaim his share within twelve years, the plaintiffs' right was forfeited. NAHANA *v.* DYA RAM . . **5 N. W. 170**

20. ———— *Wajib-ul-urz—Absconding co-sharer.* Where a clause of the wajib-ul-urz of a village stated in general terms that absconders from such village should receive back their property on their return, and certain persons who absconded from such village before

TRUST—*contd.*

such wajib-ul-urz was framed sued to enforce such clause against the purchaser of their property from the co-sharer who had taken possession of it on their absconding, and who was no party *to such wajib-ul-urz alleging that their* property had vested in such co-sharer in trust for them:—*Held*, that, before such co-sharer could be taken to have held their property as a trustee, there must be evidence that he accepted such trust, and this fact could not be taken as proved by the wajib-ul-urz. PIAREY LAL *v* SALIGA. **I. L. R. 2 All. 394**

21. ——————— *Wajib-ul-urz—Absent shareholders* *Held*, that a village administration-paper which provides for the surrender to absent shareholders on their return to the village of the lands formally held by them does not necessarily constitute a valid trust in their favour, although it may be evidence of such a trust Where a village administration-paper provided for the surrender to certain absent shareholders on their return to the village of the lands formally held by them, but did not contain any declaration of a trust as existing between such absent shareholders and the occupiers of *their lands at the time* such administration-paper was framed:—*Held*, that the administration-paper could not be regarded as evidence of a pre-existing trust between such persons, nor as an admission of such a trust by such occupiers. HARBHAI *v* GUMANI . . **I. L. R. 2 All. 493**

22. ——————— *Absent co-sharer—Wajib-ul-urz* *S* and his brother owned an 8 annas share of a village, and *H* and *D* owned

absent from the village and having been absent for some ten years: "We, *H* and *D*, are equal sharers of one 8 annas and *S* and (his brother) of the other 8 annas in the village according to descent: ten years ago *S* and (his brother) went *away into Orai; their present residence is not* known: they have not left woman, child, or heir of any kind in the village: on that account the entire 16 annas of the village are in possession of us, *H* and *D* At the time of the preparation of the khewat we made a gift of 4 annas of our own eight annas to *P*, and have given him possession of 4 annas of the 8 annas belonging to *S* and (his brother), keeping the remaining 4 annas in our own possession: when *S* and (his brother)

been made over to him by *H* and *D* out of the 8 annas share belonging to *S* and his brother. He based his suit upon the wajib-ul-urz, but did not expressly state that the share in suit had been entrusted to *H* and *D* on the understanding that it should be returned to him when he reclaimed

TRUST—*contd.*

it. The lower Appellate Court dismissed the suit as barred by limitation, on the ground that *P's* possession of the share in suit became adverse in 1866 or 1867, more than twelve years before *the institution of the suit, when S, having returned* to the village, had claimed the share and *P* had refused to surrender it. On second appeal it was contended by *S* that under the terms of the wajib-ul-urz *P's* possession was that of a trustee, and

a trust could not be implied from the terms of the wajib-ul-urz, which amounted to nothing more than an acknowledgment of *S's* title and an offer to surrender possession when he returned, and as when he did return in 1866 or 1867 *P* refused to surrender possession, *S* was bound to have sued to recover the share in suit within twelve years from the date of such refusal, and as he had failed to do so, the suit was barred by limitation. *Per* PEARSON, *J.*—That although no mention was made in the wajib-ul-urz of such a trust as was contended for, yet the terms of that document strongly suggested the creation of such a trust. Having regard to the terms of the wajib-ul-urz, and to the fact that *S* and his brother were not strangers to *H* and *D*, nor merely co-shares, but near blood-relations, probably residing together on the same premises and partners in agricultural labours, further inquiry should be made with the view of elucidating the nature of the acquisition of *H* and *D* of the share and of their subsequent possession SIRDAR SAINEY *v.* PIRAN SINGH . . . . **I. L. R. 3 All. 453**

23. ——————— **Retirement and disability of trustees**—*Effect of, on trust.* Where property is assigned to trustees by an insolvent trader for the purpose of having it equally distributed among the creditors, such a trust does not become inoperative by reason of the retirement of two out of three trustees, and of the inability of the third to discharge his duties properly. BAUMGARTNER *v* STEPHENSON . . . . **3 Agra 321**

24. ——————— **Creditor's trust-fund**—*Unclaimed dividends, suit for distribution of.* Where a creditor's trust-deed contained no provision for redistribution of unclaimed dividends, and a suit was brought by the representatives of one of the creditors, party to the deed, for the administration and distribution of funds in the defendant's possession allotted to other creditors by way of dividends, but unclaimed by them for forty years:—*Held*, that the plaintiff was not entitled to such relief. *Wilde v. Banning, L. R. 2 Eq 577*, distinguished. MANICKAVELU MUDALI *v* ARBUTHNOT & Co. . . . . **I. L. R. 4 Mad. 404**

25. ——————— **Resulting trust**—*Intention of party—Implied trust, presumption of* Suit brought to recover possession of a talukh, upon the alleged ground that the moneys with which the purchase was made were not the moneys of the

TRUST—*contd.*

person in whose name the property was bought, but of a lady with whom he was living as her husband, and that there was a resulting trust in her favour The Privy Council considered that the very principle of a resulting trust was that the property had been purchased with money belonging to another, with an implied trust that it should belong to that other person *to whom the money also belonged; but that,* if it was the intention of the person to whom the money belonged that there should be no such trust, no such implied trust could arise by implication, and the presumption would then be met by the facts. AMEEROONNISSA KHANUM v ASHRUFFOONNISSA

17 W. R. 259 : 14 Moo. I. A 433

26. ———— *Statute of Frauds—Stat 29 Car II, c. 3.* The plaintiff, who was the widow of *G*, sued the defendant, the executrix of *J*, to recover a sum of R7,394 9-6, part of the purchase-money of a house which had been sold by *J* in his lifetime, and which the plaintiff alleged had been, shortly before his death, *conveyed by her husband G to J in trust to sell* and hold the proceeds in trust for *G's* family. The defendant denied the trust, and insisted that *J* had purchased the house from *G* for valuable consideration. Both *J* and *G* were Parsis *Held*, that, even assuming that no consideration was given by *J* to *G* for the house, the plaintiff was not entitled to succeed In the absence of consideration, the trust of the house, which was admittedly conveyed by *G* to *J*, would have resulted to *G*, unless, under the provisions of s 7

[illegible]

had made a particular declaration of trust by it. Nor without probate could the plaintiff take up

[illegible]

I. L. R. 6 Bom. 363

27. ———— Breach of trust—*Parties—Defaulting trustees—Breach of trust beneficial to trust-estate.* The Court will not, at the instance of one of two defaulting trustees, declare the liabilities arising from a breach of trust without having all the parties concerned before it. Nor will the Court pass an order which might in any way tend to be construed as an assent to a breach of trust already committed, even though the breach may have been beneficial to the trust-estate. BARRY v STEEL . 1 C. L. R 80

28 ———— Revocation of trust—*Voluntary settlement. A*, being at the time unmarried, *executed a voluntary settlement by which he* created trusts for himself for life, and after his death for his issue and widows (if any), with ultimate trusts over The deed contained a provision empowering *A* at any time, with the consent of the trustee, to revoke the trusts and to declare any new or other trusts *A* subsequently married, and after his marriage executed a deed of revocation, declaring that the trust-property should be held for himself absolutely The trustees refused to hand over the trust-property, and *A* thereupon instituted a suit to have the trust set aside His wife was a minor, and there was no issue of the marriage. *Held*, that, although there might be cases in which, where no other person but the settlor was interested, the deed might be regarded as a mere direction as to the manner in which the settlor's property should be applied for his benefit, and as such revocable by the settlor, yet that, *in the present case, there being an infant beneficiary*, the deed could not be revoked GOLAM YASSIN v. OFFICIAL TRUSTEE OF BENGAL

I. L. R. 8 Calc. 887

29 ———— Nature of suit—*Suit for land—Property—Executors—Trust—Limitation Act (XV of 1877), s. 10* Where property was by will vested in executors, in trust to pay legacies,

[illegible]

executors to themselves could not stand against her, the beneficiary :—*Held*, that such a suit is not a suit for land, and that s. 10 of the Limitation Act applied. *Saroda Persad Chattopadhya* v. *Brojo Nath Bhuttacherjee, I. L R 5 Calc. 910*, distinguished. *Hurro Coomaree Dossee* v. *Tarini Churn Bysack, I. L R. 8 Calc. 766*, referred to NISTARINI DASSI v. NUNDO LAL BOSE (1902)

I. L. R. 30 Calc. 369

30. ———— Secret trust—*Evidence.* A party setting up a secret trust must adduce evidence to prove that it was communicated by the testator to the universal legatee, and that the legatee agreed to accept the property bequeathed on the terms of the trust. *Jones* v. *Badley, L. R. 3 Ch. A C. 362*, referred to. KALI CHARAN GHOSAL v RAM CHANDRA MANDAL (1903)

I. L. R. 30 Calc. 783

31. ———— Trust not completed—*Trust deed—Trust not completed—No possession of trust property taken by trustees—Deed never acted upon—Gift by deed in future without present gift to support it—Estate in abeyance—Class—Gift to class, who may take.* On the 17th October 1872, one Mulji Jaitha and his son Soondardas Mulji, who lived together as members of a joint Hindu family, executed a

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trust-deed by which they conveyed to the said Soondardas Mulji and three other persons as trustees a large amount of property in trust (ultimately) for the sons of Soonderdas Mulji in equal shares when the youngest of such sons should attain twenty-one years of age or the survivor of the wives of Soondardas Mulji should die, whichever should last happen. [illegible]

[illegible]

before the plaintiff was born In this will he declared that in the event of his death his father (Mulji Jaitha) was the owner of the property [illegible] Dharamsi [illegible] case he [illegible] should [illegible] eath his father Mulji Jaitha remained in sole possession of all the property of which in Soondardas's lifetime the two had been in joint possession, including the properties comprised in the trust-deed and the properties which Soondardas had purported to dispose of by his will. Mulji Jaitha died in August [illegible] 1888, whe[illegible] directed t[illegible] should be [illegible] Dharamsi [illegible] shares After Mulji Jaitha's death Dharamsi at first solely managed the estate, including the properties comprised in the trust-deed; but when the plaintiff attained his majority, he was admitted to the joint management and the two brothers continued to manage down to Dharamsi's death on the 28th February 1899. Dharamsi left a will, dated 7th February 1899, in which he claimed for the first time that the properties in the trust-deed were his sole property and also certain of the properties mentioned in the will of his father Soondardas, and he bequeathed the whole of such properties to his son, the defendant Karsandas The plaintiff thereupon filed this suit, contending that the trust-deed was inoperative, and that he was entitled to a moiety of the estate, and that Dharamsi's will was of no effect *Held*, that the trust-deed was inoperative and of no effect—(i) inasmuch as, under its provisions, the estate was to be held in abeyance from the date of the deed [illegible]

[illegible] in fact given to the trustees, and the trust was therefore never perfectly created. *Held*, also, on the evidence, that Soondardas had no property of his own to dispose of, and that his will was wholly inoperative. *Held*, therefore, that under the will of Mulji Jaitha, the plaintiff and Dharamsi were entitled in equal shares to all the property left by Mulji Jaitha, including the property comprised in the trust-deed Where, by a will or deed, there is a gift to a class, the rule is that a member of the class who can take must take unless the Court is satisfied on the will or deed that the testator or settlor intended that the class, and not any individual member thereof should take. GORDHANDAS SOONDARDAS *v.* BAI RAMCOOVER (1901) . **I. L. R. 26 Bom. 449**

32 ———— **Trustee of Mission Society, right of, to eject tenant**—*Trust, construction of—Gift to Mission Society for establishing Native Christian hamlet—House in hamlet let out to Native Christian tenant—Notice to quit, if to state reasons for eviction—Trust, duration and object of—Trust, perpetual—Beneficiaries, who are—Native Christian community, right of, under trust* Certain premises were made over to the Baptist Mission Society by the donor, for the purpose of establishing a hamlet of Native Christians of the Baptist community at Monghyr, the donor appointing certain trustees by name for aiding [illegible]

[illegible] notice to quit was served upon the defendant [illegible]

[illegible] of management of the trusts, [illegible] power to eject a tenant. *Quære*. Whether the trustees were absolute owners of the premises. *Smith* v. *Anderson, L R 15 Ch D 247*, referred to That in the notice to quit served on the defendant the plaintiff was not bound to disclose the reasons for defendant being considered unfit for occupying the house in the Mission compound. The rights of the Native Christian community as a body under the trust, as distinguished from those of individual members thereof, indicated. PARMANAND KARAN *v.* BAPTIST MISSION SOCIETY OF LONDON (1904) . . **8 C. W. N. 918**

33. ———— **Trustee of charitable trust has no power to appoint a co-trustee in place of a deceased trustee**—*Civil Procedure Code (Act XIV of 1882), s. 13—Decision on a question of law not res judicata when the subject-matter of the subsequent suit is different.* The provisions of the Indian Trust Act do not apply to charitable trusts. In the absence of a power

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under the instrument creating a trust or by virtue of some statutory provision, a trustee, as such, has no power to appoint any person as trustee either in his own place or to act jointly with him. A decision on a question of law in a previous suit is not *res judicata* in a subsequent suit between the same parties, when the subject-matter of the two suits are different. *Quære*: Whether such a decision can be *res judicata* against a party, who could not have prosecuted an appeal against it. *Parthasarodi* v. *China Krishna, I L R 5 Mad 304*, *Venku* v. *Mahalinga, I L R 11 Mad 393*; *Chamanlal* v. *Bapubhai I L R 22 Bom 669*, *Vishnu* v. *Ramling, I L R 26 Bom 25, 30*, referred to and followed. GOPU KOLANDAVELU CHETTY v. SAMI ROYAR (1905)

I. L. R. 28 Mad. 517

34. ——— **Construction of indenture** —"*Absolutely,*" *interpretation of—Construction of deeds—Construction of wills—Repugnancy in words*. A deed of indenture contained, among other things, a provision which ran "upon trust for the use of the said trust absolutely to be expended and used by them for such charitable purposes as they might think fit" On a construction of this provision:—*Held*, that having regard to the words that follow the phrase in the indenture in question, the word "absolutely" cannot be taken as conferring an unfettered and unlimited interest on the persons designed as trustees; and that the words used created a valid trust for charitable purposes in the events, which had happened. The rule that, if there be a repugnancy,

35. ——— *Deed of trust—Construction—Distinct provisions for devolution of trusteeship and of beneficial interest—Clear language in one—Ambiguity in the other—Construction placed on earlier document—Use in interpreting later document—"Heirs," meaning of*. In construing an instrument, which provided that a certain pension was to devolve on the "heirs" of the original pensioners, it was contended that the term "heirs" must mean "heirs, who are also descendants" because the terms "heirs" and "descendants" were used as convertible terms in describing the descent of certain trusteeships, including the trusteeship of the pension. *Held*, that it could not be assumed that the donor intended the descent of the trusteeship and the descent of the beneficial interest to be governed by the same rules. The ambiguity of the language used on the one subject cannot control the clear and unambiguous words employed with regard to the other. The construction placed on an earlier document could not be used in construing a letter document executed by the same person, when the later document did not embody or refer

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to the earlier document, and when further they did not form parts of the same transaction and were not even contemporaneous. Nor could the decision on the earlier document afford a precedent for the interpretation of the later document, when the language of the two documents were found to be entirely dissimilar. HAIDAR HUSAIN KHAN v. FAGHFUR MIRZA (1905)

9 C. W. N. 817
s.c. L. R. 32 I. A. 135

36. ——— **Limitation**—*Suit for possession of trust property as manager—Limitation Act (XV of 1877), Sch II, Arts 124 and 144*. Where the plaintiff claimed possession of certain trust

37. ——— **Mahomedan law—Will**—*Reference to trust-deed in will for the purpose of confirming it—Testamentary document—Trustee de son tort—Express trustee, Liability to account—Limitation Act (XV of 1877), s. 10*. Under the Mahomedan law possession is as necessary in the

becomes a trustee *de son tort* and, as such, is bound to account as if he were the rightful trustee and limitation will not run in his favour under s 10 of the Limitation Act (XV of 1877). MOOSABHAI v. YACOOBBHAI (1905)

I. L. R. 29 Bom. 267

38. ——— **Hindu trusts**—*Indian Trustees Act (XXVII of 1866), applicability of, to Hindu trusts—Practice*. The Indian Trustees Act is applicable to a trust in which the settlor, the trustees and *cestuis que trustent* are all Hindus, provided such trust does not violate any provision of Hindu Law. NILMONEY DEY SARKAR, *In re* (1905) . . . **I. L. R. 32 Calc 143**
s.c. 9 C. W. N. 79

39. ———**Administration of, by Court**—*New trustees, appointment of—Concurrent sanction of Court*. Where a suit has been instituted for administration of a trust and a decree has been made *that* attracts the Court's jurisdiction, and a trustee cannot afterwards exercise a power of appointment without the concurrent sanction of the Court. In such a case a trustee having a

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power of appointment of the new trustees is not excluded from the right of nomination, but the sanction of the Court is necessary to its choice. *In re Hall, 54 L. J. Ch. (A S)*, distinguished. AMRITA BIBEE *v. v.* KANHIA LAL AGARWALA (1905) **I. L. R. 32 Calc 448** **s.c. 9 C. W. N. 239**

40. ———— Power of appointing additional trustees or controlling body—*"Under the trust," meaning of*—Under s. 539 of the Code of Civil Procedure, the Court in sanctioning a scheme, may provide for the appointment of additional or new trustees, though such appointment may not be in conformity with the original constitution of the trust or with the rules in force in respect to it The words "under the trust" in s 539 of the Code of Civil Procedure have no reference to such original constitution on the rules. The Court of Chancery in England has always exercised such powers, and in the absence of express words restricting the powers of Courts in this country, the Legislature must be presumed to have conferred similar powers upon them by s 539 of the Code of Civil Procedure. *Chintaman Bajaji Dev v. Dhondo Ganesh Dev, I L. R. 15 Bom 612*, and *Annoji v Narayan, I. L. R 21 Bom 556*, followed. A scheme framed by the Court may be liable to variation for good cause shown *Re Browne's Hospital v Stamford, 60 Law Times 288*, referred to The directions in a scheme framed under s 539 of the Code of Civil Procedure may be enforced in execution on application by persons interested. *Damodarbhat v. Bhogilal, I L R 24 Bom 45*, followed PRAYAG DOSS JI VARU MOHANT *v* TIRUMALA SRIRANGACHARLAVARU (1905) **I. L. R. 28 Mad. 319**

TRUST DEED.

See MAHOMEDAN LAW—TRUSTS. **I. L. R. 36 Calc. 431**

TRUST PROPERTY.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—TRUST PROPERTY

See COURT FEES ACT, 1870, s. 19D **I. L. R. 23 Calc. 980**

See COURT FEES ACT, 1870, SCH. I, ART 11 . . **6 B L. R. Ap. 138**
11 B. L R. Ap. 39
7 B. L. R. 57
14 B. L. R. 184
I. L. R. 20 Calc. 575

See HINDU LAW—PARTITION—PROPERTY LIABLE OR NOT TO PARTITION. **I. L. R. 19 All 428**

See TRUST.

See TRUSTEE.

See TRUSTS ACT.

———— **Debts incurred by trustee**—*Trustees' right of indemnity—Creditor's right to stand in the place of the trustee.* *A*, the owner of an hotel, on the occasion of her marriage with *B*, appointed *B* trustee by a deed of settlement The trust-deed gave the trustee power to carry on the business of the hotel through managers and assistants, and it was declared that the trustee should be at all times fully indemnified out of the trust estate in respect of all liabilities arising from the execution of the trusts The plaintiffs brought a suit against *B*, the trustee, for goods supplied to the hotel and claimed *B's* right of indemnity. *Held*, that the plaintiffs were entitled in equity to stand in the place of the trustee, if the trustee had not through his own default lost his right of indemnity *In the matter of M. A Shard, I L. R. 28 Calc. 574*, referred to BRIDGE *v.* MADDEN (1904) . **I. L R. 31 Calc. 1084**

TRUSTEE.

See ATTACHMENT. **I. L. R. 35 Calc. 641**

See COSTS—SPECIAL CASES—TRUSTEES. **13 B. L. R. 383**
I. L. R. 11 Calc. 628

See COSTS—TAXATION OF COSTS. **I. L. R. 18 Bom. 189**
I. L. R. 20 Bom. 301

See EXECUTOR . **I. L. R. 2 Bom. 388**

See HINDU LAW—ENDOWMENT—SUCCESSION IN MANAGEMENT **5 B. L. R. 181**
I. L. R. 7 Mad. 499

See HINDU LAW—ENDOWMENT—TRANSFER OF RIGHT OF WORSHIP. **3 C. L. R. 112**

See INSOLVENCY ACT, s 40. **I. L. R. 3 All. 799**

See LAND REGISTRATION ACT (BENGAL ACT VII OF 1876) **12 C. W. N. 441**

See LIMITATION ACT, 1877, s. 10 (1871, s. 10; 1859, s. 2)

See MAHOMEDAN LAW—ENDOWMENT **I. L. R. 18 Bom. 401**

See MALABAR LAW—JOINT FAMILY. **I. L R. 2 Mad. 328**
I. L. R. 1 Mad. 153

See MORTGAGE . **9 C. W. N. 914**

See NATIVE STATES **I. L. R. 30 Bom. 578**

See OUDH ESTATES ACT **I. L. R. 3 Calc. 522; 645**
L. R. 4 I. A. 178
I. L. R. 26 Calc. 879

See PARTIES—PARTIES TO SUITS—DEBTOR AND CREDITOR, SUITS BETWEEN. **3 Agra. 104**
I. L. R. 3 All. 799

See TRUST.

See TRUSTS ACT.

See TRUST PROPERTY.

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF. **7 B. L. R. 113**

TRUSTEE—*contd*

See WILL—CONSTRUCTION
4 B L. R. O. C. 53
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I L. R. 31 Bom. 472

——— alienation by—

See LIMITATION ACT, 1877, SCH II, ART 134. I. L. R. 28 Bom. 363, 500

ARTS 134 AND 144
I L. R. 27 Bom. 373

——— appointment of—

See ACT XX OF 1863
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I. L. R. 17 Mad. 212
I. L. R 19 Mad. 285

——— appointment of, prayer for—

See VALUATION OF SUIT—SUITS
I. L. R. 19 All. 60

——— assignment of property to—

See DEBTOR AND CREDITOR 3 Agra 104
I. L. R. 19 Bom. 12

——— assignment of trusteeship—

See ACT—1863—XX, s 18
I. L. R. 2 Mad. 219

——— commission allowed to—

See WILL—CONSTRUCTION
I. L. R. 24 Calc. 44

——— constructive—

See ENDOWMENT. I. L. R. 23 Bom 659

See INSOLVENCY—ORDER AND DISPOSITION . . I L. R. 2 Bom. 542

——— distinction between trustee and creditor.

See COMPANY—POWERS, DUTIES, AND LIABILITIES OF DIRECTORS
6 B. L. R. 278

——— nature of liability of—

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——— nomination of—

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——— of temple—

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——— of temple, breach of trust by—

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION
I. L. R. 1 Mad. 55

——— removal of—

See ENDOWMENT. I. L. R. 34 Calc 587

——— right of, to sue—

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE
I. L. R. 20 Mad. 162
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——— right of, to sue—*concld.*

See DEBTOR AND CREDITOR.
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——— suit against—

See LIMITATION ACT, 1877, s 10
7 C. W. N. 353

——— suit by—

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——— suit by, to eject trespasser.

See RIGHT OF SUIT—CHARITIES AND TRUSTS . I. L. R. 18 Bom. 721

——— suit for removal of—

See ACT XX OF 1863, s 14.
I. L. R. 2 Mad. 197
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I L. R. 21 Bom. 556
I. L. R. 23 Bom. 659

See LIMITATION ACT, 1877, SCH. II, ART. 134. . . I. L. R. 24 Calc. 418

See RIGHT OF SUIT—CHARITIES AND TRUSTS

See VALUATION OF SUIT—SUITS.
I L. R. 19 All. 104

1. ——— **Relinquishment by one trustee**—*Effect of relinquishment.* In a contest, between three trustees or managers of an endowment, each entitled to a third share in the profits of the property, if one of them withdraws from the contest, his share is held to have been relinquished in favour of the remaining partners, and to have merged in the general account to be rendered by the trustees or managers. BUZL RUHIM *v.* LUTAFUT HOSSEIN. KHODEJOONNISSA BIBEE *v* LUTAFUT HOSSEIN . W. R. 1864, 171

2. ——— **Breach of trustees' duty**—*Mixing trust funds with money of trustees—Commission on trust moneys* It is a grave breach of duty in trustees, or administrators taking out letters of administration, to estates in this country under powers of attorney from executors or next of kin abroad, to mix the incomes raised by them from trust properties or the funds of the estate in one common fund

I. L. R. 6 Calc. 70; 7 C. L. R. 19

3. ——— **Appointment of new trustees**—*Probate—Executors—Executors alienating property of their testator's estate before obtaining probate—Title of alienees to such property—Right of holder of property to vote at election of trustee before obtaining probate—Trustee elected by debenture-holders—Meeting of debenture-holders to elect a trustee. Exclusion from meeting of holders of debentures*

TRUSTEE—*contd.*

obtained from executors before probate—Validity of election of trustee elected at meeting from which such debenture-holders were excluded. In order to secure certain money which it had borrowed by the issue of debentures, the *D* Company on the 23rd November 1883 conveyed certain lands, etc, to three trustees *K*, *G*, and *D* by way of mortgage. With regard to the appointment of new trustees in case any trustee should die, etc., the indenture of mortgage provided that, in certain events, the surviving or continuing trustees might convene a meeting of the debenture-holders for the purpose of nominating a new trustee; and that at such meeting the election of such new trustee should be decided by a majority of votes of the debenture-holders present in person, each party having only one vote, and in case of an equality of votes, then the chairman of the meeting should have a casting vote. *K*, one of the trustees appointed under the deed, died on the 9th February 1886, leaving a will whereby he appointed three executors At the time of his death *K* was the holder of one moiety of the debentures, *viz*, 1,400 debentures of the value of R7,00,000 The two remaining trustees, *G* and *D*, called a meeting of the debenture-holders for the 27th February 1886 to elect a trustee Previously to the meeting and for the purpose of having the large interests of *K's* estate adequately represented, the executors of *K* distributed some of the debentures in their hands belonging to *K's* estate among nominees for the purpose of voting at the meeting; and they also sold some of the debentures. Among the persons to whom debentures were sold were the first three plaintiffs. Pursuant to the notice convening the meeting, the plaintiffs and other persons, to whom debentures belonging to the estate of *K* had been given or sold, presented themselves and claimed to attend the meeting; but none of them, except the three executors (plaintiffs 4, 5, and 6) of *K*, were allowed to attend, and they were admitted only in their capacity as executors. Defendant No 1 was chairman of the meeting, and he ruled that the three executors had a joint right, in their capacity an executors, to give one vote upon any proposition that might be submitted to the meeting At the meeting it was proposed that the holders of the debentures, who claimed admission to the meeting, should be permitted to attend. The chairman ruled the motion irrelevant, and would not allow it to be put. The executors therefore withdrew from the meeting. After they had withdrawn, the third defendant, *P*, was elected a trustee. At the date of the meeting the executors had not obtained probate of *K's* will. On behalf of the defendants it was contended that *P's* election was valid; and that the persons to whom the executors had given or sold debentures belonging to *K's* estate had been properly excluded from the meeting of the 27th February, inasmuch as the executors had not at that time obtained probate, and consequently the title of their alienees to the debentures was still incomplete. *Held,* that

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P (defendant No. 3) had not been validly appointed a trustee to the indenture of the 23rd November 1883 Under that indenture, debenture-holders had the right to vote, and the debentures were payable to bearer. The fact that the executors had not at the date of the meeting obtained probate did not affect the rights of those to whom they had given or sold debentures, and such persons had consequently been improperly excluded from the meeting. MATHURADAS LOWJI *v.* GOCULDAS MADHOWJI . **I. L. R. 10 Bom. 468**

4. ———— **Breach of trust**—*Liability of passive trustee.* A trustee who, having accepted a trust, remains passive and takes no steps to see the trust carried into execution, is liable for losses arising from the breach of trust of his co-trustee. BAI JADAV *v.* TRIBHUVANDAS JAGJIVANDAS **9 Bom. 333**

5. ———— **Fiduciary relationship**—*Assignment by married woman.* *L M* died in 1856, having bequeathed certain personal property to *J S*, who then and at the time of the subsequently-mentioned suit was a married woman, [illegible] of attorney authorizing

[illegible]

the legacy was assigned to trustees, who did not execute the deed or undertake the trust, and no other trustee was substituted for them. *O G & Co.* at various times advanced money to *J S*, and in acknowledgment received promissory notes from her for a portion of such advances, and in a suit by *O G & Co* to recover the amount of these advances, it was held that *O G & Co*, standing in a fiduciary relation to *J S*, before they could avail themselves of her acts, must show that she did them with a full knowledge of the circumstances of the case and of her own position with regard to it SMITH *v.* STEWART **Bourke O. C. 292**

6. ———— **Cause of action**—*Adverse possession—Limitation.* When property is placed in the hands of another by way of trust, no cause of action arises to the owner until there has been a demand by the owner for the restoration of the property and a refusal by the trustee to give up the property The period of limitation begins to run from the date of such refusal or distinct assertion of adverse right, and not from the date the trustee enters into possession. RAKHALDAS MADAK *v.* MADHUSUDAN MADAK **3 B. L. R. A. C. 409 : 12 W. R. 319**

7. ———— **Suit to set aside alienations by trustee**—*Bonâ fide purchasers.* A suit brought by a *cestui que* trust to set aside as fraudulent certain alienations made by the trustee was dismissed by the lower Appellate Court as barred by limitation, merely on the ground that more than twelve years had, at the commencement of the suit, elapsed since the execution of such deeds of alienation. *Held,* (i) that this was not sufficient.

TRUSTEE—*contd*

and that the Court should have tried whether the purchasers were cognizant at the time of their purchase of a subsisting trust affecting the property, for if so, they would have taken it subject to the trust, and would stand in the shoes of the original trustee, and would not be *bonâ fide* purchasers from trustees entitled to the benefit of the law of limitation, (ii) that if the trustee had power to make valid grants, the grantees would have a perfectly good title, if they took for valuable consideration without notice of the trust LUTEEFUN *v* BEGO JAN BEGO JAN *v* CHERAG ALI 5 W. R. 120

8. ———— **Suit for mesne profits where estates had been under care of Court of Wards**—*Cause of action—Fiduciary relationship* Plaintiff, the zamindar of Shivaganga, sued to recover two villages which she alleged formed part of the Shivaganga zamindari The villages originally belonged to *P*, mother of the present defendant, *B*, the ex-zamindar of Shivaganga In 1856 they were purchased by the Court of Wards on behalf of *B*, who was then a minor, with part of the rents and profits of the zamindari, and in 1860 were given by him to his mother In 1864 *B* was ousted by a decree of the Privy Council, and became liable to the present plaintiff for the mesne profits of the zamindari In the account taken of mesne profits due, the amount expended on the purchase of these villages was excluded by plaintiff's consent from the sum debited to the ex zamindar Plaintiff now sued *P*, and, she dying, the suit was continued against *B* as her representative *Held*, that, there being in the decree of the Privy Council nothing directly giving a right to maintain the suit, there was but one ground upon which the suit could be supposed to lie, namely, the existence of the relation of trustee and beneficiary between the Collector and the plaintiff at the time of the purchase. *Held*, also, that such relation did not exist KATTAMA NACHIAR *v.* BOTHAGURUSAMI TEVAR. 6 Mad. 293

9 ———— **Debt incurred by trustee for**

certain sum against a trustee, in a suit brought by them against the trustee for balance due for goods supplied to the trust estate, which consisted of a business The trust settled the net profits on the settlor for life with a reversion to her sons, born or to be born. At the time of the suit, a son of the settlor was alive, but was not made a party to the suit. Subsequently the plaintiffs on proof that the debt incurred from them by the trustee was for the benefit of the

TRUSTEE—*contd.*

trust estate and that there had been no neglect or default by the trustee so as to deprive him of his right of indemnity, moved to obtain an order that on the trustee's failure to pay the decretal amount they were entitled to execute their said decree against the trust estate. Notice of their application was given to the son, who did not appeal *Held*, that, on default of the trustee's paying the decretal amount, the plaintiffs were entitled to execute their decree against the trust estate. MADDEN *v* A. J. BRIDGE (1905) . 9 C. W. N. 9

10. ———— **Person not entitled obtaining renewal of a promissory note, trustee for rightful owner**—*Misjoinder of parties.* Where on the death of the payee of a promissory note executed by *D*, *C* becomes entitled to the amount, but *A* obtains a renewal from *D* in favour of *B*, a suit will lie by *C* against *D*, *A* and *B* as defendants to recover on the renewed note, as *A* and *B* in obtaining the renewal must be *held* in law to have become trustees for *C*, *A* and *B* are necessary parties and the suit will not be bad for misjoinder. The only person entitled to object *C's* claim will be *D* RAMAKRISHNA RAJU *v* KATTA VENKATASWAMY (1905) I. L. R. 29 Mad. 87

11 ———— *Consent decree that new trustee be appointed by the Court—Preference to lineal descendants of settlor—Discretion—Appointment of a stranger to the line.* Where a consent decree had been passed directing that the first respondent should retire from the trusteeship, a Mahomedan Shiah religious endowment and that a new trustee be appointed in his place by the Chief Court of Lower Burma, preference in such appointment being given to the lineal descendants of the settlor.—*Held*, that under this decree the Chief Court had a discretion to exercise in the selection of a trustee, that the appellant, as senior in order of the settlor's children had no absolute right to be appointed in the absence of disqualification, and that

religious observances of the Shiah school. SHAROO BANOO *v.* AGA MAHOMED JAFFER BINDANEEM (1906) . I. L. R. 34 Calc 118 s.c. L. R. 34 I. A. 46 11 C. W. N. 297

12. ———— **Duties of**—*Discretionary power, exercise of—Improvident transaction of trustee not binding on beneficiary of liability of transferee of trust estate—Compromise by trustee when valid—Burden of proof—Decree may direct party benefiting by breach of trust to pay to the trust estate when removal of trustee is not asked for—Following trust property* It is no answer to a charge of breach of trust that the trustee acted under competent legal advice. A trustee is bound to make as reasonable a bargain in the interests

TRUSTEE—*concld*

of the beneficiary as circumstances will permit; and a transaction which circumstances show to be unreasonable or improvidently entered into, will not be upheld by Court. A transferee from [illegible]

solved merely because, in his opinion, the transaction was prudent and beneficial to the *cestue que trust.* Where a transaction by the trustee is *primâ facie* improvident, it lies upon the trustee to show, as against the beneficiary, that it is one which the Court can uphold Where a breach of trust has been committed and a suit is brought by the beneficiary against the trustee and the party who has received money through such transaction to recover such money for the trust estate, it is open to the Court by its decree to direct payment of such money to the trustee by the defendant who has received such payment unless it is established that the beneficiary can get no relief unless he seeks to remove the trustee and procure the appointment of another. Where trust-money has, by a breach of trust, been paid by the trustee, the beneficiary is entitled to follow it as trust-property in the hands of the payee. *National Trustees Company of Australasia* v. *General Finance Company of Australasia,* [*1905*] *A. C. 273,* referred to. *Keating* [illegible] *In re Barney,* [illegible] *Patrick,* [illegible] *mbandha* [illegible] *biran, I L R. 10 Mad 375, 508,* distinguished. *Srinivasa Ayyangar* v *Srinivasa Swami, I L R 16 Mad 31, 33,* distinguished. SUBRAMANIAN CHETTIAR *v.* RAJESWARA DORAI (1909) **I. L. R. 32 Mad. 490**

TRUSTEES ACT.

———— **(XXIV of 1841)**—*Application for appointment of new trustees* Trustees were ap- [illegible]

appointed S, a new trustee, to sell the business, and he sold it to *R* The old trustees had left the country In an application, with the consent of all parties, under Act XXIV of 1841, that *S* might sign the deed of transfer, the Court *held* that it was necessary to show that the old trustees had no lien on any other property in the concern before the order asked for could be made *In the matter of* FORT GLOUCESTER MILLS Co **Bourke O. C. 260**

———— **(XXVII of 1866), s. 3**—*Hindu trusts —Equitable jurisdiction of High Court—Appointment of new trustee—Supreme Court Charter, 1823.* The High Court may exercise the summary powers conferred upon it by the Trustee Act (XXVII of 1866) in the case of *Hindu trusts S. 3 of the* Trustee Act, which provides that the power and authority given by the Act to the High Court shall be exercised only "in cases to which English law is applicable," cannot be intended to limit

TRUSTEES ACT—*contd.*

———— **s. 3**—*contd.*

the operation of the Act only to cases to which, in their whole extent, the law prevailing in England applies without qualification or reserve, as this would virtually exclude the Act in any case on which an Act of the Indian Legislature has any bearing. The cases referred to in the section must be cases to which English law is in some measure applicable, but in what measure is not indicated in the Act. English law must be regarded as applicable in the sense intended if the principles recognized by the English Equity Courts are applicable. At the date of the grant of the Charter to the Supreme Court of Bombay in the year 1823, English equity had become a system which would deal with a body of quasi-common law in a scienti- [illegible]

bay Those doctrines could not be employed to subvert the native substantive laws, but they [illegible]

furnish the detailed rules by which effect is to be given to its principles in cases of trust If the Court is called on to give effect to a trust in any given case, it looks to the Hindu law of property to determine the estate of the trustee, but with reference to the duties of trustee and the rights of beneficiaries it is governed by the rules of English equity There are no others that it can apply In meeting an exigency, or in taking cognizance of a form of right not directly provided for in the Shastras the Court, in exercising its *jurisdiction under s 41 of the* Charter of 1823, may apply Hindu law But, taking Hindu law as one of its data, it applies "English law" also in the form of equity to all or nearly all the questions that arise *In re* KAHANDAS NARRANDAS **I. L. R 5 Bom. 154**

———— **ss 20 and 32**—*Appointment of person to convey property on behalf of persons out of the jurisdiction and under other disabilities* Where property has been, by an order of Court, directed to be sold, and where some of the parties interested in such property are either out of the jurisdiction, married women, or minors, and the place of abode of others of them is unknown, the Court will, on petition, under the Trustee Act appoint a person to convey the interest of such persons to any purchaser, notwithstanding that, at the time the order is applied for, no contract for the sale of the property has been entered into. But the Court cannot make such an order with

TRUSTEES ACT—*contd*

—— s. 20—*contd*

respect to the interest of a party who has not been served, and who has not entered appearance LACKERSTEEN *v* ROSTAN . I L. R. 7 Calc. 32

—— s. 30—*The Trustees and Mortgagees Act (XXVIII of 1866)—Hindu trusts, if acts applicable to—"Cases in which English law is applicable" in s 3, meaning of* The Indian Trustees Act is applicable to a trust which has been created in a form valid under the English law but in which the trustees and the *cestui que trustent* are all Hindus, if such trust does not violate the provisions of Hindu law *In the matter of* NILMONEY DEY SARKAR (1905) . I L R. 32 Calc 143
s c. 9 C W. N. 79

—— s 35—*Application for removal of trustee—Ground for removal—Stat 13 & 14 Vict, c. 60, s 32* Where a petition was presented to the High Court praying for the removal, under s 35, Act XXVII of 1866, of certain trustees of a will, on the grounds, *inter alia*, of misappropriation, waste, and breach of trust, and for the appointment of new ones:—*Held*, that the matters alleged were much too [illegible]
cation, anc [illegible]
appointmer [illegible]
should ins [illegible]
1866, s. 35, is analogous to 13 & 14 Vict, c 60, [illegible]

remove are willing to act and refer the applicant to a suit. *In the goods of* POWELL . 6 N. W. 54

TRUSTEES AND MORTGAGEES ACT (XXVII OF 1866).

—— s 34

[illegible]

pressly repeals amongst others sections s 34 of the Trustees and Mortgagees Act The Indian Trusts Act was made applicable to the Bombay Presidency in 1891, and since then, at all events, s. 34 has ceased to have any force The saving clause in s 1 of the Indian Trusts Act does not affect the repealing section which immediately follows and there is no saving or exception in favour of Charitable Trusts or of Trustees of Properties dedicated to charity S. 7 of the Statute of Frauds is wholly repealed, by s. 2 of the Indian Trusts Act. S 7 of the Statute of Frauds was mainly intended to regulate procedure. It never applied to India at any time; even if it did, the Indian Evidence Act entirely superseded it DINSHA MANEKJI PETIT, SIR *v.* JAMSETJI JIJIBHAI, SIR (1908)
I. L. R. 33 Bom. 509

TRUSTEES AND MORTGAGEES ACT (XXVII OF 1866)—*contd.*

—— s. 43

See TRUSTEES ACT, s 30
9 C. W. N. 79
I. L. R. 32 Calc. 143

1. —— s 43—*Administrator-General—Taking opinion of Court on question respecting the administration—Question affecting rights of parties inter se—Refusal of Court to express opinion* The Administrator-General of Bombay, having taken out letters of administration (having effect throughout the Bombay Presidency) to the estate of one [illegible]

[illegible] the brother of the said A B, deceased, who had taken out letters of administration in England to the estate of his deceased brother, to hand over to him, the said *G B*, the balance in question,—the said *G B* claiming to be the administrator of the domicile of the deceased, and, as such, to be entitled to all the personal assets of his estate wheresoever situate Being in doubt as to whether he might safely accede to the request, the Administrator-General of Bombay, by petition under [illegible]

and importance, and involving, moreover, in its decision questions which might seriously affect the rights of parties *inter se*, it was not a question such as was contemplated by s 43 of the Trustees and Mortgagees Act, XXVIII of 1866, nor one upon [illegible]

2. —— *Powers of Court—Power to sanction lease.* *J S*, a Hindu, died in [illegible]

estate of *J S*, still unadministered As adminis- [illegible]

TRUSTEES AND MORTGAGEES ACT (XXVII OF 1866)—*concld.*

———— s.43—*concld.*

son served her with a notice to desist from granting the said lease She therefore presented this petition to the Court under s. 43 of the Trustees and Mortgagees Powers Act (XXVIII of 1866), praying (*a*) that she might be advised whether she had power to grant the said proposed lease; (*b*) that the said lease might be sanctioned or directed by the Court; and (*c*) that the Court might give such opinion, advice, or direction in the premises as the Court might think fit. *Held*, that under the section the Court had no power to sanction the proposed lease or to advise as to whether the petitioner had power to grant it. The Court will not, under this section, advise trustees as to disputed points of law or fact, but will do so only as to undisputed matters of management, such as questions of advancement, maintenance, change of investment, sale of a house, compromises, taking proceedings, *etc. Held, also*, that, as a matter of general principle, the trustee of the property in question could make a lease thereof for the benefit of the trust, or raise money by way of charge for the purposes of necessary repairs and maintenance; but with regard to the details of amount or as to the work to be done, the Court refused to give any opinion. *In re* LAKSHMIBAI

I. L. R. 12 Bom. 638

TRUSTS ACT (II OF 1882).

———— ss. 1 and 2—*Trustees and Mortgagees Powers Act (XXVIII of 1866) s 34—Non-applicability to Charitable Trusts—Statute of Frauds (29 Ch. II, c 3), s 7.* The Trustees and Mortgagees Powers Act (XXVIII of 1866) does not apply to Charitable Trusts. S. 2 of the Indian Trusts Act (II of 1882) expressly repeals amongst other sections s. 34 of the Trustees and Mortgagees Act The Indian Trusts Act was made applicable to the Bombay Presidency in 1891, and since then, at all events s. 34 had ceased to have any force. The saving clause in s. 1 of the Indian Trusts Act does not affect the repealing section which immediately follows and there is no saving or exception in favour of Charitable Trusts or of Trustees of properties dedicated to charity S. 7 of the Statute of Frauds is wholly repealed by s. 2 of the Indian Trusts Act. S. 7 of the Statute of Frauds was mainly intended to regulate procedure It never applied to India at any time; even if it did, the Indian Evidence Act entirely superseded it DINSHA MANEKJI PETIT, SIR *v* JAMSETJI JIJIBHAI, SIR (1908)

I. L. R. 33 Bom. 509

———— s. 5, 81—

See WILL. I. L. R. 32 Mad. 443

———— *Bequest to legatee with oral directions in testator's lifetime for the disposal of the property—Rule of English law that such legatee is bound by the trusts so declared by testator applies in India under s 5 of the Trusts Act—S. 81 of the Trusts Act does not apply to such cases—*

TRUSTS ACT (II OF 1882)—*contd.*

———— s. 5—*contd.*

[illegible]

communicated to him, and the legatee expressly or impliedly undertakes to carry out the wishes so expressed to him by the testator, the legatee will *be treated as a trustee and will be compelled* to carry out the instructions so confided to him. The reason for this rule is that it would be a fraud on the part of the legatee not to give effect to the testator's intentions, and the law will not permit him to benefit by his own fraud' The legislature *in enacting s. 5 of the Indian Trusts Act* and the provision thereto, intended to make this rule of equity applicable in India. S 50 of the Indian Succession Act does not apply to such cases. The instructions of the testator are given effect to under the English law, and under s. 5 of the Trusts *Act, not as a part of the will, but by* fastening on the conscience of the legatee a personal obligation to carry into effect the wishes of the testator, in order to prevent the perpetration of fraud. The [illegible]

[illegible] applies where the testator intending to dispose [illegible] leaves the estate [illegible] ce to the [illegible] or will [illegible] ator has [illegible] ecret instructions with the intention of retaining the estate himself and applies for letters of administration as universal legatee, the Court will refuse the grant. *McCormick* v. *Grogan, L. R. 4 E. & I. 82, p 97*, referred to *In re Maddock Llewelyn v Washington, [1902] 2 Ch. 220*, referred to. *Per* WALLIS, J.—The beneficiary entitled under the secret trust communicated to and accepted by the legatee claims through the legatee named in the will; and as no right as legatee can be established without a grant of probate or letters of administration under s. 187 of the Indian *Succession Act*, the beneficiary cannot maintain a suit to recover the benefit intended for him when there is no grant of probate or letters of administration. *Per* SANKARAN-NAIR J.—(*contra*).—S. 187 of the Succession Act is no bar to such a suit as the beneficiary [illegible] claim as *legatee*, but [illegible] atee, as far [illegible] rce an *alle*- [illegible] stablish *any* [illegible] gatee is in possession of a substantial portion of the property he is an *executor de son tort* with all the liabilities

TRUSTS ACT (II OF 1882)—*contd.*

——— s. 5—*concld.*

of an executor and universal legatee and he cannot plead want of probate or letters of administration MANUEL LOUIS KUNHA v. JNANA COELHO (1908)
I. L. R. 31 Mad. 187

——— s. 6

See EXECUTOR . I. L. R. 26 Bom. 301

See HINDU LAW—GIFT
I. L. R. 29 Mad. 412

——— s. 6—*Hindu Law—Ancestral property—Trust by the Father—Will—Legatees* Certain legacies were devised by the will to relatives of the testator and others. *Held,* that as the Court had held that the appellants were not validly appointed executors, the legatees were not represented by them and no declaration could be made as to the validity or otherwise of the legacies HARILAL BAPUJI v. BAI MANI (1905)
I. L. R. 29 Bom. 351

——— s. 20.

See GUARDIAN AND WARDS ACT.
I. L. R. 33 Calc. 591

——— s. 30—*Executor—Failure to produce fund at appointed time—Advisory duty—Appoint-*

a clear breach of duty in the employment and supervision of the agent the liability of the trustee for breach of trust arises. LAKHMICHAND v. JAI KUVARBAI (1905) . . I. L. R. 29 Bom. 170

1. ——— s. 34—*Application for directions by trustees of charitable institution—Questions of*

TRUSTS ACT (II OF 1882)—*contd.*

——— s. 34—*concld.*

detail and difficulty—Procedure The management of the Doveton charities is vested in a committee of management who are empowered under the trust-deed to require the trustees of the funds of the charities to invest the trust-funds in excess of two lakhs of rupees "in the purchase or building of any additional land, building, and premises" Certain buildings, having been erected under these provisions of the trust-deed, were now stated to be in urgent want of repair The current income of the charities was not sufficient

2. ——— *Executor—Trustee—Advice of Court as to administration of property—Executor continuing as such—Administration suit* So long as an executor occupies that position, he cannot claim the advantages provided for trustees by s 34 of the Indian Trusts Act (II of 1882) If he feels any doubt as to the

——— s. 48—*No right to recover even where unlawful agreement only partly carried out—Decision not bad, although no distinct issue when parties not taken by surprise.* The rule that a person in *pari delicto* cannot recover is applicable not only where the unlawful agreement had been fully carried out, but also where there has been part performance of a substantial character of such ... ought ... to exe- ... Where ... suc, is present to the minds of the parties, the decision on such point cannot be impeached on the ground that there was no issue raised. MUTHURAMAN CHETTY v. KRISHNA PILLAI (1905)
I. L. R. 29 Mad. 72

——— s. 49.

See ACT XX OF 1863.
I. L. R. 17 Mad. 212

TRUSTS ACT (II OF 1882)—*contd.*

———— ss. 53, 36.

———— *Trustee—Transactions entered into by trustee for his own benefit—"Unless otherwise provided"—Equity in favour of a person paying off a subsisting charge on property—Appointment of cestui que trust as trustee.* S. 53 of the Indian Trusts Act (II of 1882) strikes at transactions entered into by a trustee for his own profit after he has accepted the trust and while he is performing the duties of the office. It does not render void a mortgage in favour of a person created before he becomes trustee of the property by the deed of trust itself as a condition of the trust imposed by the settlor. The expression "unless otherwise provided" used in s. 36 of the Indian Trusts Act (II of 1882), means, unless otherwise provided by the instrument of trust. Where there is a subsisting charge on certain property paid off by the person in possession, it is equitable that when the plaintiff reclaims the estate, credit should be given to that person for the payment of the mortgage which the plaintiff would have had to meet. *Mahomed Shumsool v. Shewukram, L. R. 2 I. A. 17. Lamba Ganapa v. Vishwanath Amrit, (1893) P. J. 39* and *Ranu v. Kalu, (1894) P. J. 23,* followed. There is no provision in the Indian Trusts Act (II of 1882) that a *cestui que trust* shall not be appointed a trustee. He is not as such incapacitated from being trustee for himself and others but as a general rule he is not altogether a fit person for the office in consequence of the probability of a conflict between his interest and his duty. ASHIDBAI *v.* ABDULLA (1906) . I. L. R. 31 Bom. 271

———— ss. 55, 60, 61.

See APPEAL—DECREES.
I. L. R. 11 All. 131

———— s. 56

See PARTIES—PARTIES TO SUITS—TRUSTS, SUITS RELATING TO.
I. L. R. 23 Mad. 239

———— ss. 63 and 64—*Trust not established.* A claim made for a share of property by inheritance from a deceased relation who had been in joint possession of it with the defendant was met by the defence that the estate had been jointly held for religious and charitable purposes under a will, the deceased having had no beneficial or heritable interest. The defendant alleged that the original owner of the property had bequeathed the property in trust for these purposes. The claimant alleged a revocation of the will, and denied that there was such a trust. The judgment of the High Court, decreeing the claim, observed that, even assuming that there had been a trust under the will recognized by the deceased and the defendant, the property which had come into their possession had been by them appropriated *from the first to their own purposes,* and had been so long held by them adversely to the trust title that the defendant could not now allege that there was no beneficial interest transmissible by inheritance. Upon this the Judicial Committee pointed out that no trustee could have actually acquired a title by such an appropriation against the trust: Indian Trusts Act, 1882, ss. 63 and 64. They added that, at the same time, the judgment of the High Court had come to the right conclusion, for the will and the trust alleged had not been established. BITTO KUNWAR *v.* KESHO PRASAD MISR . . I. L. R. 19 All. 277
L. R. 24 I. A. 10
1 C. W. N. 265

———— s. 72.

See ADMINISTRATOR-GENERAL'S ACT (V of 1902), s. 4, cl. 2.
I. L. R. 29 Bom. 188

———— s. 74.

See APPEAL—DECREES.
I. L. R. 19 All. 131

———— s. 74—*Administrator-General's Act (V of 1902), s. 4, cl. 2—Discharge by Court of an executor—Vesting of property in the continuing executor.* The Court has power to discharge an executor on his own application, if proper case be made out. An executor so discharged remains liable for anything he has done or left undone while an executor—it only relieves him from the duties of his office from the date of the discharge. *Ex parte* AMERCHAND MADHOWJI (1905)
I. L. R. 29 Bom. 188

———— ss. 81, 83.

———— *Trust for a specific purpose—Express trust—Resulting trust—Limitation Act (XV of 1877), s. 10. Per* BATCHELOR, J. *(obiter).*—S. 10 of the Limitation Act does not apply where the object of the original trust being uncertain or undiscoverable, a resulting trust arises by operation of ss. 81 and 83 of the Indian Trusts Act, 1882. Whether the resulting trust flow from the invalidity of the declared trust or from the impossibility of ascertaining the declared trust, it is equally a substituted trust, that is, a trust which is created by the law *faut de mieux,* that is as the best arrangement which the law regards as possible in difficult circumstances. This general rule is affected to this extent only, that where there is a trust covering the whole estate and the bequests do not exhaust the estate, the trustees are expressed trustees of the residue for the heir of the testator. MATHURADAS *v.* VANDRAVANDAS (1906) . I. L. R. 31 Bom. 222

———— s. 82

See HINDU LAW, WILL.
I. L. R. 29 Bom. 306

———— ss. 82, 88.

See BENAMI TRANSACTION—CERTIFIED PURCHASER—CIVIL PROCEDURE CODE, 1882, s. 317 . I. L. R. 22 All. 434

———— s. 84—

See CONTRACT ACT (IX of 1872), ss. 2, 20 to 35, 65 . I. L. R. 33 Bom. 411

TRUSTS ACT (II OF 1882)—*concld.*

——— s. 84—*Benami sale to defraud creditors where no creditor defrauded, vendee holds property for the benefit of vendor.* Where a benami sale is effected to defraud creditors, but no creditor is actually defrauded thereby, the transferee, under s 84 of the Trust Act, holds the property for the benefit of the transferor. A suit for the specific performance of a contract to sell made by the transferee can be successfully resisted by the transferor. S. 84 of the Trust Act embodies the principles recognized by English Courts at the time the Act was passed; and the fact that English Courts subsequently doubted the soundness of these principles will not justify the Courts in India in departing from the rule of law laid down by the section. Judgment of BENSON, J., in *Yaramati Krishnayya v Chundru Papayya, I. L. R. 20 Mad. 326,* not followed. *Ledlingappa v Hirasa, I. L. R. 31 Bom. 405,* distinguished. MUNISAMI MUDALIAR *v* SUBBARAYAR (1907) . . I. L. R. 31 Mad. 97

——— s. 88.

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION . I. L. R. 23 Mad. 377

——— s. 90.

See APPEAL, ABATEMENT OF
I. L. R. 30 Mad. 67

——— s. 91.

See TRANSFER OF PROPERTY ACT, s. 40
I. L. R. 29 Mad. 177

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.
I. L. R. 24 Bom. 400

See VENDOR AND PURCHASER—INVALID SALES . . I. L. R. 26 Bom. 159
I. L. R. 18 Mad. 43

——— ss. 91, 95.

See INJUNCTION—SPECIAL CASES—EXECUTION OF DECREE.
I. L. R. 21 Mad. 353

TURN OF WORSHIP OF IDOL.

See HINDU LAW—SHEBAIT
I. L. R. 29 Mad. 283
10 C. W. N. 825

——— right to—

See DAMAGES—SUITS FOR DAMAGES—TORT . . I. L. R. 3 Calc. 390

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UBHAYAPATTOM.

——— *Malabar Law—Ubhayapattom—Agreement in mortgage perpetually void as a clog on the equity of redemption.* An "ubhayapattom" is a kanom mortgage. Where from the terms of an ubhayapattom it is clear that

UBHAYAPATTOM—*concld*

the debt was not intended to be extinguished, a covenant for perpetual renewal by the mortgagor operates as a clog on the equity of redemption and the addition of the words "you shall hold the properties for ever without surrendering them" does not convert such a transaction into an immediate grant of a permanent interest. Such a covenant will be inoperative as a clog on the mortgagor's right of redemption in a mortgage executed before the passing of the Transfer of Property Act and subsequent to 1858, on the principles of equity which formed the basis of judicial decisions during that period. NEELAKANDHAN NAMBUDRIPAD *v* TIRUNILAI ANANTHA KRISHNA AYYAR (1906) . I. L. R. 30 Mad. 61

UGANDA, CONSULAR COURT OF.

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.
I. L. R. 22 Bom. 54

ULTRA VIRES

See CHAUKIDARI CHAKRAN LAND, SETTLEMENT OF . I. L. R. 32 Calc. 1107

See CRIMINAL PROCEDURE CODE, s. 21
8 C. W. N. 862

See DAMAGES, SUIT FOR
I. L. R. 34 Calc. 863

See FOREST ACT (VII OF 1871).
I. L. R. 29 Bom. 480

See LEASE . I. L. R. 34 Calc. 1030

See LETTERS PATENT, 1865, cl. 12
11 C. W. N. 663

See RULE 515 A OF THE HIGH COURT
I. L. R. 34 Calc. 619

1. ——— *Nullity—Executive Government.* An order, which is entirely *ultra vires*, of the Executive Government is a mere nullity and no suit is necessary to set it aside. BALVANT RAMCHANDRA *v* SECRETARY OF STATE (1905)
I. L. R. 29 Bom. 480

2. ——— *Local Self Government Act (III of 1885), ss. 139 and 78—Bye-law made under—Authority of the District Board to make the bye-law.* Where a bye-law of a District

Board, shall be liable to a fine not exceeding R50, and to a further fine not exceeding R2 for every day on which the offence is continued;"

ULTRA VIRES—*concld.*

punishable under the bye-law. RAMAUTAR SAHU *v* ARRAH MUNICIPAL BOARD (1907)
11 C. W. N. 1099

UMPIRE.

See ARBITRATION—APPOINTMENT OF ARBITRATORS AND UMPIRES

UNASCERTAINED GOODS.

See CONTRACT . **I. L. R. 33 Calc. 547**

UNBORN PERSON.

— — — gift to—

See MAHOMEDAN LAW.
I. L. R. 36 Calc. 431

UNCERTAINTY.

See WILL . **I. L. R. 31 Bom. 583**

UNCHASTITY.

See DEFAMATION—IMPUTATION ON A WIFE **I. L. R. 25 Bom. 151**

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT ADOPT . **5 B. L. R. 362**
I. L. R. 5 Mad. 358
I. L. R. 9 Bom. 94

See HINDU LAW—INHERITANCE
I. L. R. 32 Calc. 871
9 C. W. N. 1003

See HINDU LAW—

INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF INHERITANCE—UNCHASTITY

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW.
12 B. L. R. 238
L. R. I. A. Sup. Vol. 203
I. L. R. 1 Bom. 559
I. L. R. 7 Bom. 84
I. L. R. 9 Bom. 108
I. L. R. 15 All. 382
I. L. R. 17 Mad. 392
I. L. R. 27 Bom. 465

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIFE **1 Mad. 372**
2 Mad. 337
8 Mad. 144
I. L. R. 19 Mad. 6

See HINDU LAW—STRIDHAN—EFFECT OF UNCHASTITY . **I. L. R. 1 All 46**

See HINDU LAW—WIDOW —DISQUALIFICATIONS—UNCHASTITY.

See PARTITION—RIGHT TO PARTITION—WIDOW . **I. L. R. 24 Mad. 441**

See SLANDER **I. L. R. 28 Calc. 452**
9 C. W. N. 847

UNCONSCIONABLE BARGAIN.

See CONTRACT ACT (IX OF 1872), s. 16
I. L. R. 32 Bom. 37 ; 208
I. L. R. 31 All. 386

UNCONSCIONABLE BARGAIN—*contd.*

See DISQUALIFIED PROPRIETOR.
10 C. W. N. 849

See INTEREST—MISCELLANEOUS CASES—BOND . . **I. L. R. 25 All. 284**

See WILL—CONSTRUCTION.
5 C. W. N. 729

1. ——————— Undue influence—*Circumstances under which relief may be granted by the Court.* A person of the age of some twenty-eight years, the son of a wealthy father, but of profligate habits and greatly in need of money, his father having refused to supply him, executed a bond to secure a sum of R500, with interest, which amounted to R37-8 0 per cent per annum, with six-monthly rests. The bond further contained a stipulation that the borrower should not be empowered to repay the money within three years And if he did pay within three years, he should nevertheless be obliged to pay three years' interest at the rate mentioned. *Held*, that, although it could not be said that the execution of this bond was procured by means of undue influence or that the rate of interest was penal, nevertheless the bargain was an unconscionable bargain against which the Court might properly ... The High Court affirmed the decree

... I. L. R. 25 All 284 ...
... rosunno
... Ram Lal
... ah Mo-
... I. A.
... AN LAL
(1907) . . . **I. L. R. 29 All 303**

2. ——————— *Unconscionable bargain—Parties not on an equal footing—Defendant not aware of the nature of the transaction—Undue influence—Contract voidable.* To render a ... influence ... as re- ... igh rate ... Equity ... on that ... not by itself ... There must ... en there is ... tances they ... justice and ... nsaction are not on an equal footing, when it appears that the borrower was not aware of the real nature of the ... his signature to a document, ... it terms to ... n the actual ... than what appears on the document, which the borrower when pressed for payment for what appears due on such a document has to renew on still more exorbitant terms, all these are additional circumstances sufficient to make out a *primâ facie* case of undue in-

UNCONSCIONABLE BARGAIN—*concld.*

fluence so as to throw the onus on the lenders to disprove it. CHATRING, MOOLCHAND & Co v. WHITCHURCH (1907). . I. L. R. 32 Bom. 208

3. ——— ——— **Exorbitant rate of interest** —*Unconscionable transactions—Contract Act (IX of 1872), ss 16, 19A—Contract induced by undue influence—Money-lender—Undefended suit—Court's right to interfere—Reasonable rate of interest, what is* Under ss. 16 and 19A of the Indian Contract Act the Court has power to interfere and relieve a defendant against what may appear to the Court to be unconscionable transactions. The circumstances in each case must be looked to in order to decide what would be a reasonable rate of interest to allow POMA DONGRA v WILLIAM GILLESPIE (1907)
I. L. R. 31 Bom. 348

4. ——— **Fraud**—*Loan borrowed by a person in urgent need of money—Promise to pay a time-barred debt—Unfair and unconscionable bargains—Undue influence—Coercion—Contract Act (IX of 1872), s 16* A Court of Equity will not set aside a contract, merely because it flows from moral, not legal, obligations, unless it was proved that the defendant was forced, tricked or misled into it by the plaintiff by means of fraud, using that word not merely in the restricted sense of actual deceit, but in the larger sense of an unconscientious use of power arising out of certain circumstances and conditions and showing that the defendant, having been victimised by the plaintiff's unfair and improper conduct, was unable to understand what he was doing GANESH v. VISHNU (1907) . I. L. R. 32 Bom. 37

UNCOVENANTED SERVICE FAMILY PENSION FUND.

See MUTUAL BENEFIT SOCIETY.
I L. R. 7 Calc. 1
I. L. R. 22 Bom 451

———— **entrance certificate of**—

See STAMP ACT, 1879, s 3, SUB-S 15
I. L. R. 19 Calc. 499

UNDERGROUND RIGHTS

See LANDLORD AND TENANT
I. L. R. 33 Calc. 54

See LIFE ESTATE
13 C. W. N. 611

See MINERAL RIGHTS.

See MINES AND MINERALS.

———— **granted by Digwar**—

See SERVICE TENURE 12 C. W. N. 193

UNDER-PROPRIETOR.

———— **right of**—

See OUDH RENT ACT, s. 108
13 C. N. W. 1093

UNDER-RAIYAT.

See LANDLORD AND TENANT.
13 C. W. N. 595

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.
I. L. R. 29 Calc. 231
I. L. R. 34 Calc. 358

See UNDER-TENURE

———— **deposit by**—

See BENGAL TENANCY ACT, s. 171.
13 C. W. N. 97

———— **ejectment of**—

See BENGAL TENANCY ACT, s 85
13 C. W. N. 913

1. ———— **"Person whose immoveable property has been sold"**—*Civil Procedure Code (Act XIV of 1882), s 310A—Sale in execution, deposit to set aside—An under-raiyat under the judgment debtor—Locus standi.* An under-raiyat can apply under s. 310A, Civil Procedure Code, as being a person whose immoveable property has been sold in execution of a decree for arrears of rent due in respect of the superior holding. *Narain Mandal* v *Sourindra Mohan Tagore, I L R 32 Calc. 107 ; Paresh Nath Singha* v. *Nabo Gopal Chattopadhya, I. L. R 29 Calc. 1 , Binodini* v. *Peary Mohan Haldar, 8 C. W. N 55 ; Kunja Behary* v *Sambhu Chandra, 8 C W. N. 232,* followed in principle. *Abed Mollah* v *Diljan Mollah, I L. R 29 Calc. 459,* dissented from. CHANDRA KUMAR NATH *v.* KAMINI KUMAR GHOSE (1907) . . . 11 C. W. N. 742

2 ———— **Heritability**—*Under-raiyat—Bengal Tenancy Act (VIII of 1885), s 19* The heirs of an under raiyat under an annual holding do not acquire an interest in his holding by inheritance. The only right which they have, irrespective of custom or local usage, is to

[illegible]

DASI *v.* RAJENDRA NATH CHUKERBUTTY (1906)
11 C. W. N. 519

UNDERTAKING NOT TO SUE.

See ARREST—CIVIL ARREST.
I. L. R. 1 Calc. 78

See WARRANT OF ARREST—CRIMINAL CASES . . 2 B. L. R. A. Cr. 17

UNDER-TENURE.

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS.

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

See SALE FOR ARREARS OF RENT—PORTION OF UNDER-TENURE, SALE OF.

See UNDER-RAIYAT.

UNDER-TENURE—*concld*

——— avoidance of—

See Sale for Arrears of Rent—Incumbrances.

——— suit to cancel—

See Limitation Act, 1877, Sch. II, Art 121 (1871, Art. 119) I. L. R. 4 Calc. 860
I. L. R. 25 Calc. 167

UNDERWRITER.

See Insurance—Marine Insurance
I. L. R. 2 Bom. 550
12 Bom. 23
3 Bom. A. C. 1
Cor. 2 : Hyde 107

liability of—

See Marine Insurance
13 C W. N. 425

UNDISCLOSED PRINCIPAL.

See Contract Act (IX of 1872), s 231
I. L. R. 32 Bom 356

UNDIVIDED SHARES IN LAND.

See Mahomedan Law—Gift
L. R. 34 I. A. 167

UNDUE INFLUENCE.

See Acquiescence
I. L. R 17 Mad. 275

See Benami Transaction.
I. L. R. 33 Calc. 773

See Champerty . 13 B. L. R. 509
L. R. 1 I. A. 241

See Contract—Alteration of Contracts—Alteration by Court (Inequitable Contracts)
L. R. 4 I. A. 101
I. L. R. 10 All. 535
I. L R. 22 All. 224
I. L. R. 25 Bom. 126

See Contract Act (IX of 1872), s 16.
I. L. R. 32 Bom. 37; 208
I. L. R. 31 All. 386

See Deed—Cancellation.
I. L. R. 10 All. 535

See Disqualified Proprietor.
I L. R. 28 All 570

See Fiduciary Relationship.
I. L. R. 30 Mad. 169

See Fraud . I. L. R. 28 Bom. 639

See Hindu Law—Adoption—Who may or may not adopt
I L. R 13 Mad. 214

See Landlord and Tenant.
13 C. W. N. 167

See Mahomedan Law—Endowment
I. L. R. 22 Calc. 324
L. R. 22 I. A. 4

UNDUE INFLUENCE—*contd.*

See Mahomedan Law—Gift—Validity.
I. L. R. 16 Mad. 43

See Onus of Proof—Decrees and Deeds, Suits to enforce to set aside.
I L. R. 18 Calc 545
L. R. 18 I. A. 144
I. L. R. 12 All. 523

See Onus of Proof—Principal and Agent . I. L. R. 25 All. 358

See Pardanashin Women
5 C. W. N. 505

See Plea . I. L. R 28 Bom. 639

See Unconscionable Bargain.

See Vendor and Purchaser—Invalid Sales . . Cor. 57
1 B. L. R. A. C. 95
I. L. R 5 Bom. 450

See Will—Execution.
I. L. R. 22 Bom. 17
L. R. 24 I. A. 148

See Will—Validity of Will.
I. L. R. 7 Mad. 515

1. ——— Onus of proof—*Third party not in confidential relationship.* A third person who stands in no confidential relation to a grantor who is under age is not bound in the first instance to show that undue influence was used in a transaction. The subject of undue influence considered. Raj Coomar Roy *v.* Alfuzuddin Ahmed
8 C. L. R. 419

2. ——— *Gift—Suit—Benami transactions—Pardanashin lady—Suit to set aside deeds as having been executed by person of unsound mind—Alleged influence of daughter over her mother—Gift with imaginary consideration inserted in deed.* In a suit by a son to set aside certain transactions entered into by his mother, a Mahomedan lady, in favour of her daughter, the defendant, by which the daughter acquired possession of most of her mother's property, the plaint alleged that his mother was, at the time the transactions took place, of "unsound mind and entirely under the domination and control" of her daughter. Both Courts in India found that the mother was not of unsound mind, but the first Court treated her as a *pardanashin lady* and as "entirely under the control and domination" of the defendant, who had unscrupulously used her power over her mother to get her mother's property into her own hands, and made a decree that the transactions should be avoided on the ground of undue influence. The Court of appeal reversed the finding with respect to undue influence and dismissed the suit. *Held*, that, assuming the question of undue influence could be set up at all [illegible] except with [illegible] had been [illegible] it), no [illegible] by the [illegible] mother [illegible] special

UNDUE INFLUENCE—*contd.*

influence or control; and the evidence was insufficient to establish any general case of domination on the part of the daughter, any subjection of the mother, such as to lead to a presumption against any transaction between the two; and with regard to the actual transactions, there was no evidence whatever of undue influence brought to bear upon them. *Held*, also, that in the evidence and circumstances of the case the transactions in dispute were absolute gifts, and not *benami* transactions, which might have been set aside ISMAIL MUSAJEE MOOKERDAM *v.* HAFIZ BOO (1906)

I. L. R. 33 Calc. 773
s c L. R. 33 I. A. 86
10 C. W. N. 570

3. ——————— *Contract Act (IX of 1872, as amended by Act VI of 1899), ss 16, 74* Urgent need of money on the part of the borrower does not of itself place the lender in a position to "dominate his will" within the meaning of s 16 of the Contract Act (IX of 1872), as amended by s. 2 of Act VI of 1899. *Dhanipal Das v Maneshar*

4. ——————— *Contract Act (IX of 1872), ss 16, 19A—Unconscionable bargain—Parties not on an equal footing—Defendant not aware of the nature of the transaction—Contract voidable.* To render a contract voidable on the ground of undue influence there must be evidence

terms to those appearing on the face of it, when the actual rate of interest is many times higher than what appears on the document, when the borrower when pressed for payment for what appears due on such a document has to renew on still more exorbitant terms, all these are additional circumstances sufficient to make out a

I. L. R. 32 Bom. 208

5. ——————— **Promise to pay a time-barred debt**—*Undue influence—Urgent need of money—Loan borrowed by a person in urgent need of money—Unfair and unconscionable bargains—Fraud—Coercion—Equity.* The defendant, a karkun in the Government service, being heavily indebted and being very much harassed by his creditors, applied to the plaintiff for a loan or a mortgage The plaintiff agreed to lend provided the defendant executed a *khata* for the payment of R307-4-0 originally due by the latter's father, but which in 1894 had been held to be time-barred in a suit brought by the plaintiff and also for the payment of R25, the costs of that suit. The defendant, accordingly on the 16th September 1895 passed a *khata* for R332-4 0 for the amount due under which the defendant finally passed a promissory note for R600 on the 27th August 1901. Upon this promissory note the present suit was brought The Subordinate Judge held that the defendant received from the plaintiff only R28 on the 16th September 1895, of which R10 had been repaid, and passed a decree for R36 (*viz*, Rs. 18, the amount of principal, and R18 as interest). On appeal, the District Judge, varied the decree by allowing plaintiff's claim to the further extent of R307-4-0; and disallowed the rest of the claim on the ground that it was vitiated by undue influence, which the plaintiff exercised over the defendant On appeal: *Held*, that the plaintiff's claim ought to be allowed in full. If, according to law, a promise to pay a debt barred under the Statute of Limitation is valid and is supported on the principle that in so promising the debtor is doing what every honest man, morally speaking, ought to do and would do, the

a man, who is in urgent need of money on account of his poverty and pecuniary difficulties, asks for a loan from another, that other is in one sense in a position to dominate the will of the former by proposing his own terms and getting the borrower to agree to them The borrower's necessity is in such cases the measure of the terms agreed to. That is a feature of every contract of money-lending, where the borrower is a man without credit and the lender is exposing his money to considerable risk But that is not the vague kind of relation and domination contemplated by the plain terms of cl 1 of s. 16 of the Contract Act (IX of 1872) There are well-known relations such as those of guardian and ward, father and son, patient and medical adviser, solicitor and client, trustee and *cestui que trust* and the like which plainly fall within cl. 1 of the section. Where no such specific relations exist and the parties are at arm's length, being strangers, undue influence

UNDUE INFLUENCE—*concld.*

been exerted, are of great importance. In short, the test is, confidence reposed by one party and betrayed by the other, which means that there must be an element of fraud or coercion, under either of which the acts constituting undue influence must range themselves. The expression "unfair advantage" in cl. 1 of s. 16 of the Contract Act (IX of 1872) is used as meaning an advantage obtained by unrighteous means. A Court of

using that word not merely in the restricted sense of actual deceit, but in the larger sense of an unconscientious use of power arising out of certain circumstances and conditions, and showing that the defendant having been victimised by the plaintiff's unfair and improper conduct was unable to understand what he was doing. GANESH v. VISHNU (1907) . . I. L. R. 32 Bom. 37

UNITED PROVINCES COURT OF WARDS ACT (III OF 1899)

——— ss. 9, 35, 47.

See NORTH-WESTERN PROVINCES LAND REVENUE ACT (XIX OF 1873), ss 194 (*g*), 203 . I. L. R. 29 All. 589

UNITED PROVINCES LAND REVENUE ACT (III OF 1901).

See CIVIL PROCEDURE CODE, 1882, s. 265. I. L. R. 28 All. 375

See CONTRACT ACT, s. 69. I. L. R. 28 All. 583

——— ss. 56 and 86—*Cess—Rent—Payment recorded in wajib-ul-arz as muhtarifa. Held*, that certain dues recorded as payable to the zamindars by a class of residents in the *abadi* other than agricultural tenants, and described in the village wajib-ul-arz as "*muhtarifa*," were payments to be made by way of rent, and no cesses such as required the general or special sanction of the Local Government for their validation ABDUL HAI v. NATHU (1904) I. L. R. 27 All. 183

——— ss. 110, 111, 223 (k).

See PARTITION. I. L. R. 29 All. 604

——— ss. 110, 111 and 233 (k)—*Partition —Suit for recovery of property in Civil Court—*

tunity of having his objections considered under s. 11 and has not availed himself of it. KHASAY v JUGLA (1906) . . I. L. R. 28 All. 432

——— ss. 147, 195, 196.

See PENAL CODE, s. 173. I. L. R. 31 All. 608

UNITED PROVINCES LAND REVENUE ACT (III OF 1901)—*contd.*

——— ss. 147, 227, 228.

——— *Penal Code (Act XLV of 1860), s 353—Attachment—Power of Tahsildar to issue warrants of attachment for realization of revenue. Held*, that a Tahsildar has no power under the United Provinces Land Revenue Act, 1901, to issue a warrant of attachment in order to realize arrears of Government revenue, nor is a warrant issued by a Tahsildar validated by general authority to that effect given to him by the Collector of the District EMPEROR v. RADHE LAL (1907) I. L. R. 29 All. 272

——— ss. 183 and 233.

See CONTRACT ACT (IX OF 1872), s 69.

——— s. 223 (k)

See N.-W. P. LAND REVENUE ACT, 1873, ss. 132, 241 . I. L. R. 31 All. 41

——— s. 233 (k).

1. ——— *Suit for partition of Dera and site—Civil and Revenue Court—Jurisdiction.* In a suit for partition of a *Dera* standing on agricultural land situate in a *mahal* in which the plaintiffs had a share :—*Held*, that

ition also and that enue Act.

I. L. R. ... All. 330

2. ——— *Mode of partition*

fendants The plaintiff was referred to a civil

suit under s. ...
The dispute related to the mode of partition made by the Revenue Court and a Civil Court had no jurisdiction to entertain it. DEBI SARAN PANDE v RAMJAS (1909) . . I. L. R. 31 All. 541

——— s. 234—*Lambardar and co-sharer—Remuneration of lambardar—Rules of the Board of Revenue dated 24th February, 1902, Nos. 22 and 23. Held*, that, in the absence of any agreement between the lambardar and co-sharers as to the lambardar's remuneration, the lambardar is entitled to 5 per cent. under Rule 23 of the Board of Revenue

UNITED PROVINCES LAND REVENUE ACT (III OF 1901)—*concld*

——— s. 234—*concld.*

Rules, dated February 24th, 1902, and is entitled to the benefit of this rule, although in previous years he may have received nothing GENDA KUNWAR *v.* PIARI LAL (1906) I. L. R. 28 All. 693

UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900).

See N.-W. P. AND OUDH MUNICIPALITIES ACT

——— s. 3

United Provinces Municipalities Acts 3 (4)—Definition—" Street " [illegible]

" street " within the meaning of s. 3 of the Municipalities Act, 1900, and was not the less a street because it happened to be a cul-de-sac MUNICIPAL BOARD OF BULANDSHAHR *v.* DAKKHAN LAL (1907) I. L. R. 30 All. 70

——— ss. 82, 87 (3)

——— *Application for permission to build—Implied permission—Power to* [illegible]

express or implied, to the erection of a specified building necessarily carries with it a right to put up such ordinary scaffolding as would be necessary under ordinary circumstances for the execution of the work. EMPEROR *v.* GOKUL (1907) I. L. R. 29 All. 737

UNLAWFUL ASSEMBLY.

See ABSCONDING OFFENDER I. L. R. 29 Calc. 417

See CHARGE—FORM OF CHARGE—SPECIAL CASES—RIOTING. I. L. R 21 Calc. 827; 955 I. L. R. 26 Calc. 630 3 C. W. N. 605

See CHARGE—FORM OF CHARGE—SPECIAL CASES—UNLAWFUL ASSEMBLY.

See CHARGE TO JURY—SPECIAL CASES—RIOTING . I. L. R. 21 Calc. 955

See CHARGE TO JURY—SPECIAL CASES—UNLAWFUL ASSEMBLY.

See PENAL CODE, ss. 141 to 145.

See PENAL CODE, s. 186 I. L. R. 30 Calc. 285

See PRIVATE DEFENCE, RIGHT OF. I. L. R. 26 Mad. 249

UNLAWFUL ASSEMBLY—*contd.*

See RIOTING.

See SECURITY TO KEEP THE PEACE. I. L. R. 35 Calc. 315

1. ——— Penal Code, s. 141—*Rioting—Assembly originally lawful* An assembly, lawful in its inception, may become unlawful by its acts. If force is used, the higher offence of rioting is committed QUEEN *v* KHEMEE SINGH 1 W. R. Cr. 19

2. ——— *Common object.* In order to convict of the offence of being members of an unlawful assembly, it must be shown that the accused were actuated by a common object, and that the acts done by them were of such a nature as to make them guilty under s. 141 of the Penal Code. QUEEN *v.* DINOBUNDO RAI . . . . . . 9 W. R. Cr. 19

In the matter of the petition of KOYLASH CHUNDER DASS . . . . . 20 W. R. Cr. 78

3. ——— Penal Code (Act XLV of 1860), ss. 141 and 147 [illegible]

of which was by show of criminal force, and by criminal force, if necessary, to enforce the right to keep the river channel clear by preventing the construction of the bund and by demolishing it so far as it was constructed, and that the case came

UNLAWFUL ASSEMBLY—*contd.*

within s. 141, para. (4). *Queen* v. *Mitto Singh, 3 W. R. Cr. 41*; *Shunker Singh* v. *Burmah Mahto, 23 W. R. Cr. 25*; and *Birjoo Singh* v. *Khub Lall, 19 W. R. Cr. 66*, referred to and commented on. GANOURI LAL DAS v QUEEN-EMPRESS.
I. L. R. 16 Calc. 206

4. ———— Penal Code, ss. 141 and 154—*Owner of land on which unlawful assembly is held—Common object* *Held*, that the owner or occupier of land on which an unlawful assembly is held cannot be convicted under s. 154 of the Penal Code, unless there is a finding that the riot was premeditated Where two opposite factions commit a

5 ———— *Affray and unlawful assembly* There is no ground for the distinction between an unlawful assembly as a premeditated act and an affray as a sudden one; for according to s 141 of the Penal Code, an assembly which was not unlawful when it assembled may subsequently become an unlawful assembly. *In the matter of the petition of* LOKENATH KAR
18 W. R. Cr. 2

6. ———— *Maintenance of rights—Intention of parties*. No charge of members of an unlawful assembly under s 141, Penal Code, can be sustained, where the intention of the parties was not to enforce a right or supposed right, but to maintain undisturbed the actual subsisting enjoyment of a right which was at that time being exercised. SHUNKER SINGH v. BURMAH MAHTO . . . . . 23 W. R. Cr. 25

7. ———— *Person joining it and staying to prevent mischief to property.* It cannot be said that a person intentionally joins an unlawful assembly or continues in it when it appears from the evidence that he went to the place where the members of the unlawful assembly were gathered, to prevent mischief being done to his own property which he had a right to protect BIRJOO SINGH v. KHUB LALL . 19 W. R. Cr. 66

8. ———— *Raiyats carrying away crops* Where the defendants, raiyats of a portion of a zamindari sold in execution of a decree of the Civil Court, reaped and carried away their crops despite the purchaser's people, and refused

. . . . . 4 Mad. Ap 65

9 ———— *Interrupting procession as a nuisance. Held*, that the act of the defendants in assembling and forcibly interrupting a procession was forbidden by cl. 4 of s. 141 of the Penal Code, although the defendants acted upon the ground that the procession was a nuisance or annoyance to them or their community. ANONYMOUS . . . . . 5 Mad. Ap. 6

10. ———— Penal Code, ss. 141, 143—*Assertion of right.* One of two village factions objected to the other passing in procession over

formed and approached the ground in question. Forty-six members of the first-named faction were assembled there to prevent the procession by force; the police ordered them to disperse: this order having been neglected, the police prevailed on the other faction to abandon the procession *Held*, that the persons who did not disperse on being ordered to do so were guilty of the offence of being members of an unlawful assembly. QUEEN-EMPRESS v. TIRAKADU . I. L. R. 14 Mad. 126

11. ———— Penal Code, s. 143—*Dispute as to possession of land—Assembly going with armed men to sow land* On the trial of certain persons charged with being members of an unlawful assembly it was proved that there was a dispute of long standing between the accused and certain other parties regarding the possession of certain land; that neither of the parties was in undisturbed possession of the land; that the accused went to sow the land with indigo, accompanied by a body of men armed with lathies; that they were prepared to use force, if necessary; and that the lathials kept off the opposite party by brandishing their weapons while the land was sowed *Held*, that the accused were rightly convicted of being members of an unlawful assembly, under s.143 of the Penal Code. *Shunker Singh* v. *Burmah Mahto, 23 W. R. Cr. 25*, distinguished. *In the matter of* PEARY MOHUN SIRCAR. PEARY MOHUN SIRCAR v EMPRESS . I. L. R. 9 Calc. 639

s c *In the matter of* PEARY MOHAN SIRCAR.
13 C. L. R. 60

12. ———— Penal Code, ss. 143 and 353—*Using criminal force to public servants in execution of duty—Resistance to search-warrant* Where the officer in charge of a police station required the officer in charge of another police station to cause a . . . limits of its . . . ired, de- . . . make the . . . order in . . . 2, it was . . . attempted *held* that the persons resisting . . . could not be lawfully convicted under ss. 353 and 143 of the Penal Code. QUEEN v. NARAIN
7 N. W. 209

13. ———— Penal Code, s. 147—*Rioting—Abating nuisance.* A, joint owner of a parcel of land, erected on it an edifice without the consent of B, another joint owner A dispute arose, and the Magistrate on inquiry ordered, under s. 531 of the Criminal Procedure Code, 1872, A to be put

UNLAWFUL ASSEMBLY—*contd*

in possession of the part of the land on which the edifice had been erected. *B* subsequently brought a suit in the Civil Court to establish his title to joint possession of the whole parcel and for a declaration that *A* was not entitled to erect any edifice thereon; and he further prayed that such edifice should be removed. *B* obtained a decree, whereupon his servants went on the land and pulled it down. They were charged before the Deputy Magistrate with having committed mischief, and on this convicted and fined. On the 8th October, the accused, who were the servants of *B*, found the men in the employ of *A* were putting up this erection a nawbat khana, again, and accordingly protested against its erection, pulled down the bamboos, thrust aside the servants of *A*, throwing to the ground one man who was clinging to the bamboos. On the 9th October 1897 these servants were charged before the Magistrate with rioting, and convicted under s. 147, Penal Code. *Held, per* JACKSON, *J*, that, as the accused were not on the land in question as members of an unlawful assembly, nor for any unlawful purpose, the conviction, as well as the procedure, was illegal. *Held, per* CUNNINGHAM, *J*, that the accused were merely exercising the remedy of abating a private nuisance and were exercising a legal right of self defence. EMPRESS *v.* RAJCOOMAR SINGH

I. L. R. 3 Calc 573

s c. *In the matter of the petition of* RAJCOOMAR SINGH . . . . . . **2 C. L. R 62**

14. ——— **Penal Code, s 147 and s. 105, cl. 4**—*Mischief—Right of defence of property—Penal Code, s 105, cl 4* Where land in the possession of *A* encroached on by the servants of *B*, who committed mischief on the land, and the servants of *A* assembled and resisted the encroachments, the High Court declined to interfere with the Magistrate's order convicting the [illegible]

Code QUEEN *v* RAJ KISTO DOSS

12 W. R. Cr. 43

15. ——— **Penal Code, s. 149**—*Common object.* S 149 of the Penal Code creates no offence, [illegible]

I. L. R. 9 All. 645

16. ——— *Encouraging members of unlawful assembly.* Where persons join an unlawful assembly for the purpose of committing an assault, and, instead, of preventing those armed from using their weapons encourage them to do so, they were in the same position as those members of the unlawful assembly who struck the blows. QUEEN *v.* DUSHRUTH ROY

7 W. R. Cr. 58

17. ——— *Riot in which* [illegible] e of [illegible] the [illegible] the victorious as the worsted, were *held* equally guilty of culpable homicide not amounting to murder. QUEEN *v* MANA SINGH . **7 W. R Cr. 103**

18 ——— *Constructive murder under s 34, Penal Code—Effect on others charged under s. 149* *Per* FIELD, J.—Where a prisoner is constructively guilty of murder under [illegible] act. *In the matter of the petition of* JHUBBOO MAHTON. EMPRESS *v.* JHUBBOO MAHTON

I. L. R. 8 Calc. 739

s c. JHUBBOO MAHTON *v.* EMPRESS

12 C. L. R. 233

19. ——— *Common object.* Where a person was killed by a member of an unlawful assembly, in prosecution of the common object of that assembly, the common object being the abduction of that person's mother:—*Held*, that all those who were members of the assembly at the time such person was killed were guilty of the offence of killing her. *In the matter of* GOLAM ARFIN . . **4 B. L. R. Ap. 47**

s c QUEEN *v* GOLAM ARFIN

13 W. R. Cr. 33

20. ——— **Penal Code, ss. 149 and 300, except. 2**—*Common object—Murder.* One member of an unlawful assembly, whose common object was to eject certain persons from a piece of land, the title to which was disputed, fired at and killed one of such persons. *Held* by COUCH, *C.J*, and JACKSON, PHEAR and PONTIFEX, *JJ.* (AINSLIE, *J.*, dissenting), that the act being sudden and unpremeditated, the other members of the assembly were not guilty of the offence of murder under s. 149 of the Penal Code, but of rioting with a deadly weapon under s 148. QUEEN *v* SABED ALI **11 B. L. R. F. B. 347 : 20 W. R. Cr. 5**

21. ——— *Common object—Murder* A large body of men belonging to one faction waylaid another body of men belonging to a second faction, and a fight ensued, in the course of which a member of the first-mentioned [illegible] faction was killed. *Held* (by NORMAN, *J.*, whose opinion prevailed), that the wounded man had ceased to be a member of the unlawful assembly when he retired wounded, and that he could not, under s. 149 of the Penal Code, be made liable for subsequent murder. *Held* (by JACKSON, *J.*) that, he remained a member of the unlawful assembly QUEEN *v.* KABIL CAZEE . **3 B. L. R. A. Cr. 1**

UNLAWFUL ASSEMBLY—*contd.*

22. ———— *Prosecution of common object.* If a body of men armed with lathies and under the leadership of one who to the knowledge of the rest is armed with a gun, assembled for the purpose of forcibly carrying off another man's property, and if in effecting that purpose any one of the party, taking the gun, shoots and kills a person who is making a lawful resistance, the whole party may properly be convicted of murder under s 149 of the Penal Code *Queen* v. *Sabed Ali, 11 B L. R 347, 20 W. R. Cr 5,* cited HARI SINGH v EMPRESS **3 C. L. R. 49**

23. ———— *Acts taking place after unlawful assembly is over.* Where, after the object of an unlawful assembly had been accomplished and the opposite party driven away, one of the members entered into an altercation with another and wounded him with a fish-spear, it was *held* that the act was not one done with a view to accomplish the common object of the assembly, or one which the rest knew would be likely to be committed in the prosecution of that object QUEEN v BINOD **24 W. R. Cr. 66**

24. ———— **Penal Code, ss. 151 and 188** —*Assembly of five or more persons—Lawful command.* Where the object of only three persons

XLV of 1860), and that a refusal to disperse after being lawfully commanded to disperse rendered every member of the gathering liable to conviction under the said section An order given by an

25. ———— **Penal Code (Act XLV of 1860), ss. 302, 304**—*Good faith—Order of superior officer—Firing on an unlawful assembly* *A* caused crops to be sown on land, as to the enjoyment of which there was a dispute between her and *B.* Persons having proceeded to reap the crops on behalf of *B,* the servants of *A* went to the place with the station-house officer and some constables who were armed. The station-house officer ordered the reapers to leave off reaping and to disperse; but they did not do so; he then told one of the constables to fire, and he fired into the air Some of the reapers remained and as-

wounded one of the reapers It was found that neither the station-house officer nor the last-mentioned constable believed that it was necessary for the public security to disperse the reapers by firing on them. *Held,* that the station-house officer and the constable were not acting in good faith, and that the order to shoot was illegal and did not justify the constable, and that both he and the station-house officer were guilty of murder. QUEEN-EMPRESS v. SUBBA NAIK **I. L. R. 21 Mad. 249**

26. ———— **Penal Code, ss. 147, 148, 149 and 304**—*Rioting armed with a deadly weapon—Common object of unlawful assembly. Statement of, in charge—Error in charge misleading accused—Criminal Procedure Code, 1882, s. 225.*

charge in order that the accused person might have an opportunity of meeting it. Where a

have been that they had accepted the one which had not been charged, and which consequently the accused had not had an opportunity of meeting, the conviction must be set aside. If one member of an unlawful assembly is armed with a deadly weapon, the other members cannot on that account be charged under s. 148 of the Penal Code. It is only the actual person who can be charged under that section. SABIR v. QUEEN-EMPRESS **I. L. R. 22 Calc. 276**

27. ———— **Penal Code, s. 149**—*Common object—Murder—Prosecution of common object.* Neither of the cases of *Queen* v. *Sabed Ali, 11 B L. R. F. B. 347 : 20 W. R Cr. 5,* and *Hari Singh* v. *Empress, 3 C. L. R. 49,* lays down any hard-and-

others as members of an unlawful ... held criminally liable for offences committed by his associates which he himself neither intended nor knew to be likely to be committed. On the other hand, it is equally necessary for the protection of

UNLAWFUL ASSEMBLY—*contd.*

sembly may have a community of object only up to a certain point, beyond which they may differ in their objects, and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object will vary, not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of s 149 may be different on different members of the same unlawful assembly JAHIRUDDIN v. QUEEN-EMPRESS

I. L. R. 22 Calc. 306

28. ——— **Common object disbelieved** [illegible]

[illegible]

unlawful assembly, to find out a different common object regarding which the accused were never called upon to plead nor tried, and to affirm the conviction RAHIMUDDI v. ASGARALI (1900)

5 C. W. N. 31

29 ——— **Proof of unlawful assembly**—*Hiring and harbouring persons hired for an unlawful assembly, ingredients of offences of—Penal Code (Act XLV of 1860), ss. 141, 150 and 157.* S 50 of the Penal Code refers to a particular unlawful assembly. Where, therefore, it is found that any person has hired or engaged [illegible]

[illegible] committed such offence. S. 157 of the Penal [illegible]

[illegible] members of an unlawful assembly and the [illegible]

[illegible] doing is concealing and harbouring [illegible]

[illegible]

I. L. R. 29 Calc. 214
s.c. 6 C. W. N. 143

UNLAWFUL ASSEMBLY—*contd*

30. ——— *Penal Code, s. 143—Possession of land, question of—Onus of proof—Prosecution, duty of, to prove facts—Presumption* Where some persons were accused and charged with having come upon a piece of land with a large number of people and committed mischief in respect of some indigo crops said to have been raised upon it by the complainant's tenants, and the accused pleaded that they held the land from some time before, and in proof put in a road cess return, filed by the complainant, showing that the accused were, at the date when the return was filed, in possession of a larger plot of land, of which they claimed the land in dispute to be a part:—*Held*, that the presumption as to the possession of the disputed land was in favour of the accused and that it was for the prosecution to prove that the accused gave up possession of the land of which they had held previous possession, or that they had held some other lands in the same village which were mentioned in the road-cess return, before any conviction could be had of the accused BIKU KOER v. MARSHMAN (1901) . 5 C. W. N. 368

31. ——— **Lawful assembly becoming unlawful**—*Indian Penal Code (Act XLV of 1860), ss. 141, 146—Rioting—Common object—* A lawful assembly may turn unlawful all on a sudden, and without previous concert among its members Among the members of a religious procession, those who may be actually [illegible]

KING-EMPEROR (1902) . 6 C. W. N. 507

32 ——— **Defence by accused persons of property in their possession.** Paddy belonging to a society, to which the first accused belonged, was stored in a granary in a street It was found as a fact that this paddy had been in the possession of the first accused for some time prior to 5th November 1899, and was in his possession on that date. Complainant, on 5th November 1899, attempted, as treasurer of the society, forcibly to take possession of the paddy, with his servants, whereupon all the accused resisted him, and maintained the possession of the first accused, some blows being struck. On a [illegible] accused for rioting [illegible] committed.

AIYAR (1901)

. . . 25 Mad. 624

33. ——— **Possession of deadly weapons, if necessary to render each member of unlawful assembly liable for offence under s. 144.** *Penal Code, ss. 114, 144.* When one person instigates another to join an unlawful assembly armed with a deadly weapon, and afterwards joins the unlawful assembly himself, he may be punishable under s. 144, Indian Penal Code, read with s. 114, even though he

UNLAWFUL ASSEMBLY—*contd.*

was not himself armed with a deadly weapon. SRIHARI SHOME *v.* LAL KHAN (1900)
5 C. W. N. 250

34. ———— Evidence of common object. Two persons were charged with being members of an unlawful assembly armed with deadly weapons for the purpose of committing dacoity. The facts proved were that a crowd of about 100 persons, including the accused, had assembled together, armed with bill-hooks and sticks; and that the crowd had dispersed at once on seeing the police. On these facts the Magistrate assumed that the intention of the members of the crowd was to use criminal force, and, having regard to the weapons with which they were armed, he convicted the accused under s 144 of the Indian Penal Code *Held*, that the prosecution had failed to show that the common object of the crowd was such as would constitute it an unlawful assembly, as defined by s. 141 of the Indian Penal Code, and that the accused were entitled to be acquitted. QUEEN-EMPRESS *v.* PEELIMUTHU TEVAN (1900)
I. L. R. 24 Mad. 124

35. ———————— *Indian Penal Code (Act XLV of 1860), ss 148, 149, 324—Rioting, armed with deadly weapon—Offence committed in prosecution of common object.* The prin-

out. In the scuffle which ensued after they had entered the house, a wound was inflicted on another person, Wahid Ali, by one of them, with a dao picked up in the hut. The person who inflicted the wound was not placed on his trial. Of the others who were placed on their trial, the petitioners were convicted by the Joint Magistrate under s. 148 and s. 324, read with s. 149 of the Indian Penal Code. *Held*, that the conviction under s. 148, Indian Penal Code, was wrong, as each person charged under that section must himself be shown to have been armed *Sabir* v. *Queen-Empress, I. L R 22 Calc 276*, followed. *Held*, further, that the wound inflicted on Wahid Ali could not be regarded as the natural result of the common enterprise in which the accused were engaged, so that the conviction under s. 324, read with s. 149, was also wrong. HARENDRA CHANDRA SARKAR *v.* EMPEROR (1903)
7 C. W. N. 513

36. ———— Dispute amongst joint owners—*Penal Code, s. 143—Unlawful assembly with armed men—Force not actually used—Sentence—Criminal Procedure Code (Act V of 1898), s 106—Order against one joint owner—Proceeding against the other owner under s. 107, desirable.* Where two parties were entitled to joint possession of a property but one party having been out of possession, their servants (the petitioners) with 30 or 40 other persons went armed with lathies to take forcible possession of the property and succeeded in getting possession without having had to use any force: —*Held*, that the petitioners were rightly convicted of an offence under s. 143, Indian Penal Code, but as the masters of the petitioners had a right to possession and as what the petitioners did, though not warranted by law, did not actually lead to a breach of the peace, the sentence ought not to be too severe That an order under s. 106, Criminal Procedure Code, directing the petitioners to execute bonds to keep the peace for one year was, in the circumstances, justifiable but as that order would have the practical effect of preventing the petitioners and their masters from taking possession of the property, it was desirable that the other side should also be bound down in a proceeding under s. 107, Criminal Procedure Code. BEPIN BEHARI GUHA *v* PRANAKUL MAJUMDAR (1906) . . **11 C. W. N. 176**

UNLAWFUL COMPULSION.

See COMPOUNDING OFFENCE
I. L. R. 21 Calc. 103

———— Unlawful compulsory labour—*Criminal force—Slavery—Wrongful confinement—Penal Code (Act XLV of 1860), ss. 344, 352, 374.* The accused induced the complainants, who, he alleged, were indebted to him in various sums of money, to consent to live on his premises and to work off their debts. The complainants were to, and did in fact, receive no pay, but were fed by the accused as his servants. He insisted on their working for him, and punished them by beating

that the conviction was erroneous and ...
set aside PETHERAM, C J.—A person who insists that another, who has consented to serve him, shall perform his work, does not unlawfully compel such person to labour against his will within the meaning of s. 374 of the Penal Code, because it is a thing which such person has agreed to do; ... person for not working to ...
...unishable
...upon the
...ave their
... for the
...nlawfully
...and that
MADAN

... ...lc. 572

UNLAWFUL CONSIDERATION.

See CIVIL PROCEDURE CODE, 1882, s 257A
I. L. R. 31 Bom. 552

UNLIQUIDATED DAMAGES.

See INSOLVENCY ACT, s. 40.
13 B. L. R. Ap. 2

See INTEREST—MISCELLANEOUS CASES—UNLIQUIDATED DAMAGES
7 Bom. A C. 89
9 Bom. 7

See SET-OFF—GENERAL CASES
17 W. R. 113
2 Mad. 296
3 Agra 43; 97
22 W. R. 1
I. L. R. 4 Bom. 407
I. L. R. 11 Calc. 557
I. L. R. 7 All. 284

UNNATURAL OFFENCE.

——— — **Penal Code, s 377**—*Charge—Particulars as to time, place and person—Criminal Procedure Code, 1882, s 222* *Held*, that, where a person was tried for an unnatural offence and convicted on a charge which did not allege the time when, place where, or point to any known or unknown person with whom, the offence was committed, and without any proof of these particulars, the facts proved against him only being that he habitually wore woman's clothes and exhibited physical signs of having committed the offence, that the conviction was not sustainable QUEEN-EMPRESS *v* KHAIRATI . . I. L. R. 6 All. 204

UNPROFESSIONAL CONDUCT.

See ADVOCATE

See CONTEMPT OF COURT—PENAL CODE, s 174-7 . . 7 C. W. N. 797

See LEGAL PRACTITIONERS' ACT (XVIII OF 1879), ss 13, 14

See MOOKTEAR.

See PLEADER—REMOVAL, SUSPENSION AND DISMISSAL.

professional work for his client, without the intervention of a Solicitor, at a fee of half the usual ... 'o the ... fer to ... in a ... by ... ten gold mohurs (five times the usual fee) for refusing the brief offered he would take up the case against her:—*Held*, that the advocate was guilty of highly unprofessional conduct S K. H., AN ADVOCATE, *In re* (1907) . I. L. R. 34 Calc. 729

UNPROFESSIONAL CONDUCT—*concld*

interfere. A pleader is within his rights in declining to accept a brief if he does not wish to do so and is not bound to give his reasons for it. A plea ... not ... siona ... Prac ... the ... come at once to the High Court for its intervention *In re* NABIN CHANDRA DAS GUPTA (1908)
I. L. R. 35 Calc. 317

UNSEAWORTHINESS.

See CONTRACT—CONDITIONS—PRECEDENT.
2 B. L. R. O. C. 127

See DAMAGES—REMOTENESS OF DAMAGES.
6 B. L. R. Ap. 20

See INSURANCE—MARINE INSURANCE.
Cor. 5 : 2 Hyde 107
5 Moo. I. A. 361

UNSETTLED POLLIAM.

——— **Hereditary tenure**—*Evidence of possession or receipt of rent.* There is no long uniform current of decisions at Madras sufficient to show that every polliam, not permanently settled, is necessarily only a tenure for life, or at the will of the Government Each case must depend upon its own particular circumstances The existence of a proprietary estate therein, and the tenure by which it has been held, are matters judicially determinable on legal evidence In India the ...

the estate has passed on one or more occasions from ancestor to heir. There is no difference in this respect between a polliam and an ordinary zamindari. OOLAGAPPA CHETTY *v.* ARBUTHNOT ...

s c. in High Court. ARBUTHNOT *v.* OOLAGAPPA CHETTY . . . . . 5 Mad. 303

And LEKHAMANI *v* RANGA KRISTNA MUTTA VIRA PUCHAYA NAIKAR . . 6 Mad. 208

UNSOUNDNESS OF MIND.

See INSANITY.

See LUNATIC.

UNSTAMPED DOCUMENTS.

——— **admissibility of, in evidence.**

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED IN COURT BELOW—UNSTAMPED DOCUMENTS.

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED OR UNREGISTERED DOCUMENTS.

UPAN CHOWKI TENURE.

See Mesne Profits—Right to and Liability for . 1 B. L. R. A. C. 167

USAGE.

See Custom.

See Hindu Law—Worship.
I. L. R. 31 Mad. 236
12 C. W. N. 946

See Local Usage.

See Occupancy Holding.
12 C. W. N. 1086

See Transfer. . 13 C. W. N. 541

USAGE OF TRADE.

See Principal and Agent
I. L. R. 29 Bom. 291

USE AND OCCUPATION.

See Landlord and Tenant—Holding over after Tenancy . 4 W. R. 24
12 W. R. 289
17 W. R. 494
20 W. R. 400
23 W. R. 61
24 W. R. 412; 441

See Landlord and Tenant—Liability for Rent . I. L. R. 16 Bom. 568

See Munsif, Jurisdiction of
I. L. R. 23 Calc. 425

See Presidency Small Cause Courts Act (XV of 1882), s. 9.
I. L. R. 31 Bom. 138

See Small Cause Court, Mofussil—Jurisdiction—Rent, Suit for.
I. L. R. 5 Bom 572
I. L. R. 6 Bom. 79
I. L. R. 17 Calc. 541
I. L. R. 24 Calc. 557
I. L. R. 22 Mad. 149

——— decree for—

See Plaint—Amendment of Plaint.
I. L. R. 22 Calc. 752

See Variance between Pleading and Proof—Special Cases—Rent.
5 N. W. 65
22 W. R. 346
13 B. L. R. 243
I. L. R. 27 Calc. 239

USER.

See Easement. I. L. R. 30 Calc. 1077

See Ferry . . I. L. R. 18 Calc. 652

See Fishery, Right of.
I. L. R. 12 Mad. 43

See Forgery . I. L. R. 35 Calc. 820

See Possession—Adverse Possession.
I. L. R. 16 Bom. 338

See Prescription.

See Right of Way . 6 C. W. N. 197

[Before the Limitation Act of 1871 no precise time had been laid down as sufficient to create a right of suer.]

USER—*contd.*

See Mullick Karim Baksh *v.* Harbihar Mandar . 5 B. L. R. 174 : 13 W. R. 440

Kisto Mohun Mookerjee *v* Juggurnath Roy Joogee . . . 11 W. R. 236

Huro SooNduree Debia *v.* Ram Dhun Bhuttacharjee . . . . . 7 W. R. 276

1. ——— **Proof of right of user**—"*All along*" *or* "*from before.*" A user "all along" or [illegible]

2. ——— **Right to outlet for water**—*Easement.* In a suit to close up an outlet of water opened by the defendant, the lower Appellate Court found that the "outlet or such" was used (barabar) all along, and that therefore the defendant had a right of user. *Held*, that an enjoyment for at least twelve years is necessary to create a right by user, and that user by the defendant for that period at least had been found. Kartik Chandra Sirkar *v.* Kartik Chandra Dey
3 B. L. R. A. C. 166 : 11 W. R. 522

3. ——— **Use for many years.** In a suit for a declaration of the right of user over the water of a tank, which right was denied, the finding of the lower Appellate Court, from the evidence of witnesses adduced by plaintiff, that plaintiff had used the water for many years, was *held* to be sufficient to prove a continuous and uninterrupted user on the part of the plantiff Toolsee Doss Kobeeraj *v.* Bhyrub Lall Tewaree
8 W. R. 311

4. ——— *Prescription—Ancient and uninterrupted right—Easement.* A party claiming the right of user by prescription over the property of another must show not only that [illegible] but also [illegible] as not [illegible], Ram Prasad Das . . [illegible] 281

Heeralall Kooer *v.* Purmessur Kooer.
15 W. R. 401

5. ——— **Interruption of right of easement.** The mere fact of user for any number of years will not be sufficient to confer a right, if the user be from time to time interrupted by the owner resuming, as occasion may require, the [illegible] the user will [illegible] exer- [illegible] [illegible] 449

6. ——— *Wrongful interruption—Acquiescence* Wrongful interruption does not destroy a right of user where steps are immediately taken to assert the right, but if this is not done for a length of time, acquiescence may safely be presumed Heeralall Kooer *v* Purmessur Kooer . . . 15 W. R. 401

USER—*concld.*

7. ——— Letting house to tenant. Where a right of user of a drain or passage is incidental to a house, that right is not affected by the owner of the house letting the house to a tenant. AMJUDEE BEGUM v. AHMED HOSSEIN

6 W. R. 314

8. ——— Long user by tenants of a plot of their landlord's land as a threshing floor—*Conditions of contract of tenancy—Presumption.* On evidence that a tenant has for a great number of years used a particular piece of the zamindar's land along with other tenants as a

9. ——— License to use land of another, coupled with grant—*Revocation of license—Right of licensee to damages* A license to use the land of another, unless coupled with a

838, applied. PROSONNA COOMAR SINGHA v. RAM COOMAR GHOSE . I. L. R. 16 Calc. 640

USUFRUCT.

See EASEMENTS ACT, s. 7.
I. L R. 29 Bom. 357

See RIPARIAN OWNERS.
I. L. L. 29 Bom. 357

USUFRUCTUARY MORTGAGE.

See AGRA TENANCY ACT (II OF 1910), ss. 20, 21, 31 . I. L. R. 29 All. 327

See CIVIL PROCEDURE CODE, 1882, ss. 13, 43 I. L. R. 31 Bom. 527

See DECREE—FORM OF DECREE—MORTGAGE . . I. L. R. 1 All. 624
I. L. R. 11 Mad. 88

See DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), ss 12, 13.
I. L. R. 32 Bom 516

See LANDLORD AND TENANT
10 C. W. N. 719

See LEASE—ZURI-I-PESHGI LEASE.

See LIMITATION ACT, 1877, s. 19 (1859), s. 1, CL. 15)—ACKNOWLEDGMENT OF OTHER RIGHTS . 13 B. L. R. 177
1 C. W. N. 513

See MORTGAGE—CONSTRUCTION—BOND AND RENTAL AGREEMENT.
I. L. R. 26 Mad. 662

EQUITABLE SET-OFF.
I. L. R. 32 Calc. 576

USUFRUCTUARY MORTGAGE—*concld.*

USUFRUCTUARY MORTGAGE—POSSESSION UNDER MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION. . 6 C. W. N. 601
I. L. R. 28 All. 225
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13 C. W. N. 833

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——— *Mortgagee not in possession of a portion of the mortgaged property—Acquiescence of mortgagee in part performance—Stipulation for interest—Redemption without payment of interest.* Where a mortgage-deed provides for payment of interest if " there is any defect (*nuqs*) in the mortgaged property and any manner of defect arise in the mortgagee's possession " —*Held*, that the defect referred to is a defect

claim
'artab
All.
ih v.
Alimunnissa, 6 All L J. 64, referred to. JHUNKU SINGH v. CHHOTKAN SINGH (1909)
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See HINDU LAW—USURY.

See INTEREST—STIPULATIONS AMOUNTING OR NOT TO PENALTIES.

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20 W. R. 32
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UTBUNDI TENURE—*concld.*

——— *Abandonment—Notice—Landlord and tenant—Sale of landlord's interest—Admission by vendor who is a party—Tenant's right to plead that sale was benami.* An *utbandi* tenant, when he ceases to hold the land, is not bound to give any notice of abandonment to his landlord, in order to avoid liability for rent for future years. AMRITA LAL MUKHERJEE *v.* GIRIDHAR GHOSE (1907) . . 11 C. W. N. 681

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13 C. W. N. 1190

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I L R. 5 Bom. 258

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See LEGAL PRACTITIONERS' ACT.

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See PAUPER SUIT—SUITS 15 W. R. 198

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13 C. W. N. 605

See STAMP ACT, 1879, SCH II ART. 11.
I. L. R. 8 Mad. 14

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——— appearance of, on Original Side of High Court—

See PRACTICE—CIVIL CASES—VAKIL AND COUNSEL . I. L. R. 30 Calc. 986

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I. L. R. 1 Mad. 24

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7 C. W. N. 843

——— compromise by, of suit—

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——— in Kumaon or Garhwal, enrolment of—

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——— right to appear before Special Tribunal—

See BARRISTERS . 13 C. W. N. 605

——— *Vakil's fee—Regulation II of 1827, s 52—Calculation according to the actual value of the property in suit.*—A vakil's fee should be calculated on the amount of the actual value of the property, the subject-matter of the suit, and not on the amount of the claim as estimated for the purpose of the payment of Court-fees. *Per* JENKINS, *C.J.*—The principle and rule of taxation ought (in our opinion) as far as possible to be such as to secure that the successful [illegible] from his opponent such costs [illegible] his case [illegible] best be [illegible] the basis of taxation The real as well as the Court-fee value should be stated on every plaint and memo[illegible] dispute an issue [illegible] value. BAI [illegible]
[illegible] 29 Bom. 229

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See ATTORNEY AND CLIENT.
11 B. L. R. 60 note

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3 Agra 286
3 N. W. 25
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——— requisites of—

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11 C. W. N. 195

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See CIVIL PROCEDURE CODE, 1882, s 596. 10 C. W. N. 564, 565

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13 C. W N. 1127

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See LAND ACQUISITION ACT, ss 19, 23
11 C W. N. 875

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13 C. W. N. 487; 1046

See SUITS VALUATION ACT (VII OF 1887), s. 8. I. L. R. 33 Bom. 658

——— by Special Judge—

See COMPENSATION
I. L R. 36 Calc. 967

——— *Compensation, determination of—Land Acquisition Act (I of 1894)—Market value of land—Future utility—Expert* [illegible]

speculation The advantage of expert opinion regarding the value of land (especially in or near large towns) explained. Enquiry cannot be dis- [illegible] A proper valuation cannot be made [illegible]

[illegible] NATH BANERJEE *v.* THE SECRETARY OF STATE FOR INDIA (1905) . . I. L. R. 32 Calc. 343

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I. L. R. 2 Bom. 145; 219
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I. L. R. 30 Calc. 501; 516

REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED IN COURT BELOW—VALUATION OF SUIT.

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I. L. R. 35 Calc. 547
12 C. W. N. 448

See CIVIL PROCEDURE CODE, 1882, ss 54, 283 I. L. R. 27 All. 411; 440

See CIVIL PROCEDURE CODE, 1882, s. 596. 10 C. W. N 564; 565

See COSTS—SPECIAL CASES—VALUATION OF SUIT.

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See COURT FEES ACT.

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s. 7, CL. IV (*d*).
I. L. R. 24 Mad. 34

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See JURISDICTION—QUESTION OF JURISDICTION—WRONG EXERCISE OF JURISDICTION . . . 22 W. R. 301
I. L. R 8 Bom. 31

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See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—VALUATION OF SUIT.

See SUITS VALUATION ACT (VII OF 1887).

See VALUATION OF SUIT—APPEALS.

1. SUITS.

1. ——— **Question of valuation**—*Procedure.* Whether or not a suit has been properly valued is a preliminary question which ought to be disposed of before the case goes to trial. JOYTARA DASSEE *v* MAHOMED MOBARUCK
I. L. R. 8 Calc. 975: 11 C. L. R. 389

2. ——— **Computation of value**—*Stamp duty—Valuation of subject-matter for purpose of determining jurisdiction*—The valuation

VALUATION OF SUIT—*contd.*

1. SUITS—*contd.*

of a suit for the purposes of stamp duty, and the valuation of the subject-matter of the suit for the purpose of determining the jurisdiction of the Court in appeal, are two different things The value of the suit for the purposes of stamp duty is fixed by certain rules which determine an artificial value for those purposes. The value of the subject-matter of a suit on appeal, on which depends the jurisdiction of the several grades of civil suits, is the actual value of the property of litigation. AUKHIL CHUNDER SEN ROY *v* MOHINY MOHUN DASS . I. L. R. 5 Calc. 489: 4 C. L. R. 491

3. ——————— *Valuation for purposes of jurisdiction* Questions of jurisdiction,

of the claim as preferred by the plaintiff, and not as set up by the plea in defence, should govern the action, not only for the purposes of the original Court, but also for the purposes of appeal, and indeed throughout the litigation. JAG LAL *v.* HAR NARAIN SINGH . . I. L. R 10 All. 524

4. ——————— *Valuation for purposes of jurisdiction—Court Fees Act.* The valuation of suits for the purpose of jurisdiction is perfectly distinct from their valuation for the fiscal purpose of Court-fees. Therefore Court Fees Acts, which are fiscal enactments, are not

DHARAMCHAND . . I. L. R. 4 Bom.

5. ——————— *Jurisdiction of Munsif Mad Regs VI of 1816, s 11, and III of 1833.* The valuation of the matters of litigation for the purpose of determining the jurisdiction of Munsifs is to be made in the mode prescribed by s. 11, Regulation VI of 1816, and Regulation III of 1833, and not in that prescribed in the Stamp Acts. THIAGARAJA MUDALI *v.* RAMANUJA CHARRY. CHINNASAMI CHETTI *v* NANJAPPASARY. JUNJLA VENKATARAYADU *v.* JUNJLA KAMAMMAH 6 Mad. 151

6. ——————— *Court Fees Act 1870, s 12—Class of suit in which particular suit*

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7. ——————— *Court Fees Act, 1870, s. 12—Non-payment of sufficient Court-fee.*

Act with reference to which the valuation is to be made, and does not apply to a case in which it is contended that the property has been wrongly valued, but that the relief has been improperly estimated by putting it under a wrong article in the schedule of the Act. It does not contemplate a case on which the Court refuses to hear a suit on the ground that a sufficient Court-fee has not been paid. See *Ajoodhya Pershad Singh* v. *Gunga Prashad, I. L R. 6 Calc, 249: 6 C. L R 567.* OMRAO MIRZA *v.* JONES 12 C. L. R. 148

8. ——————— *Jurisdiction—Market value of subject-matter, mode of computing —Court Fees Act (VII of 1870), ss. 6 and 12.* For the purpose of determining the question of jurisdiction, the valuation of a suit should be computed according to the market value of the subject-matter of the suit, and not by the special rules applicable to valuation laid down in Act VII of 1870. NANHOON SINGH *v* TOFANEE SINGH 12 B. L. R. 113: 20 W. R. 33

JEEBRAJ SINGH *v.* INDERJEET MAHTOON. 12 B. L. R. 115 note: 18 W. R. 109

CHUNDER NATH BHUTTACHARJEE *v* BRINDABAN SHAHA . . . 25 W. R. 39

KALU BIN BHIWAJI *v.* VISHRAM MAWAJI. I. L. R. 1 Bom. 543

BAI MAHKOR *v.* BULAKHI CHAKU I. L R. 1 Bom. 538

9. ——————— *Market value—Valuation for stamp purposes* Where a Court is satisfied that a market value of the subject of a suit or appeal presented to it is of such an amount as to bring the suit or appeal within its jurisdiction,

Act prescribes arbitrary principles of calculation, but where it is asserted and shown, to the satisfaction of the Court, that the market value is in excess of the amount computed for such purposes, the Court must take notice of the actual market value DHUNNOO *v* DAMODUR DOSS . 2 N. W. 177

10. ——————— *Cases in which ... value.* In

date on which it has been ... Registrar consider the estimate clearly insufficient, the Court will issue a commission to ascertain the proper market value. The provisions of Sch. B of Act XXVI of 1867, considered. *Ex parte.* MOONEE RANGAPPEN 3 Mad. 352

VALUATION OF SUIT—*contd*

I. SUITS—*contd*

11. ——— *Dispute as to proper valuation.* On a dispute arising as to the proper valuation of a suit, the Court may, on the application of either party, issue a commission and make an inquiry into the market value or the net profits of the property in dispute The final decision as to the proper valuation is vested in the Court which hears the suit UMA SANKAR ROY CHOWDRY *v* MANSUR ALI KHAN
5 B. L. R. Ap 6 : 13 W. R. 327

See WAJID ALI KHAN *v* LALA HANUMAN PRASAD
4 B. L. R. A. C. 139 . 12 W. R. 484

12. ——— *Costs* In estimating the value of a suit the costs must not be included in the amount in dispute. NILMADHAB DAS *v* BISWAMBHAR DAS
3 B. L. R P. C. 27: 12 W. R. P. C. 29
13 Moo. I. A. 85

13 ——— *Character of suit —Valuation altering with wording of plaint* A [illegible]

v. GUMANI LALL . . . 2 C L. R. 134

14. ——— *Court Fees Act (VII of 1870), s 17, Applicability of—"Cumulative reliefs"—Alternative relief.* Where the plaintiff sues in the alternative for one of two reliefs, the larger of the two reliefs sought determines the amount of the stamp S 17 of the Court Fees Act (VII of 1870) does not apply to such a case That section is applicable only to a case of cum- [illegible] *cri v.* [illegible] owed.

[illegible] I. L. R. 10 Bom. 82

15. ——— Incorrect valuation—*Appellate Court—Ground for dismissal of suit.* The valuation of a suit must be taken from the statement in the plaint, and if, after going into the evidence, it is found that a particular item it improperly claimed, the Court has means of punishing the plaintiff by saddling him with costs or in any other way; but the whole suit should not be dismissed simply because, in the opinion of the lower Appellate Court, it ought to have been valued within the limit of the jurisdiction of the Small Cause Court. MOHEE LALL *v* KHETARAM MARWARY . . . . . 25 W. R. 76

16. ——— *Designed exaggeration of valuation—Suits Valuation Act (VII of 1877), s 11—Munsif, jurisdiction of—Code of* [illegible]

[illegible] 11

[illegible] 171

[illegible] uit ... ris- ... ject ... f a ... in ... ge, the ... *v* ... 39

[illegible] er- for en- on.

[illegible] 248

[illegible] suit ... *rty* ... rred of a ... not ... sed ... ht to ... ter in ... iction, ... *Appeal* ... JADAUN ... All 799

[illegible] *declara- ... cution of* ... it declared ... was liable ... decree for ... value of the ... ion, that it ... of the decree ... nsif's jurisdic- ... efore triable by ... *Rai, I. L. R* ... DURGA PRASAD *v* ... L. R. 9 All. 140

[illegible] ——— *Bengal Civil ... —Value of the subject ... edure Code (Act XIV ... operty, suit to establish* ... under s. 283 of the ... at the question whether ... n attached in execution ... f the creditor, the amount ... jurisdiction of the Court ... is in dispute, and ... recover if successful, ... , and not the val ... ss the two ... *v. Badri* ... *v Jadaun*

VALUATION OF SUIT—*contd.*

1. SUITS—*contd.*

adopted was wrong, and that the whole suit should have been tried. KOTI PUJARI *v.* MANJAYA I. L. R. 21 Mad. 271

19. ———— **Valuation of amended plaint**—*Valuation ascertained at date of filing and at date of amendment.* The proper valuation in the case of an amended plaint is that ascertained at the date of the amendment, and not at the date of the original filing of the plaint. MORO VISHVANATH *v.* GANESH VITHAL . 10 Bom. 444

20. ———— **Valuation of plaint presented again after return of plaint**—*Return of plaint for want of jurisdiction—Second presentation under Court Fees Act, 1870—Act XXVI of 1867, Plaint presented under* Where a plaint in a suit was originally presented, when Act XXVI of 1867 was in force, in the Court of the Munsif, and, being above the amount for which that Court had jurisdiction, was returned for presentation to the Subordinate Judge, and when presented there it was admitted and heard and afterwards it was found that under Act VII of 1870, the Court Fees Act which was then in force, the lower standard of valuation necessary would have made it cognizable by the Munsif:—*Held*, that by analogy to the cases which decide that the date of a suit for the purposes of

21. ———— **Account, suit for**—*Court Fees Act, 1870, s 7, cl (f), and s 11.*—By s 7, cl (f), of the Court Fees Act (VII of 1870), the plaintiff in a suit for accounts must state the amount at which he values the relief sought; but he is free to fix it as he thinks proper, subject to the provisions of s 11, which preclude the execution of the decree in case it exceeds such value until the execution fee has been paid GOVINDAS *v* DAYABHAI I. L. R. 9 Bom. 22

22. ———— *Subordinate Judge's power to make valuation—Court Fees Act (VII of 1870), s. 7, cl 4 (f)—Civil Procedure Code (Act XIV of 1882), s 54, cls. (a) and (b)* The plaintiffs brought a suit for an account, and approximately valued their claim at R16,151-0. The Subordinate Judge was of opinion that the claim was for recovery of money, and should have been valued at R1,000 He therefore called on the plaintiffs to make up the stamp to that required on this valuation; and the plaintiffs refusing, he dismissed their suit under s 54 (b) of the Civil Procedure Code (Act XIV of 1882). *Held*, that in any case the Subordinate Judge was wrong If the suit was really one for an account, the plaintiffs were entitled to value the relief they sought approximately, as they had done; if it were not one for an account, but for recovery of money, still the Subordinate Judge had no power himself to value the relief sought, but should have called on the plaintiffs to value the relief they sought, and then if he had thought such relief was undervalued, he could have applied s 54 (a) of the Code of Civil Procedure and rejected the suit. BALVANTRAV *v.* BHIMASHANKAR I. L. R. 13 Bom. 517

23. ———— *Suit for account and for balance that may be found due—Appeal—Act XIV of 1869, ss. 8 and 26.* The plaintiffs sued for an account of all business done by the defendants as their commission agents from 1854 to 1867, and prayed that whatever was found due might be awarded with interest. The plaintiffs valued the relief sought approximately at R510, and this was the only valuation stated in the plaint. The suit was filed in the Court of a first class Subordinate Judge, who rejected the plaintiff's claim. Against this decision the plaintiffs preferred an appeal to the High Court. *Held*, that, as the approximate amount of the claim was stated in the plaint to be R510, that must be taken to be the value of the subject-matter of the suit for purposes of jurisdiction The appeal, therefore, lay under ss. 8 and 26 of Act XIV of 1869, not to the High Court, but to the District Court. Under s. 50 of the Code of Civil Procedure (Act XIV of 1882), if a plaintiff seeks the recovery of money, the plaint must state the precise amount so far as the case admits, while in a suit for the amount which will be found due on taking unsettled accounts the plaint need only state approximately the amount sued for. As in the former instance the precise amount, so in the latter the approximate amount stated in the plaint must be taken to be the amount, of value of the subject-matter of the suit for purposes of jurisdiction KHUSHALCHAND MULCHAND *v.* NAGINDAS MOTICHAND . . . I. L. R. 12 Bom 675

24. ———— **Adoption, suit to set aside**—*Suit by reversioner—Jurisdiction* For the purpose of determining the jurisdiction over a suit by a reversioner to set aside an adoption, the loss which would accrue to the adopted person, should the adoption be declared invalid, is the measure of the value of the subject-matter of the suit. KESHAVA SANABHAGA *v.* LAKSHMINARAYAN I. L R. 6 Mad. 192

25. ———— *Court Fees Act, s 7—Suits Valuation Act (VII of 1887), ss. 4, 10.* ... of a suit ... to of the ... ds if the ... upon his plaint by the plaintiff. *Keshava* ...*bhaga v. Lakshmi Narayana, I. L. R 6 Mad.* 192, dissented from. SHEO DENI RAM *v.* TULSHI RAM I. L. R. 15 All. 378

26. ———— **Annuity, suit for declaration of right to**—*Act XXVI of 1867—Stamp Act, 1862, Sch. A, cl. 2.* In a suit for a declaration

VALUATION OF SUIT—*contd.*

1. SUITS—*contd.*

of right to an annuity (varshasan) it was *held* that the stamp for the petition of special appeal should be regulated by the *market value of the annuity* and that *primâ facie* ten times the amount of the annuity might be assumed to be its market value, as enacted for analogous agreements by s 2, Sch. A, Act X of 1862. NARSINVACHARYA *v* SVAMI RAYA CHARYA 5 Bom. A C. 55

27. ———— Attachment, suit to set aside—*Suit by trustees' deed given by insolvent for benefit of creditors* The valuation for stamp duty of a suit brought by the trustees of an assignment by an insolvent trader for the benefit of his creditors to set aside an attachment by an execution-creditor should be calculated on the value of the lien claimed by the judgment-creditor STEPHENSON *v* BAUMGARTNER . 3 Agra 104

28. ———————— *Suit under Civil Procedure Code, 1882, s. 283—Stamp—Possession—Court Fees Act, VII of 1870, Sch II, Art. 17, cl.1.* When a party prefers a claim or makes any objection to the attachment of any property in execution of a decree, but fails to establish it, and brings a suit under s 283 of the Code of Civil Procedure (Act XIV of 1882) to establish his right to the property attached, his plaint is to be treated as falling under Art 17, cl. 1, of Sch II, of the Court Fees Act, VII of 1870, and is chargeable with only a ten-rupee stamp, notwithstanding that the plaintiff may pray in such a suit to be awarded possession. *Parvati* v *Kisan Sing, Judgments for 1881, p 121,* followed. *Gunpatgir Guru Bholagir* v. *Gunpatgir, I L R. 3 Bom 230,* distinguished DHONDO SAKHARAM *v* GOVIND BABAJI I. L R. 9 Bom. 20

29. ———— Attachment, suit to set aside order removing—*Court Fees Act, VII of 1870, ss. 6 and 12, and Sch II, Art 17, cl. 1—Valuation by subordinate Court—Suit to re-establish judgment-debtor's right to property on removal of attachment* Where, on the removal of an attachment at the instance of a third party, the judgment-creditor brought a suit to establish the right of his judgment-debtor to the property from which the attachment had been removed, and to get the summary order to remove the attachment set aside:—*Held,* that the proper stamp on a plaint of that kind was R10 under s 6 and Sch. II, Art 171, of the Court Fees Act, VII of 1870 VITAL KRISHNA *v.* BALKRISHNA JANARDAN I. L. R. 10 Bom. 610

30. ———— Award, suit to carry out. A suit to carry out an arbitration award need not be valued KHODA BUKSH *v.* MOWLA BUKSH 14 W. R. 255

31. ———— Award, application to file —*Civil Procedure Code, 1882, s. 525.* The proper Court-fee upon an application to file an award under s. 525 is the Court fee prescribed for applications, and not the Court-fee upon a plaint. BIJADHUR BHUGUT *v.* MONOHUR BHUGUT I. L. R. 10 Calc. 11

s c PALUT BHAGUT *v.* MONOHUR BHAGUT 13 C. L R. 171

32. ———— Charge on property, suit to establish—*Madras Civil Courts Act, 1873—Subject-matter of suit.* For the purposes of jurisdiction (Madras Civil Courts Act, 1873) the subject matter of a suit to establish the validity of a charge, upon property is, when the property is in excess of the charge, the amount of the charge, when the charge is in excess of the property, the value of the property KRISHNAMA CHARYAR *v* SRINIVASA AYYANGAR . I. L R. 4 Mad. 339

33. ————Damages, suit for. In determining the jurisdiction of the Court in a suit for damages, the amount claimed, and not that eventually found due, must be taken at the valuation. JOY DOORGA DASSEE *v* MANICK CHAND BABOO 16 W. R. 248

34. ———— Declaratory decree, suit for—*Suit to establish right to attached property Held,* that, in the case where a person has preferred a claim to property attached in the execution of a decree, on the ground that such property is not

35. ———————— *Suit for declaration that property is liable to sale in execution of decree—Jurisdiction* In a suit to have it declared that certain property valued at R400 was liable to sale in execution of the plaintiff's decree for R1,500:—*Held,* that in this case the value of the property determined the jurisdiction, that it was immaterial that the amount of the decree was higher than the limit of the Munsif's jurisdiction, and that the case was therefore triable by the Munsif. *Gulzari Lal* v. *Jadaun Rai, I. L R 2 All. 799,* distinguished. DURGA PRASAD *v.* RACHLA KUAR . . . I. L. R. 9 All. 140

36. ———————— *Bengal Civil Courts Act (VI of 1871), s 20—Value of the subject*

property attached, unless the two amounts happen to be identical. *Janki Das* v. *Badri Nath, I. L. R. 2 All 698; Gulzari Lal* v. *Jadaun Rai, I. L. R.*

VALUATION OF SUIT—*contd.*

I. SUITS—*contd*

2 All. 799; Krishnama Chariar v. *Srinivasa Ayyangar, I. L. R. 4 Mad. 339*, and *Dayachand Nemchand* v. *Hemchand Dharamchand, I. L. R. 4 Bom. 515*, followed MODHUSUDUN KOER *v.* RAKHAL CHUNDER ROY **I. L. R. 15 Calc 104**

37. ———————— *Suit by claimant to attached property—Court Fees Act (VII of 1870)—Civil Procedure Code, 1882, ss. 278 and 283* Where a claimant whose objection under s. 278 of the Code of Civil Procedure has been disallowed, brings a suit and makes the judgment-creditor, who was trying to execute the decree, the sole defendant to the suit, a claim for a declaration that the property under attachment was the plaintiff's property and not liable to attachment in execution of the decree of the defendant, is a claim for only one declaration, and for such purposes and in such a suit it is immaterial whether the claim is that the property is the plaintiff's and not liable to attachment or that the property is the plaintiff's as against the defendant's right to attach, and that the order of attachment should be cancelled. But where the person objecting under s 278 of the Code brings his suit and makes not only the execution-creditor in the attachment proceedings, but also the judgment-debtor in those proceedings, parties to the suit, and asks for a declaration of the plaintiff's title to the property under attachment as against the judgment-debtor, and also asks for a declaration in denial of the judgment-creditor's right to bring that property to sale in execution of the judgment-creditor's decree, there are two substantial declarations asked for. MOTI SINGH *v* KAUNSILLA.
I. L. R. 16 All 308

38. ———————— *Bengal, N.-W. P, and Assam Civil Courts Act (XII of 1887), ss. 19 and 21—Suit claiming property under the Civil Procedure Code, s 283.* When in a suit under s 283 of Act XIV of 1882 the claimant objector makes the judgment-debtor or his representative a par . . .

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the value of the property attached, whether such value exceeds or is less than the amount which is sought to be realized by the sale of property in execution of the decree *Gulzari Lal* v *Jadaun Rai, I. L. R 2 All. 199, Durga Prasad* v. *Rachla Kuar, I L R 9 All 140; Krishnama Chariar* v. *Srinivasa Ayyangar, I. L. R 4 Mad 339;* and *Modhusudun Koer* v. *Rakhal Chunder Roy, I. L R 15 Calc 101*, distinguished. *Mahabir Singh* v. *Behari Lal, I. L. R. 13 All 230*, and *Madhu Das* v. *Ramji Patal, I. L R 16 All 286*, referred to. DWARKA DAS *v* KAMESHAR PRASAD
I. L. R. 17 All. 69

39. ———————— *Court Fees Act, s 12, and Sch II, Art 17, cl 3—Consequential relief—Appeal—Civil Procedure Code, 1859, s. 246.*—S 12 of the Court Fees Act prohibits appeals on questions relating to valuation for the purpose of determining the amount of a fee, but does not prevent a Court of appeal from determining whether or not consequential relief is sought in a suit, so that it may determine under what class of cases the suit falls for the purposes of the Court Fees Act. A suit by a person against whom an order has been made, under s 246 of Act VIII of . . .

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CHUNIA *v.* RAM DIAL . . I. L. R. 1 All. . . .

40. ———————— *Suit to stay butwara proceedings under Beng Reg. XIX of 1814, after partition by private arrangement.* An allottee, under a private partition, sued to stay subsequent partition proceedings brought under Regulation XIX of 1814 and to have his possession confirmed. The defendants objected to the valuation of the suit and to the suit being heard by the Civil Courts, no proceedings having first been instituted before the revenue authorities *Held*, . . .

. . . DOUR SINGH
I. L. R. 8 Calc. 126 : 10 C L. R 146

41 ———————— *Suit for declaration of title to paid offices— Withdrawal of claim to some of the offices—Office still claimed involving the right to the others* In a suit to declare title to four paid offices in a temple, the plaintiffs asked that the issues with regard to three of them should not be tried, but on cross-examination asserted right to them. It was found that the fourth office carried with it the right to the other three *Held*, that the plaintiffs were not shown to have relinquished their claim on the three offices for the purposes of the suit, but that, even if they had done so, the value of all the four offices must be taken for the purposes of jurisdiction SUNDARA *v* SUBBA . . . **I. L. R. 10 Mad. 371**

42. ———————— *Suit to obtain a declaration decree—Suit to set aside a summary order—Consequential relief—Prayer to have property released from attachment—Court Fees Act (VII of 1870), Sch. II, Art 17 (i) and (iii).* *Held*, that the Court-fee payable on the plaint and memorandum of appeal in a suit under s. 283 of the Civil Procedure Code praying (a) for a declaration of right to certain property, and (b) that the said property might be released from attachment in execution of a decree was R10 in respect of each of the reliefs prayed DILDAR FATIMA *v.* NARAIN DAS . . **I. L. R. 11 All. 365**

43. ———————— *Pecuniary valuation of suit—Court Fees Act, s. 12, Sch. II, Art. 17 (iii)* A suit for two declarations filed in a subordinate Court was valued by the plaintiffs at a sum in

VALUATION OF SUIT—*contd.*

1. SUITS—*contd.*

excess of the pecuniary jurisdiction of a District Munsif It was pleaded that the matter in dispute was *res judicata* by reasons of decrees passed in District Munsifs' Courts. No objection was taken in the Subordinate Court to the valuation of the suit *Held*, that the plea of *res judicata* failed *Per* MUTTUSAMI AYYAR, *J*—For the purposes of jurisdiction, the value of a suit for a mere declaratory decree must be taken to be what it would be if the suit were one for possession of the property regarding which the plaintiff seeks to have his title declared GANAPATI *v* CHATHU

I. L. R. 12 Mad. 223

44. ——— *Madras Civil Courts Act (Mad Act III of 1873), s 12—Suit for declaration of Membership of a tarwad—Valuation for the purposes of jurisdiction.* The plaintiff, alleging that he was carnavan of the defendant's [illegible]

tarwad property exceeded R[illegible],000 in value, [illegible]

subject-matter of the suit was the value of the whole tarwad property, and not the value of what the plaintiff's share would be on partition; the order therefore was wrong and should be set aside *Ganapati* v *Chathu, I L. R 12 Mad. 223*, followed. IBRAYAN KUNHI *v* KOMAMMUTTI KOYA

I. L. R 15 Mad. 501

45. ——— *Bengal Tenancy Act, s. 149—Suit by third party claiming rent paid into Court in rent-suit, nature of—Title-suit—Institution stamp* A suit by a third person under cl (3) of s. 149 of the Bengal Tenancy Act is not a title-suit, and need not be stamped as such *Per* TOTTENHAM, *J.* Such suit is in the nature of a suit for an injunction under the Specific Relief Act or else a declaratory suit. JAGADAMBA DEVI *v*. PROTAP GHOSE . **I. L. R. 14 Calc. 537**

46. ——— *Suit to establish right by reversal of deeds* When a plaintiff only sues for declaration of his title to certain lands on reversal of the kobalas said to have been illegally executed by his father, he need not be compelled to value the case at the total of the consideration mentioned in those deeds. SHEO GHOLAM SINGH *v* BEJOYRAM PROTAB SINGH . **W. R. 1864, 317**

47. ——— *Plaint insufficiently stamped — Court Fees Act (VII of 1870), s 12* The law allows a plaintiff in some cases to rectify a mistake as to stamp duty, but this privilege is subjected to qualification, and does not exist where the relief to be granted is altogether distinct from that originally sought. In such case, the plaintiff should not be allowed to put an additional stamp on his plaint. Where a plaintiff sued on a stamp of R10 for a declaration of his title to land worth R19,000, in the possession of the defendant, it was *held* that the suit could not be maintained, and that the plaintiff was not entitled to put an additional stamp on the plaint and convert his suit into one for possession CHOKALINGAPESHANA NAICKER *v*. ACHIYAR

I. L. R. 1 Mad. 40

48. ——— *Court Fees Act (VII of 1870), s 4, and Sch II, Art. 17, cls 3 and 6—Jurisdiction—Bombay Civil Courts Act (XI of 1869), s 24* A Subordinate Judge of the 2nd class has no jurisdiction to entertain a suit for the declaration of the plaintiff's title where the property in respect of which the declaration is sought exceeds R5,000 in value. The law may lay down, for purposes of revenue, certain rules [illegible]

obtain a decree, declaratory of the plaintiff's title to, or whether it be to establish his title, coupled with a prayer for possession of, the rights of a deceased person, the inheritance is the object in dispute The actual value of the estate to which the plaintiff claims to be entitled, and not the value which it may eventually represent to the plaintiff, is the value of the subject-matter. BAI MAHKOR *v*. BULAKHI CHAKEE

I. L. R. 1 Bom. 538

49. ——— *Court Fees Act (VII of 1870), s 17—Suit by reversioners to declare various alienations by a Hindu widow to be invalid against them* When reversioners sue to have declared invalid as against them alienations made by a Hindu widow, a Court-fee of R10 must be paid in respect of each of the alienations in question. DAIVACHILAYA PILLAI *v* PONNATHAL . . . . **I. L. R. 16 Mad. 459**

50. ——— *Court Fees Act (VII of 1870), s 7, cl. 4 (c), Sch II, Art 17, cl. (iii)—Suit for a declaration that a decree obtained by defendant against plaintiff was null and void—Decree for declaration without consequential relief.* A suit in which the only prayer is to have a decree set aside as null and void is a suit for a declaratory decree without consequential relief and Art 17, cl 3, and not s. 7, cl. 4, of the Court Fees Act (VII of 1870), is applicable to it. SHRIMANT SAGAJIRAO KHANDERAV *v* SMITH

I. L. R. 20 Bom. 736

51. ——— *Court Fees Act (VII of 1870), Sch II, Art. 17, cl. (vi)—Civil Procedure Code, s 539—Prayer for appointment of plaintiff's as trustee.* A prayer in a plaint purporting to be a plaint under s. 539 of the Code of Civil Procedure that the plaintiffs themselves may be appointed trustees is not a prayer for possession requiring to be stamped at the value of the trust property but is a prayer for relief falling within Art. 17, cl. (vi), of the second schedule to Act VII of 1870 *Sonachala* v. *Manika, I. L. R. 8 Mad. 516* ;

VALUATION OF SUIT—*contd.*

I. SUITS—*contd.*

Delroos Banoo Begum v. *Asghur Ally Khan, 15 B L. R 167*, and *Omrao Mirza* v. *Jones, I. L. R. 10 Calc. 599*, referred to and distinguished. THAKURI *v.* BRAHMA NARAIN **I. L. R. 19 All. 60**

52. ——————— *Court Fees Act (VII of 1870), Sch. II, Art. 17, cl (vi)—Suit to*

[illegible]

(vi), of the second schedule of Act VII of 1870. *B L. R 167; Sonachala* v. *Manika, I L R. 8 Mad 516*; and *Omrao Mirza* v *Jones, I. L R. 10 Calc. 599*, referred to. MUHAMMAD SIRAJ-UL-HAQ *v* IMAM-UD-DIN . . **I. L R 19 All. 104**

53. ——————— *Court Fees Act (VII of 1870), s. 7, cl 4—Suit for declaration of right and for injunction* A suit for a declaration

[illegible]

the Court *A* sued *B* and *C* (1) for a declaration of his title to certain property, and (2) for an injunction restraining *C* from paying, and *B* from receiving, an allowance of R2,400 a year out of the income of the property in dispute *A* valued each of the reliefs sought at R130, and affixed a Court-fee stamp of R20 to the plaint. The Court

[illegible]

54. ——————— *Declaration sought that certain property was joint ancestral property and not liable to attachment in execution of a certain decree—Court Fees Act (VII of 1870), Sch. II, Art 17, cl 3, and s. 7, cl 4.* The plaintiffs specified in their plaint, as the reliefs sought by them,—(i) That it be declared by the Court that

[illegible]

be also awarded by the decree. The suit is valued with reference to the amount of the decree and the value of the property at R6,000. (iii) That any other relief which the Court may think the plaintiffs entitled to may also be granted. *Held,*

[illegible]

VALUATION OF SUIT—*contd.*

I. SUITS—*contd.*

55. ——————— *Suit to compel trustees to account—Court Fees Act, Sch II, Art 17, cl. (vi).* The mere fact that the plaintiffs in a suit under s. 539 of the Code of Civil Procedure may ask for an account to be taken from the trustees and that the trustees may be compelled to refund moneys alleged to have been misappropriated by them, does not take the case out of the purview of Art. 17, cl (vi), of the second schedule to the Court Fees Act, 1870, and render the plaintiff liable to pay an *ad valorem* Court-fee on that part of their plaint. *Thakuri* v. *Brahma Narain, I. L R 19 All. 60*, referred to. GIRDHARI LAL *v.* RAM LAL . . . . **I. L. R. 21 All. 200**

56. ——————— *Sale in execution of decree—Suit by unsuccessful auction-purchaser for a declaration of right and for possession—Civil Procedure Code, 1882, s 335—Court Fees Act (VII of 1870), s. 7.* A purchaser of property at a sale held in execution of a decree obtained formal possession, but was resisted in obtaining actual possession by a person, who claimed to be the owner in possession of the property. An application made by the auction-purchaser under s. 335 of the Code of Civil Procedure was rejected, and the auction-purchaser accordingly filed a suit against the person in possession claiming a declaration of his right to the property, and to be put in actual possession thereof *Held*, that such a suit was properly stamped with a Court-fee stamp of R10. *Dhondo Sakharam Kulkarni* v. *Govind Babaji Kulkarni, I L R. 9 Bom. 20* referred to PIRYA DAS *v.* VILAYAT KHAN **I. L. R. 22 All. 384**

57. ——————— **Deed, suit to set aside**—*Suit for cancellation of bond—Value of subject-matter of suit—Jurisdiction* The value of the subject-matter of a suit for the cancellation of a bond is to be determined with reference only to the principal amount, and not that amount together with the interest payable thereon when the suit is instituted. GULAB RAI *v.* MANGLI LAL **I. L. R. 6 All. 71**

58. ——————— *Appeal—Suit for cancellation of a document—Jurisdiction* The plaintiffs sued for the cancellation of a bond for the payment of R6,000, together with interest thereon at the rate of 4 per cent. per mensem, alleging that they had executed such bond under the impression that it was a bond for the payment of R3,000, together with interest thereon at the rate of 1½ per cent per mensem, whereas the defendants had fraudulently caused them to execute the bond in suit The plaintiffs paid into

[illegible] he value of [illegible] difference [illegible] bouts, and [illegible] the Court [illegible] rict Judge

was cognizable by him. [illegible] AN RAI *v.* AJUDHIA RAI . . . **I. L. R. 2 All. 148**

VALUATION OF SUIT—*contd.*

1. SUITS—*contd.*

59. ——— *Deed prejudicing title to immoveable property.* In a suit to annul sale-deed which prejudices the title of the plaintiffs to immoveable property, a stamp calculated on the consideration-money mentioned in the sale-deed is sufficient THAKOOR PATHUK v. RAM SOOMRUN LAL . . . . . . **2 N W. 433**

60. ——— *Suit to set aside sale-deed as being forged.* A suit to set aside a false sale-deed was *held* to be sufficiently valued at the sum mentioned in that sale-deed. THAKOOR PATUCK v RAMSOOMRUN LAL
1 N. W 17: Ed. 1873, 16

61. ——— *Court Fees Act (VII of 1870), ss 7, 12—Suit to cancel an instrument affecting land—Partial interest of plaintiff in the land—Appeal against an order for payment of additional court-fees* In a suit in a Subordinate Court by members of a Malabar tarwad to set aside an instrument affecting the whole of the tarwad property, the Subordinate Judge held that Court-fees were leviable, assessed on the value of the property, and accordingly ordered an additional payment to be paid by the plaintiffs The plaintiffs failed to make the payment, and the Subordinate Judge dismissed the suit *Held*, that the order was erroneous, since the plaintiffs would not be gainer to the extent of the value of the property if they obtained a decree, the plaint should not be valued according to the value of the whole of the tarward property; (2) that the High Court was not precluded by the Court Fees Act, s 12, from revising it, and reversing the order as to valuation of the suit KANARAN v. KOMAPPAN **I L. R. 14 Mad. 169**

62. ——— *Court Fees Act, Sch I, cl 1—Suit for cancellation of an agreement* [illegible]

the agreement had been extorted from him, and praying for a declaration that the agreement was not binding on him, and for any other relief " which the Court considers to be reasonable " *Held*, that the plaintiff was bound to pay Court fees upon the value of his interest in the document sought to be invalidated. PARATHAYI v SANKUMANI . . . . . **I. L. R. 15 Mad. 294**

63. ——— *Suit to cancel document on ground of fraud* The plaintiff executed a document whereby he created a charge of R4,500 upon certain immoveable property. In a suit to cancel the document upon the ground of fraud :—*Held*, that the plaintiff valued his relief at R4,500, and that the District Munsif had no jurisdiction to try the suit NARAINA PUTTER v AYA PUTTER . . . . . **7 Mad. 372**

64. ——— *Suit for possession of property alienated—Price stated in sale-deed.* In a suit for possession of a share of a undivided estate and to set aside a kobala by which the estate had been illegally alienated, the plaintiff is not bound to value his claim according to the price stated in the kobala. AUGOPURA CHOWDHRY v. MEAH BIBEE . . **10 W. R. 207**

65. ——— **Deed, suit to enforce registration of**—*Court Fees Act (VII of 1870), s 7, cl 5—Madras Civil Courts Act (Mad. Act III of 1873), ss 12, 14—Suit to enforce registration—Jurisdiction of Munsif* Suit in the Court of a District Munsif to enforce registration of two instruments of gift The property purported to be conveyed was the same in each instrument, and its value was found to be less than R2,500, but the earlier instrument comprised also an assignment of the right to manage a charity. The latter instrument was found to have been executed in suppression of the former, and the District Munsif passed a decree directing its registration alone *Held*, that the documents standing in the relation to each other of operative and superseded document, the valuation of the suit for the purposes of jurisdiction was the value of the interest created by the operative document; and that the District Munsif had jurisdiction to entertain the suit RAMAKRISHNAMMA v. BHAGAMMA . . . **I. L. R. 13 Mad. 56**

66. ——— **Ejectment, suit for**—*Market value of tenant-right.* Where a landlord claims to eject a tenant, he claims to recover the tenant rights in the holding, and the stamp duty chargeable on the plaint should be determined with reference to the market value of the right only. AJOODHYA CHOWBEY v. DAIBEE SINGH
3 Agra Rev. 5

67. ——— *Suit to contest claim of occupancy raiyat—Court Fees Act, 1870, s. 7, cl II, and Sch II, cl 5.* In a suit to eject a defendant as being a tenant at will, the Court-fee upon the plaint or memorandum of appeal is 8 annas under Sch II, cl. 5, of Act VII of 1870 Cl. 11 (*d*) of s 7 of that Act applies only to suits brought by a tenant to dispute the validity of his landlord's notice to quit. NURJAHAN v MAREEN MUNDUL **11 C. L. R. 91**

68. ——— *Court Fees Act (VII of 1870), s 7, para. 5—Suits Valuation Act, (VII of 1887), s 8—Jurisdiction—Suit to eject a tenant at fixed rates* A suit to eject a tenant at fixed rates is a suit for the possession of land within the meaning of para. 5, s. 7, of the Court Fees Act, 1870, and the valuation of such suit for the purposes of Court-fees and of jurisdiction is the value of the subject-matter of the suit, that is to say, of the tenant right, not of the land itself nor of merely one year's rent. RAM RAJ TEWARI v. GIRNANDAN BHAGAT
I. L. R. 15 All. 63

69. ——— *Suit to have a lease to set aside and buildings erected by lessees demolished—Suit for possession of land and demolition of buildings erected thereon—Court Fees Act*

VALUATION OF SUIT—*contd.*

1. SUITS—*contd.*

—*Bengal Civil Courts Act, ss. 20, 22.* Certain co-sharers of a village sued to have a lease of certain land, the joint undivided property of the co-sharers, which the other co-sharers had granted, [illegible]

[illegible] was Rs.3,000. B sued A claiming *inter alia* possession of certain land and to have certain buildings erected thereon by the defendant demolished. *Held*, with reference to the abovementioned suits, that in estimating their value for the purposes of the Court Fees Act, 1870, or of the Bengal Civil Courts Act, 1871, the value of the buildings which might have to be demolished should not be taken into account. JOGAL KISHORE *v.* TALE SINGH. BINDESHRI CHAUBEY *v.* NANDU

I. L. R. 4 All. 320

70. ———— Emoluments attached to office, suit for—*Court Fees Act, 1870, s. 7, cls. 2, 4—Claims for future emoluments—Jurisdiction—Madras Civil Courts Act, 1873, s. 12—Portion of claim struck out and plaint returned for presentation to inferior Court.* In a suit filed in the Court of a Subordinate Judge, the plaintiff prayed, *inter alia*, for a decree for the payment, annually, of the emoluments attached to a certain office, or their value at a rate stated in the plaint. This portion of the claim he valued, under cl. 2 of s. 7 of the Court Fees Act, at ten times the amount of the value claim for one year. The value of the claim thus stated exceeded the pecuniary limit of the jurisdiction of the District Munsif. The Subordinate Judge held that this portion of the claim was not actionable, inasmuch as the right to the emoluments was conditional upon services to be rendered, and did not fall under cl. 2 of s. 7 of the Court Fees Act, not being a fixed sum payable periodically, and therefore he held that the plaint was improperly valued, that the suit was not within his jurisdiction, and that the plaint should be returned to be presented to the proper Court. *Held*, that this order was right. KRISHNAN *v.* REVI VARMA

I. L. R. 8 Mad. 384

71. ———— Interest—*Court Fees Act (VII of 1870), s. 7—Claim for interest from institution of suit until payment—Future mesne profits.* No additional stamp is required on account of the claim for interest from institution of the suit until payment. It stands on the same footing as future mesne profits, which do not fall under s. 7 of the Court Fees Act (VII of 1870). VITHAL HARI ATHAVLE *v.* GOVIND VASUDEO THOSAR

I. L. R. 17 Bom. 41

72. ———— Instalment-bond, suit on. The stamp on a plaint on an instalment bond should be estimated, not on the amount of the whole bond, but on the amount claimed in the suit.

SUTTO BHAMA DOSSEA *v.* JAMEERUDDY KHAN

4 W. R. S. C. C. Ref. 12

73. ———— Khoti estate, suit for recovery of—*Act XXVI of 1867, Sch. B, cl. 11—Amount of assessment. Held*, that a khoti estate is an estate paying revenue to Government upon which an assessment is temporarily settled, and that a suit for its recovery should be assessed at *eight times the annual assessment* under Act XXVI of 1867, Sch. B, Art. 11, note (*a*), Sp. Rule 1 for the Bombay Presidency. *Ex parte* VITHAL *alias* GOPAL GANESH BIVALKAR

4 Bom. A. C. 148

74. ———— Land, suit for—*Court Fees Act (VII of 1870), s. 7, Art. 5, proviso—Stamp—Construction and applicability of the proviso—Valuation of suits for land in a talukhdari village—Talukhdar's jumma—Remission—Per* WEST and NANABHAI, *JJ.* The proviso to Art. 5 of s. 7 of the Court Fees Act (VII of 1870) was clearly intended to provide a standard of valuation in the Bombay Presidency, not only for the comparatively rare cases of land forming part but not a definite share of an estate paying revenue to Government, but for all cases of suits for land. The theory being that all land is primarily liable to be rated or taxed for the public revenue, any sum not levied according to the appraisement, made in order to show the proper amount of the land-tax may be regarded as a remission. In the case of a talukhdari village, the proprietor of which had, under a settlement with Government for a period of twenty-two years, agreed to pay a fixed annual jumma, or lump assessment instead of the full survey assessment for the whole village:—*Held*, by a majority of the Full Bench, that the difference in amount between the jumma and the full survey assessment was a remission, and therefore a suit for possession of lands in this village was to be valued according to cl. (*3*) of the proviso to Art. 5 of s. 7 of the Court Fees Act (*VII 1870*). *Per* BIRDWOOD, *J.*—The remission contemplated [illegible] remission, [illegible] between [illegible] alukhdar [illegible] lauses of [illegible] to lands which have [illegible] dinarily [illegible] Bombay [illegible] able to [illegible] thirty years, the second to lands settled for a lo[illegible]r period or permanently, and the third to inam lands on which the whole or a part of the survey assessment has been expressly remitted. The talukhdars are not inamdars. They are landholders liable to pay a land-tax, but not under a survey settlement, such as is applicable to lands for which provision seems to have been specially made in the proviso to Art. 5 of s. 7 of the Court Fees Act. No part of the proviso therefore applies to a suit for the possession of lands in a talukhdari village.

VALUATION OF SUIT—*contd.*

1. SUITS—*contd.*

Such a suit should be valued according to cl (*d*) of Art. 5 of s. 7 of the Court Fees Act. ALA CHELA *v.* OGHADBHAI THAKERSI **I. L. R. 11 Bom. 541**

BAVAJI MOHANJI *v.* PUNJABHAI HANUBHAI **I. L. R. 11 Bom. 550 note**

75 ———— *Court Fees Act (VII of 1870), s. 7, cl 5 (c), (e)—Paramba in Malabar, valuation of suit for—Suit for garden land or land paying no revenue.* On its appearing that a Paramba in Malabar is not subject to land-tax, but that a tax is levied on trees of certain kinds which may grow on it —*Held*, that a paramba must be regarded for the purposes of the Court Fees Act as a garden or as land which pays no revenue, according to the circumstances of each case ACDATHODAN MOIDIN *v* PULLAMBATH MAMALLY . . **I. L. R. 12 Mad. 301**

76. —— **Manager, suit to remove**—*Court Fees Act, 1870, s 7—Suit to eject trustee—Jurisdiction—Specific Relief Act, s 42* By an agreement between *S* and *M*, members of the same Hindu family, it was arranged that certain immoveable property dedicated to charitable uses by the family should be managed by *M*, subject to the supervision of *S*, and that *M* should render accounts to *S* and observe certain other conditions *S* sued *M* in the Court of the District Munsif, and prayed for a decree for the removal of *M* as manager and for the appointing of himself as manager of the property *M* objected that the Court had no jurisdiction, because the property exceeded in value the pecuniary limits of the jurisdiction of the District Munsif's Court as fixed by s 12 of the Madras Civil Courts Act, 1873 *Held*, that *S* was not entitled to sue for the removal of *M* without praying for his ejectment from the property, and that, as the property exceeded in value R2,500, the District Munsif had no jurisdiction SONACHALA *v* MANIKA . . **I. L. R. 8 Mad. 516**

77. ———— *Karnavan of Malabar tarwad—Madras Civil Courts Act, 1873, s 13* For the purpose of jurisdiction, a suit to remove the karnavan of a Malabar tarwad is not a suit for the recovery of the tarwad properties managed by the karnavan and to be valued as such, but a suit which asks for a relief that is incapable of valuation NARANJOLI CHIRAKAL KUNHI RAMAN *v* NARANJOLI CHIRAKAL PUTTALATHU KUNHUNNI NAMBIAR **I. L. R. 4 Mad. 314**

78. ———— *Suit for removal of karnavan—Court Fees Act, 1870, Sch II, Art 17, cl 6* A suit for the removal of a karnavan of a Malabar tarwad on the ground of misfeasance is incapable of valuation and falls under s. 6, Art. 17, Sch. II of the Court Fees Act, 1870 GOVINDAN NAMBIER *v.* KRISHNAN NAMBIAR **I. L. R. 4 Mad. 146**

79. ———— *Act XX of 1863 —Suit to remove managers of endowment from office —Court Fees Act, 1870, Sch. II, Art. 17.* In a suit under Act XX of 1863 to remove the managers of an endowment from office, the subject-matter was *held* to be one which did not admit of valuation and the Court-fee payable on its institution was the fixed fee of R10 VEERASAMI PILLAY *v.* CHOKAPPA MUDALIAR . **I. L. R 11 Mad. 149 note**

See SRINIVASA *v.* VENKATA **I. L. R. 11 Mad. 148**

80 ———— *Madras Civil Courts Act, s 12—Court Fees Act, Sch. II, Art. 17, s 6—Suit to remove a karnavan—Valuation for jurisdiction* Although, for the purposes of the Court Fees Act, a suit to remove the karnavan of a Malabar tarwad is incapable of valuation and subject to the fee prescribed by s. 6, Art. 17 of Sch II of that Act, yet, for the purposes of deter-

should adopt it. KRISHNA *v.* RAMAN **I. L. R. 11 Mad. 266**

81. ———— *Suit to remove a karnavan for mismanagement as de facto karnavan —Madras Civil Courts Act (III of 1873), s. 13.* In a suit brought to remove the karnavan of a Malabar tarwad from office on the grounds of mismanagement of tarwad property, to the extent of more than R2,500, brought in the Court of a District Munsif —*Held*, that for the purpose of jurisdiction the suit was not one for the recovery of tarwad properties, nor to be valued as such, but it was a suit for relief that was incapable of valuation, and therefore was within the jurisdiction of the District Munsif KUNHAN *v.* SANKARA **I. L. R. 14 Mad. 78**

82 ———— **Mesne profits, suit for**—*Denial of plaintiff's title* In a suit for wasilat, the stamp on the plaint will be sufficient if it cover the amount claimed for wasilat, notwithstanding the defendant may deny the title of the plaintiff to the land KADIR BUKSH *v* WISE **Marsh. 165 : 1 Ind. Jur. O. S. 103** **1 Hay 370**

83. ———— *Suit for possession and mesne profits* Where a suit for mesne profits is united with one for possession, no separate stamp-fee is necessary in respect of mesne profits. SYEDUN *v* ALLAH AHMED **W. R. 1864, 327**

84. ———— **Mortgage**—*Court Fees Act (VII of 1870), s. 7, cl. 19—Suit by the mortgagee against the heir of the mortgagor for recovery of the mortgage-debt by sale of mortgaged and other property—Suit for money.* A suit instituted by the mortgagee against the heir of the original mortgagor, to have the mortgage-debt paid by sale not exclusively of the mortgaged property, but also of all the other property in the hands of such heir liable for the debts of the original mortgagor, is virtually a suit for money, and should be valued, not at the principal debt, but the entire amount

VALUATION OF SUIT—*contd.*

1. SUITS—*contd*

including interest. KASHINATH BALLAL *v.* GANPATRAO AMRITESHVAR JOSHI

I. L. R. 18 Bom. 696

85. ————— *Court Fees Act (VII of 1870), s 7, cls. 5 and 9—Suit against mortgagee for recovery of mortgaged property* [illegible]

the Court-fee will always be upon the amount appearing in the bond. KORAMAN SINGH *v.* NORMAN COCKELL . . . 1 C. W. N. 670

86 ————— Partition, suit for—*Madras Civil Courts Act, s 12—Jurisdiction—Subject-matter of suit* In suits for partition, the value of the property of which the plaintiff claims a share, and not the value of the share claimed, determines the jurisdiction of the Court under s 12 of the Madras Civil Courts Act, 1873 VYDINATHA *v.* SUBRAMANYA . . . I. L. R. 8 Mad. 235

87. ————— *Suit for partition of share of land.* In a suit for ascertainment, partition, and delivery to the plaintiff, of a share of certain land, the suit should be valued at the amount of the value of the whole estate. *Vydinatha* v. *Subramanya, I. L R. 8 Mad., 235*, followed. NAGAMMA *v* SUBBA . . I L. R. 11 Mad. 197

88. ————— *Court Fees Act (VII of 1870)—Suit for partition and for possession of share.* The stamp on a suit for partition and possession of the plaintiff's share of joint family property must be an *ad valorem* one of the value of the share. BALVANT GANESH *v* NANA CHINTAMON . . . . I. L. R. 18 Bom. 209

89. ————— *Suit for partition of family property—Valuation for purposes of jurisdiction—Court Fees Act (VII of 1870), s 7, cl. (iv) (b)—Suits Valuation Act (VII of 1887), s 8* In a suit by a member of a joint Hindu family praying for a partition of the family property and for the delivery to the plaintiff of his share, the value of the suit for the purposes of jurisdiction is the amount at which the plaintiff values his share. VELU GOUNDAN *v.* KUMARAVELU GOUNDAN

I. L. R. 20 Mad. 289

90. ————— *Suits Valuation Act (VII of 1887), s. 8—Jurisdiction of Subordinate Judge—Valuation of a suit for partition.* In a suit for partition of certain property, the value of the whole property sought to be divided was over R5,000. Plaintiff valued his share at R250, and paid Court-fees on this amount. The suit was filed in the Court of a Subordinate Judge of the first class. *Held*, that the value of the subject-matter of the suit could not be held to be more than R250, so that the suit ought to have been filed in the Court of the second class Subordinate Judge. MOTIBHAI *v.* HARIDAS .

I. L. R. 22 Bom. 315

VALUATION OF SUIT—*contd*

1. SUITS—*contd.*

91. ————— *Hearing fee, calculation of—Market value of property.* The ordinary rule for assessing the hearing fee according to the market value of the property in suit is not applicable to a suit for partition, and the Court in each case ought to fix the amount of such fee Generally speaking, the value of the suit is the difference between the value after partition of the plaintiff's share which he requires to be partitioned and the value of the same share not partitioned. KIRTEE CHUNDER MITTER *v.* ANNATH NATH DEB . . . 13 C. L. R. 253

92. ————— *Suit for division of lands according to established custom* A co-owner of village lands sued in 1861 to have them divided among the villagers according to a custom (last observed in 1835) that at the expiration of every twelve years the lands should be redistributed by lot among the co-owners, and to have two of the shares delivered to him as one of such co-owners In 1851 another co-owner had, in a suit to which some only of the present defendants were parties, obtained a decree for the periodical allotment of the lands; and in 1853 such decree, which clearly recognized the existence and validity of the custom, was affirmed on appeal. *Held*, that the plaintiff need not pay an institution fee on the aggregate amount of the value of all the sharers in the village, and that the stamp on the plaint need only be proportioned to the value of the property actually sued for. VENKATASVAMI NAYAKKAN *v* SUBBA RAU SANKARA SUBBAIYAN *v.* SUBBA RAU . . . . . 2 Mad 1

93. ————— *Jurisdiction—Subject-matter of suit—Act XIV of 1869, s 25* What *primâ facie* determines the jurisdiction of [illegible] matter of the claim, [illegible] determina- [illegible] jurisdiction [illegible] of the suit. [illegible] stand on a *bonâ fide* error in [illegible] plaintiff [illegible] making [illegible] which [illegible] reason- [illegible] subject- [illegible] s. 25 of [illegible] ught by [illegible] e plaint- [illegible] ession of [illegible] claimed [illegible] im, and not [illegible] is sought to [illegible] BAJI BHATKAR . . . . . . I. L. R. 8 Bom. 31

94. ————— *Bengal, N.-W. Provinces and Assam Civil Courts Act (XII of 1887), s. 21—Court Fees Act (VII of 1870), s. 7, cl. 4—Suits Valuation Act (VII of 1887), ss. 7, 8, and 11—Jurisdiction, valuation for purposes of.* For purposes of jurisdiction, the words "value of the original suit" in s. 21 of Act XII of 1887

VALUATION OF SUIT—*contd.*

1. SUITS—*contd.*

are, in partition suits, to be taken to mean the value of the property in suit, and this is the valuation by which the Courts should be guided in such suits. *Kirty Churn Mitter v. Annath Nath Deb, I. L. R. 8 Calc 757,* followed The Court Fees Act (VII of 1870), s. 7, cl 4, does not contemplate that a plaintiff should assign an arbitrary value to the subject-matter of the suit, and the

95 ———————— *Stamp in partition suit* The plaintiff brought a suit to have 99 items of property partitioned. The plaint bore a Court-fee stamp of R10 The defendants admitted that three of the properties were ancestral and joint, but as to the other items the second defendant stated that they were the self-acquired property of her deceased husband, and contended that the plaint was insufficiently stamped, as the object of the suit was to obtain a declaration of title to and possession of, properties in which the plaintiff had no interest. An issue was raised on this point, and on this issue the Subordinate Judge allowed the objection and rejected the plaint. On appeal —*Held*, by PETHERAM, *C J*, and NORRIS, *J.*, that the plaint was sufficiently stamped The only relief prayed for was partition, and for the purposes for the stamp, the cause of action which is stated in the plaint, and that only, must be looked at. MOHENDRO CHANDRA GANGULI *v.* ASHUTOSH GANGULI
I L R. 20 Calc. 762

family to have her share of the family property partitioned, the value of the plaintiff's share was found to be less than R1,000, and the value of the whole family property exceeded R1,000. *Held,* that the subject-matter in dispute in the suit, within the meaning of s 20 of the Bengal

I. L. R 12 All. 508

97

VALUATION OF SUIT—*contd.*

1. SUITS—*contd.*

in an undivided agraharam, of which the total value was about R10,400, and obtained a decree. *Held,* that the subject-matter of the suit was the share sued for and not the total value of the agraharam, and therefore the suit should have been filed in the District Munsif's Court. *Vydinatha v. Subramanya, I. L. R. 8 Mad 235,* distinguished. RAMAYYA *v* SUBBAYUDU
I. L. R. 13 Mad. 25

98. ———————— *Madras Civil*

and Subordinate Judge. The purchaser at a Court-

sons, who were in possession of, and claimed to be entitled by right of purchase to, the whole estate, for partition and possession of his eight pangus. It was found that the plaintiff was entitled to the eight pangus purchased by him as against the defendants *Held,* (i) that the value of the share sought to be recovered, and not the entire value of the property, should be taken to be the value of the suit for the purpose of determining jurisdiction, and that the suit was within the pecuniary limits of the jurisdiction of

concurrent jurisdiction with a District Munsif in suits less than R2,500 in value. *Krishnasami v. Kanakasabai, I. L R 14 Mad 183* NARAYANAN *v.* NARAYANAN . . I L. R 15 Mad 69

99. ———————— *Suits Valuation Act—Act VII of 1887, s 8—Order by Appellate Court directing that the plaint be returned—Appeal against such order—Amendment of Memorandum of appeal* The plaintiff sued in the Court of the District Munsif to recover his share of family

jurisdiction to entertain the suit. CHINNASAMI

VALUATION OF SUIT—*contd.*

I. SUITS—*contd.*

PILLAI *v.* KARUPPA *v.* UDAYAN **I. L. R. 21 Mad. 234**

100. ——— **Partnerships**—*Suit for share of profits of partnerships after winding up and adjustment of accounts—Contract Act, s. 265—Court Fees Act (VII of 1870), s. 7, cl. 4—Suits Valuation Act (VII of 1887), s. 8—Jurisdiction of Munsif.* In suits brought for the several shares of the plaintiffs in the profits of a partnership after the partnership had been determined and an adjustment of accounts made —*Held* (NORRIS and BANERJEE JJ., RAMPINI, J. dissenting), that, under the provisions of s. 7, para. iv, cl. (*f*), of the Court Fees Act (VII of 1870), and s. 8 of the Suits Valuation Act (VII of 1887), the suits were properly brought in the Munsif's Court. *Ladubhai Premchand* v. *Revichand Venichand, I. L. R. 6 Bom. 143* followed. DHANI RAM SHAHA *v.* BHAGIRATH SHAHA . . . **I. L. R. 22 Calc. 692**

101. ——— **Possession, suit for**—*Suit by auction-purchaser—Procedure.* In a suit for possession by an auction-purchaser, where plaintiff valued his claim at what he paid for the property —*Held*, that the valuation was *primâ facie* not incorrect, and, until rebutted by evidence and the result of a proper inquiry, should be accepted as correct. If the valuation was doubted, an enquiry should have been instituted under Act XXVI of 1867. SOOBUDRA *v.* RAM PROKASH SINGH . . . **16 W. R. 5**

102. ——— *Suit after foreclosure—Court Fees Act, s. 7, cl. 9.* Where a suit for possession is brought after a decree for foreclosure has been obtained, the valuation of such a suit in so far as the jurisdiction of the Court is concerned, is not to be calculated according to the scale laid down in the Court Fees Act, s. 7, cl. 9. AHOLLYA BAI DEBIA *v.* SHAMA CHURN BOSE **1 C. L. R. 473**

103. ——— *Civil Procedure Code, 1859, s. 229, Procedure under—Fresh suit Jurisdiction.* For the purpose of jurisdiction, a claim under s. 229 of Act VIII of 1859 is a fresh suit and not a continuation of the suit in which the claim is made; so that where, by reason of a change in the law as to the mode of valuing suits for the purpose of jurisdiction between the date of the original suit and the claim, the Court that dealt with the original suit ceases to have jurisdiction over the subject-matter of the claim, that Court cannot try the claim. MUTTAMMAL *v.* CHINNAN GOUNDEN **I. L. R. 4 Mad. 220**

104. ——— *Madras Civil Courts Act (III of 1873), s. 1—Jurisdiction—Suit to recover share of inheritance—Subject-matter of suit.* The plaintiff sued to be declared an heir to a deceased Mahomedan and to recover her share of the inheritance, the share claimed being less than R2,500, while the value of the whole estate exceeded that amount. *Held*, that the suit was to be valued according to the share, and not according to the value of the whole estate, and the suit therefore was within the jurisdiction of a District Munsif. KHANSA BIBI *v.* ABBA **I. L. R. 11 Mad. 140**

105. ——— *Suit for possession of share of estate and to set aside deed.* In a suit for possession of a share of an undivided estate, and to set aside a kobala by which the estate had been illegally alienated, plaintiff is not bound to value his claim according to the price stated in the kobala. AUGOPURA CHOWDHRY *v.* MEAH BIBEE **10 W. R. 207**

106. ——— *Suit for possession and declaration of title.* Where a suit is for recovery of possession (with mesne profits) of a certain portion of land, and for a declaration of right in respect of the remainder, its valuation should not include the value of the latter, which is only nominal, and requires a stamp of R10. HURRO NATH BHUTTACHARJEE *v.* HARVEY **25 W. R. 23**

107. ——— **Suit for possession and mesne profits**—*Value of the original suit—Bengal N.-W. Provinces, and Assam Civil Courts Act (XII of 1887), s. 21.* In a suit for possession and mesne profits, the value of the original suit for the purposes of s. 21 of Act XII of 1887 depends not merely upon the property sought to be recovered, but also upon the value or amount of the profits recoverable. MOHINI MOHAN DAS *v.* SATIS CHANDRA ROY . . **I. L. R. 17 Calc. 704**

108. ——— *Court Fees Act (VII of 1870), ss. 7 and 11—Mesne profits from the institution of suit, claim as to—S. 169 of the Code of Civil Procedure (Act VIII of 1859)—S. 50, cl. (f), and s. 211 of the Code of Civil Procedure (Act XIV of 1882).* The plaintiff in his plaint prayed for mesne profits only from the institution of his suit till the property in question was restored to him, and the decree awarded him those profits and directed that they should be determined in execution. After the property was restored to the plaintiff, he applied, in execution of the decree, to have the amount of mesne profits determined, which being done, a question arose as to whether the plaintiff could proceed to further execute his decree without paying the Court-fee on the amount so awarded in execution. *Held*, that no Court-fee was required. S. 11 of the Court Fees Act (VII of 1870) applies to a claim for mesne profits for which an amount can be and has been claimed by the plaint, and in respect of which some fee has been actually paid. RAMKRISHNA BHIKAJI *v.* BHIMABAI **I. L. R. 15 Bom. 416**

MAIDEN *v.* JANAKIRAMAYYA **I. L. R. 21 Mad. 371**

109. ——— **Pre-emption, suit for.** In a suit for pre-emption, the valuation of the property sued for is to be calculated at the market value for which it would sell, and not at ten times

VALUATION OF SUIT—*contd.*

1. SUITS—*contd.*

the value of the sudder jumma. ANJUD SINGH v. DEPUN SINGH . .

3 B. L. R. Ap. 143 : 14 W. R. 238 note

NAUNHOO SINGH v. TOFAN SINGH

14 W. R. 228

110. ———— *Jurisdiction—Bengal Civil Courts Act (VI of 1871), s 20* In a pre-emption suit, the subject-matter is the right of pre-emption, the value of which, and not that of the property itself, determines the question of jurisdiction under s 20, Act VI of 1871 NAUN SINGH v. RASH BEHARY SINGH

I. L. R. 13 Calc. 255

111. ———— *Court Fees Act (VII of 1870), ss 5 and 7, cls. (5) and (6)—Suit for pre-emption of separate plots of land not being a fractional share of a revenue-paying unit* *Held,* that in a suit for pre-emption in respect of separate plots of land which did not constitute any definite fraction of a distinct revenue-paying area and were not themselves separately assessed to revenue, the Court-fee should be paid on the market value of the land in suit, and not, as is the case where the suit is for a definite fractional share, on five times the Government revenue REFERENCE UNDER THE COURT FEES ACT, 1870, s 5

I. L. R. 16 All. 493

112. ———— **Redemption, suit for**—*Value for purpose of jurisdiction* The purchaser of the equity of redemption of certain land sued to redeem the same He made the mortgagor and vendor of the land a *pro formâ* defendant. *Held,* that the value of the subject-matter of the suit was not the market value of the land, but the amount of the mortgage-money KUBAIR SINGH v. ATMA RAM

I. L. R. 5 All. 332

113. ———— *Madras Civil Courts Act, 1873, ss 12 and 14—Value of Improvements.* *Per Curiam* (TURNER, C J., and MUTTUSAMI AYYAR, J., dissenting), that where an instrument of mortgage does not expressly secure the amount to be allowed for improvements or redemption of the mortgage, the value of the improvements is not to be calculated in ascertaining the "value of the subject matter of the suit" for the purposes of jurisdiction under s 12 of the Madras Civil Courts Act. *Per* TURNER, *C.J.* (MUTTUSAMI

of the demise before he can redeem, and the repayment of the sums spent in improvements thus secured by the mortgage in the same manner as the repayment of the principal advanced,

ANONYMOUS . **I. L. R. 5 Mad. 287 note**

114 ———— *Jurisdiction of Munsif* The integrity of a joint usufructuary mortgage having been broken in consequence of

right *qua* such share was under R1,000 The mortgagee set up as a defence to such suit that a bond, under which a sum exceeding R1,000 was due, had been tacked to the mortgage, and that, until such sum had been satisfied, the plaintiff could not recover possession of his share *Held,* on the question whether the Munsif had jurisdiction, that the value of the subject-matter of the suit was the value of the mortgagee's right *qua* the plaintiff's share; and as the value of such right did not exceed R1,000 even if it were held that the mortgaged property was further incumbered with such bond, such suit was cognizable in the Munsif's Court. The principle laid down in *Gobind Singh* v *Kallu, I. L. R 2 All 778,* followed BAHADUR v. NAWAB JAN . **I. L. R. 3 All. 822**

115. ———— *Joint mortgage—Jurisdiction—Court-fee—Valuation of suit—"Subject-matter in dispute"—Act VII of 1870, s 7, Art (ix)—Act VI of 1871, s 20—Statute, construction of* A deed of mortgage was executed by *P*, *T*, and *S* for R4,000 *A*, the purchaser of the share of *S*, brought a suit for recovery of posses-

demption of two of the mortgagors, and *pro tanto* extinguished their mortgage-debt and so by their own act empowered the plaintiff to sue for redemption of one-third of the property, the principal money now secured as between them and the plaintiff must now be regarded as one-third of the original mortgage amount,—namely, R1,333-5-4,—more particularly as fiscal enactments should, as far as possible, be construed in favour of the subject *Balkrishna Dhondo* v *Nagvekar, I. L R 6 Bom 324,* referred to *Held,* also, with reference to the terms of s. 20 of the Bengal Civil Courts Act (VI of 1871), that the "subject-matter in dispute" in suits of this kind was the amount of the mortgage-debt and the mortgagee's rights which were sought to be paid off; that from the terms of the plaint it

sumption is in favour of giving jurisdiction to the

VALUATION OF SUIT—*contd.*

1. SUITS—*contd.*

highest Court Observations by MAHMOOD, J., as to the subject-matter of suits for the redemption of mortgages, and the mode in which the value of such subject-matter should be calculated for purposes of jurisdiction. AMANAT BEGAM *v.* BHAJAN LAL . . . . I. L. R. 8 All. 438

116. ———— *Usufructuary mortgage—Over-valuation of suit, effect of Jurisdiction* The mere fact that a suit has been over-valued does not deprive the Court in which it is brought of jurisdiction, if the over-valuation was *bonâ fide* and had not the effect of altering the appellate jurisdiction, that is to say, did not cause the appeal from the judgment of the Court of first instance to lie to a different Court from that to which it would have laid had the suit been instituted in a Court having a more limited jurisdiction RAJENDRO LALL GOSSAMI *v.* SHAMA CHURN LAHORI . . I. L. R. 5 Calc. 188
4 C. L. R. 417

117. ———— *Suit to redeem mortgaged land paying revenue to Government.* The stamp duty payable under Sch B of Act X of 1862, on a suit to redeem mortgaged land paying revenue to Government, should be calculated on the sum for which the land is mortgaged, and not on the market value of such land NANDRAM SUNDARJI NAIK *v.* BALAJI VITHAL
5 Bom. A. C. 153

118. ———— *Suit by kanom-holder against jenmi and holders of prior kanom in possession* A suit brought by a kanom-holder against the jenmi and the holders of a prior kanom in possession, to recover possession of the lands, may be properly treated, for the purpose of juris-

I. L. R. 6 Mad. 140

119. ———— *Court Fees Act (VII of 1870)—Dekkan Agriculturists' Relief Act (XVII of 1879), Ch II.* The valuation of a suit for redemption for purposes of jurisdiction is the amount remaining due on the mortgage, or claimed on it by the mortgagee. It is that amount, and the right connected with it, which is the usual subject of contention in a mortgage-suit. *Per* BIRDWOOD, J.—The rules laid down in the Court Fees Act (VII of 1870) are not to be taken as necessarily a guide in determining the value of the subject-matter of a suit for purposes of jurisdiction RUPCHAND KHEMCHAND *v.* BALVANT NARAYAN . . . . I. L. R. 11 Bom. 591

120. ———— *Dekkan Agriculturists' Relief Act (XVII of 1879), Ch II, s. 3 —Appeal—*

VALUATION OF SUIT—*contd.*

1. SUITS—*contd.*

debt, the amount found to be remaining due on the mortgage, if any amount was due at the date of the suit, would represent the true valuation of the subject-matter of the suit. *Rupchand Khemchand v. Balvant Narayan, I. L. R., 11 Bom. 591,* followed. The plaintiffs, who were

dispute. He therefore passed decree awarding possession to the plaintiffs. Against this decree

As the Subordinate Judge found that no sum ... the original R50, the suit ... II of the ... VII of 1879).
AMRITA BIN BAPUJI *v.* NARU BIN GOPALJI SHAMJI
I. L. R. 13 Bom. 489

121. ———— *Suit on mortgage—Suit for redemption of mortgage—Value of subject-matter of suit.* In a suit upon a mortgage, where the sum due upon the mortgage is unknown, what determines the value of the subject matter of the suit is the amount of the mortgage, the rights connected with which are the subject of contention RAM CHANDRA BABA SATHE *v.* JANARDHAN APAJI
I. L. R. 14 Bom. 19

122. ———— *Court Fees Act (VII of 1870), s 7—Suit for redemption of mortgage.* In a suit for the redemption of a kanom the institution fee must be computed on the kanom debt as it originally stood REFERENCE UNDER COURT FEES ACT, s 5 . I. L. R. 14 Mad. 480

123. ———— *Court Fees Act (VII of 1870), ss 7 (ix) and 17—Redemption suit against mortgagee in possession—Arrears of rent covenanted for, to be deducted from the mortgage* ... mortgagee

according to the principal sum expressed ... secured by the mortgage EACHARAN PATTER *v.* APPU PATTER . . . I. L. R. 19 Mad. 18

124. ———— *Suit to redeem mortgage and for rent—Madras Civil Courts Act (Mad. Act III of 1873), s. 14.* The karnavan of a Malabar tarwad, having the jenm title to certain land and holding the uraima right in a certain public devasom to which other land belonged,

VALUATION OF SUIT—*contd.*

1. SUITS—*contd.*

demised lands of both description on kanom to the defendants' tarwad, and subsequently executed to the plaintiff a melkanom of the first mentioned land and purported to sell to him the jenm title to the last mentioned land. In a suit brought by the plaintiff to redeem the kanom and to recover arrears of rent :—*Held*, that, for the purposes of determining the jurisdiction of the Court of Appeal, the value of the subject-matter of the suit was the aggregate value of the two heads of relief. KONNA PANIKAR *v.* KARUNAKARA . . . . I. L. R. 16 Mad. 328

125. ———— Restitution of conjugal rights, suit for—*Burma Courts Act, 1875, s. 49—Appeal.* The proviso in s. 49 of the Burma Courts

within certain specified limits. A suit for the restitution of conjugal rights is incapable of being valued, and no appeal therefore in such a suit will lie under the Burma Courts Act from a decision of the Recorder of Rangoon. GOLAM RAHAMAN *v.* FATIMA BIBI . . . I. L. R. 13 Calc. 232

126. ———— A suit for restitution of conjugal rights is not one to which any special money value can be attached for the purposes of jurisdiction *Golam Rahman v Fatima Bibi, I. L. R. 13 Calc 232,* folllowed MOWLA NEWAZ *v.* SAJIDUNNISSA BIBI .

I. L. R. 18 Calc. 378

127. ———— Sale, suit to set aside—*Sale in execution of decree—Value of property sold.* In a suit to set aside an auction sale, the plaint must be stamped as if the suit were for the recovery of the property. DRAPU CHOWDHRY *v.* ISHAN CHUNDER DAS . . 9 C. L. R. 231

128. ———— Share of land, suit for—*Suit relating to land—Rental of share.* In valuing a suit relating to a share of land, the rental of the share is to be the criterion of the stamp. RAM BUKSH THAKOOR *v.* AJOODHYA LAL

2 W. R. Mis 45

129. ———— Waste lands, suit for—*Waste Lands Act (XXIII of 1863), s 5, suit under.* In a suit under s. 5, Act XXIII of 1863, by a claimant to waste land proposed to be sold or otherwise dealt with on account of Government, or by an objection to the sale or other disposition of such land, the plaint must be on a stamp of R100. GREESH CHUNDER ROY *v.* COLLECTOR OF SYLHET . . . . . 17 W. R. 349

130. ———— "Land"—*Pre-emption—Wajib-ul-arz—Court-fee—Act VII of 1870 (Court-fees Act), s. 7, sub-s. V (b)—Land—Valuation of suit.* The term "land," as used in the Court-fees Act, 1870, does not include buildings. A claim, therefore, for pre-emption of an indigo factory, although the site of the factory may be

VALUATION OF SUIT—*contd.*

1. SUITS—*contd*

land paying revenue to the Governm...

buildings as constitute an indigo factory would fall within the meaning of the term "houses," as used in the Court fees Act DURGA SINGH *v.* BISHESHAR DAYAL (1898) . . . I. L. R 24 All. 218

131. ———— Membership of tarwad—*Valuation of a suit for declaration as to membership of tarwad* The value of a suit for a declaration that certain persons are or are not members of a *tarwad* is the value of the share of the *tarwad* property which would be allotted to them if a partition were made by common consent. PANGA *v.* UNNIKUTTI (1900) . I. L. R. 24 Mad. 275

132. ———— Partition—*Bengal Civil Courts Act (XII of 1887), s. 21—Act I of 1887*

I. L. R. 24 All. 581

133. ———— Revision of valuation—*Court-fees Act (VII of 1870)—Suit for an account—Petition to increase valuation after finding by Commissioner—Increase to amount exceeding Courts' jurisdiction—Return of plaint for presentation to proper Court—Material irregularity* In a suit for an account, the usual valuation for purposes of Court-fees was made in the plaint, which was filed and received in a Munsif's Court. The Munsif appointed a Commissioner to take an account, and the result was that plaintiff was found by the

which the Court of a Munsif ordinarily has jurisdiction, the Munsif ordered the plaint to be re-

Held, irregu- suit to ned the

(1901) . . . . I. L. R. 25 Mad. 543

134. ———— Under-valuation—*Suits Valuation Act (VII of 1887), s. 11—Under-*

of the Munsif's Court. The objection was overruled, both in the Munsif's Court and in that of the District Judge, but was raised again on

VALUATION OF SUIT—*contd.*

1. SUITS—*contd.*

second appeal. *Held,* that the objection was one that could be raised on second appeal. *Held,* also, that, even though the suit were under-valued, as contended, the objection to it on that ground was not one that the Court would entertain, having regard to s. 11 of the Suits Valuation Act (VII of 1887), inasmuch as it had not been shown that the disposal of the suit had been thereby prejudicially affected GOVINDA MENON *v* KARUNAKARA MENON (1900) **I. L. R. 24 Mad. 43**

[illegible]

claim only approximately or tentatively, and prays that the amount of his claims may be ascertained in the course of the suit, the amount found by the Court to be due to him must be regarded as the value of the original suit for the purpose of determining the forum of appeal, under s 21 of Act XII of 1887. *Mohini Mohan Das* v *Satis Chandra Roy, I. L R. 17 Calc. 704, Nilmoney Singh* v. *Jagabandhu Roy, I L. R 23 Calc 536 ;* and *Modhu Suddun Roy* v. *Prosanno Kumar Dutt (unreported),* referred to *Rameswar Mahton* v. *Dilu Mahton, I L R 21 Calc. 550,* and *Nagendra Nath Mazumdar* v *Russik Chandra Rai, 6 C. W N. 346,* distinguished GULAB KHAN *v.* ABDUL WAHAB KHAN (1904) . . . **I. L. R. 31 Calc. 365**

136. ———— Claim to attached property—*Jurisdiction—Suit by unsuccessful claimant under s 283 of the Code of Civil Procedure to obtain the declaration rendered necessary by the order allowing attachment when there is no distinct claim against judgment-debtor for declaration of title, to be valued at the amount for which attachment is made and not at the value of the property—Judgment debtor not party, merely as such, to claim proceedings in the eye of law* A claim to attached property under s 278 of the Code of Civil Procedure being dismissed, the unsuccessful claimant sued for a declaration that the property was not liable to attachment as the property of the judgment-debtor The judgment-debtor was made a party but no distinct claim was made against him The value of the attached property was R2,775, while the amount for which attachment took place was only R1,700 :—*Held,* that such a suit was not a suit to obtain a declaration of title to the property, but one for getting rid of the effect of the order disallowing the claim and ought to be valued at the amount for which the property was attached when such amount is less than the value of the property. *Dwarka Das* v. *Kameshar Prasad, I. L R 17 All. 69* distinguished. A judgment-debtor who is not in fact a party to the claim proceedings does not in the eye of law become such by reason solely of his being the judgment-debtor *Moidin Kutti* v. *Kunhi Kutti Ali, I. L. R. 25 Mad 721,* followed KRISHNASAMI NAIDU *v.* SOMASUNDARAM CHETTIAR (1907)

I. L. R. 30 Mad. 335

VALUATION OF SUIT—*contd.*

1. SUITS—*contd.*

137. ———— Suit for declaring document invalid—*Court Fees Act (VII of 1870), s. 7, para. IV, cl. (c)—Suit for declaring invalidity of document, which plaintiff is not bound to have set aside is not a suit for declaration and consequential relief within section—Jurisdiction—Rule 2 of Rules under s. 9 of Suits Valuation Act* In order to determine whether a suit falls under s. 7, paragraph IV, clause (*c*) of the Court Fees Act, the substance of the plaint and not the words which the plaintiff chooses to use, must be considered. A person may rely on the invalidity of a void instrument as against himself without suing for its cancellation ; and a suit by him for declaring the invalidity of such instrument will not be a suit for declaration and consequential relief under s. 7, paragraph IV, clause (*c*), of the Court Fees Act It will be otherwise where the party cannot impeach the arrangement effected by the deed without having it cancelled A transaction by the Karnavan of a Tarwad is void against members not consenting thereto, if it is in excess of his powers as such Karnavan. In declaratory suits where no consequential relief is prayed, the value for purposes of jurisdiction is the value of the property likely to be effected by the declaration and rule 2 of the rules of the High Court of 26th February, 1903, does not apply to such cases. CHINGACHAM VITIL SANKARAN NAIR *v.* CHINGACHAM VITIL GOPALA MENON (1906)

I. L. R. 30 Mad. 18

138. ———— Suit for recovery of land and mesne profits—*Valuation of suit Appeal—Forum of appeal—Bengal, N. W. P. and Assam Civil Courts Act (XII of 1887), s. 21—Interest pendente lite—Court Fees Act (VII of 1870), s. 11. Held,* by RAMPINI, A C.J., BRETT, MITRA and WOODROFFE, JJ., that when in a suit for possession of land and mesne profits, which was originally valued at a sum below R5,000, and which was instituted in the Court of a Subordinate Judge, but in which the whole amount actually found due, inclusive of mesne profits payable by the defendant to the plaintiff, was over R5,000, an appeal would lie to the High Court and not to the District Court. Where a plaintiff fixes a certain sum as the amount of his claim only [illegible] prays that the [illegible] ount [illegible] ene- [illegible] suit [illegible] eal [illegible] 31 [illegible] rest [illegible] t be

pendente lite on the mesne [illegible] taken into account in estimating the value of the original suit. *Held,* by MUKERJEE, J., that the rule formulated in *Gulab Khan* v. *Abdul Wahab Khan, I. L. R. 31 Calc. 365,* was too wide and required to be qualified ; that where a plaintiff was permitted by s. 50 of the Code of Civil Procedure to put upon the relief claimed by him an approximate or tentative value, and the Court determined,

VALUATION OF SUIT—*contd.*

1 SUITS—*concld*

the amount which the plaintiff was entitled to recover, such amount, if accepted by the plaintiff as the value of the relief claimed by him, determined the value of the suit and, consequently, the *forum* of appeal, under s 21 of Act XII of 1887 IJJATULLA BHUYAN *v* CHANDRA MOHAN BANERJEE (1907) . I. L. R. 34 Calc. 954

139. — Suit under Civil Procedure Code (Act XIV of 1882), s. 283—*Property of plaintiff wrongly attached—Claim in execution proceedings rejected—Court Fees Act (VII of 1870), Sch II, Art 17, sub-s (1)—Suit to set aside summary decision of Court not established under Letters Patent* The plaintiff was in possession of immoveable property, which she had purchased from the second defendant against whom the first defendant obtained, in the Court of a Subordinate Judge, a decree in execution of which the plaintiff's property was attached Her claim in the execution proceedings was rejected, and she thereupon brought in the Subordinate Judge's Court, a suit for a declaration

Kulkarni, I L R 9 Bom 20, followed PHUL KUMARI *v* GHANSHYAM MISRA (1907)
I. L. R. 35 Calc. 202
s c. L. R. 35 I. A. 22
12 C. W. N 169

2. APPEALS.

1. ——— Question of valuation—*Appellate Court, power of—Act XXVI of 1867.*—An Appellate Court has no power to set aside a decision

ISHAN CHANDRA MOOKERJEE *v.* LOKENATH ROY 6 B. L. R. Ap. 12; 14 W. R. 451

2. ——— *Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887), s 21, cl. (a)—"Value of the original suit"—"Amount or value of the subject matter of the suit" District Judge, jurisdiction of—General Clauses Act (I of*

to be the value assigned by the plaintiff in his plaint, and not the value as found by the Court unless it appear that, either purposely or through

VALUATION OF SUIT—*contd.*

2. APPEALS—*contd.*

gross negligence, the true value of the suit had been altogether misrepresented in the plaint. MAHABIR SINGH *v* BEHARI LAL
I. L. R. 13 All. 320

3. ——— *Ground of appeal going to the whole of the respondent's decree.* Where one of several appellants takes a ground of appeal which goes to the root of the respondent's case and which, if successful, would deprive the respondent of his decree as a whole, and not merely of his interest in it *quoad* the particular appellant, the Appellate Court is justified in refusing to hear such appellant on such ground as aforesaid unless he pays a Court-fee sufficient to cover the whole relief obtainable on such ground of appeal BUJHAWAN RAI *v* MAKUND LAL
I. L. R. 15 All. 112

4. ——— *Suit of the nature cognizable in Courts of Small Causes.* For the purposes of an appeal, whether from a decree in a regular suit or from an order passed in execution of such decree, the pecuniary test of jurisdiction is the valuation of the original suit in which the decree was passed and not merely the actual amount affected by the order sought to be appealed NAZIR HUSAIN *v* KESRI MAL
I. L. R. 12 All. 581

5. ——— *Jurisdiction of District Judge—Valuation put by plaintiff in his plaint—Amount awarded by decree—Bengal, N.*

the plaint, is within the jurisdiction, such jurisdiction is not ousted by the Court finding that a decree for a sum exceeding the limit of its pecuniary jurisdiction should be given to the plaintiff There is nothing in Act XII of 1887 to confine the sum for which a Civil Court may pass a decree to the limit of its jurisdiction to entertain a suit *Mahabir Singh* v. *Behari Lal, I L R. 13 All 320,* referred to MADHO DAS *v* RAMJI PATAK
I. L. R. 16 All. 286

6. ——— *Jurisdiction—Appellate Court*

may entertain the objection, though it had not been raised in the Court below SHEO GOBIND RAUT *v* ABHAI NARAIN SINGH 5 B. L. R. Ap. 17

7. ———
dismissing
appeal was
appeal was
appellant bringing a fresh appeal within twenty days on a full stamp. WALI ALAM *v.* NASRAN
3 B. L. R. Ap. 104
s. c. WOLEE ALUM *v.* MISRUN . 12 W. R. 50

VALUATION OF SUIT—*contd.*

2. APPEALS—*contd.*

8. ——— *Ground for dismissing appeal* When a suit has been admitted upon a certain stamp, tried, and decreed for the plaintiff, "under-valuation" is no ground for dismissing the defendant's appeal. EMAMUDDIN KHAN *v* RAMKISHORE KOWAR

5 B. L. R. Ap. 30

9. ——— *Insufficiently-stamped appeal—Deputy Registrar, power of—Civil Procedure Code, 1859, s 31* The Deputy Registrar has no authority to make an order returning a petition of appeal when the stamp fee paid upon is insufficient. The right course for that officer, if his requirements as to stamps are not complied with, is to lay the matter before the Court But if the appellant is ready to pay what is required, then, whether the time for filing the appeal has expired or not, the Deputy Registrar is bound to receive it if it was originally presented in time AMBUR ALI *v* KALI CHAND DOSS . . . 24 W. R. 258

10. ——— **Over-valuation**—*Refund of stamp duty* Where excess stamps had been filed in consequence of an over-valuation of the appeal, the surplus amount was ordered to be refunded *In the matter of* GRANT . . 14 W. R. 47

11. ——— **Law applicable to valuation**—*Law in force at presentation of appeal.* The valuation of an appeal must be according to the Act in force at the time of its presentation, and the original valuation under a law obsolete at the period of appeal can have no influence in the decision ANONYMOUS . . 5 Mad. Ap. 44

BHUGOBUTTY KOOER *v.* KUSTOOREE KOOER

15 W R. 272

12. ——— *Civil Procedure Code, 1859, s. 229—Change of law between date of original suit and date of claim, effect of, on jurisdiction* The subject-matter of an appeal should be valued for the purpose of jurisdiction according to the law in force at the date of the appeal, and not of the suit which has led to it. For the purpose of jurisdiction, a claim under s 229 of Act VIII of 1859 is a fresh suit, and not a continuation of the suit in which the claim is made, so that where, by reason of a change in the law as to the mode of valuing suits for the purpose of jurisdiction between the date of the original suit and the claim, the Court that dealt with the original suit ceases to have jurisdiction over the subject-matter of the claim, that Court cannot try the claim. MUTTUMMAL *v.* CHINNANA GOUNDEN

I. L. R. 4 Mad. 220

13. ——— **Bengal Civil Courts Act (Beng. Act VI of 1871), s. 22**—*Subject-matter in dispute—Jurisdiction of the High Court.* The appeal from the decree or order of a Subordinate Judge or Munsif, where the amount or value of the subject-matter in dispute in a suit exceeds R5,000, lies to the High Court, although the amount or value of the subject-matter in dispute in appeal is less than R5,000. *In the matter of the appeal of* DULI CHAND . . . 9 B L. R. 190

s. c. DOOLY CHUND *v.* NIRBAN SINGH. NURRENDER NARAIN SINGH *v.* SREE NARAIN DOSS. MEERBHOY SINGH *v.* RAMPERSHAD SINGH

18 W. R. 261

So also held, under s. 18, Act XVI of 1868, by the majority of the Court (PEARSON, J., dissenting) of the North-Western Provinces in MAHOMED HOSSEIN KHAN *v* SHIB DYAL

5 N. W. 108 : Agra, F. B. Ed. 1874, 276

MASOOMA BEBEE *v* NAZUR FATMA

1 N. W. 117 : Ed. 1873, 203

CHUNDER BHAN SINGH *v.* JAIRAM GEER

5 N. W. 175

But *see* SRIMATI DASI *v.* SOUDAMINI DOSSEE

9 B. L. R. 192 note

14. ——— *Appeal where one suit has been split up into several* Where a suit for R13,777 was brought against defendants whose interests were not identical, and the Judge ordered separate trials of the different causes involved, as provided in s 9, Act VIII of 1859, an appeal by the defendants from the decision [illegible]

[illegible] 100

[illegible] 31

15. ——— *Interest on* [illegible]

[illegible]

of interest the appeal was valued at more [illegible] that sum, the case was *held to come* within the principle of *In re Duli Chand* RAI DHANPAT SINGH BAHADOOR *v.* MADHUMATI DEBI

9 B. L. R 197 note : 18 W. R. 316

16. ——— *Subject matter in dispute—Jurisdiction of High Court—Execution of decree—Act XXIII of 1861, s 11.* The appeal from an order of a Subordinate Judge directing execution to issue lies to the District Judge, and not to the High Court, where the amount claimed in a suit is under R5,000, although the amount sought to be recovered in execution has, by the addition of interest since decree, grown to a sum exceeding R5,000. RUTTANJOTE KOOER *v* RAM DASS . 10 B. L. R. 290 : 19 W. R. 131

17. ——— *Execution of decree.* When the High Court called up an appeal to the Zillah Judge, and tried it as a regular appeal, and passed a decree thereon :—*Held*, that this did not entitle the parties to prefer an appeal to the High Court in the proceedings in execution of that decree. Such appeal would lie to the Zillah Judge. RAMANOOGRA SAHOY *v.* BYJNATH LAL

10 B. L. R. 291 note : 16 W. R. 184

VALUATION OF SUIT—*contd*

2. APPEALS—*contd*

18 ———— *Suit in value over R5,000—Appeal heard by Judge without jurisdiction.* The High Court in special appeal remanded a case to the Subordinate Judge for re-trial The case having been re-tried, an appeal against the second decree of the Subordinate Judge was filed in the Court of the District Judge, who declared that it was not cognizable by him, as the value of the property in dispute exceeded R5,000. A regular appeal was preferred to the High Court *Held*, that the entire proceedings subsequent to the first decree of the Subordinate Judge were *ultra vires* and could not be recognized, and that the appeal would not lie THAKOOR PERSHAD SINGH *v* MAHADEO SINGH

5 N. W. 210

19 ———— **Computation of value**—*Valuation of appeal for jurisdiction—Madras Civil Courts Act (Mad Act III of 1873).* According to s. 13 of Act III of 1873 (the Madras Civil

ferred to the District Court, but the amount in dispute in the appeal did not exceed R5,000, that the District Court had no jurisdiction to hear the appeal MUTHUSAMI PILLAI *v.* MUTHU CHIDAMBARA CHETTI . . . . **7 Mad. 356**

20 ———— **Appeals in measurement cases**—*Miscellaneous petitions.* Petitions of appeal in cases to obtain an order for measurement may be written on the stamp used for miscellaneous petitions. SMITH *v.* NUNDUN LAL

6 W. R. Act X, 13

21. ———— *Right to Measure valued at specified amount* Where a zamindar values his right to measure at a certain amount, the petition of appeal must be written on a regular stamp according to such valuation, and not upon a stamp used for miscelleneous petitions. OOMA CHURN BISWAS *v* SHIBNATH BAGCHEE **8 W. R 14**

22. ———— **Appeal from order de-**

on a stamp for an ordinary petition MOHESH CHUNDER BANERJEE *v.* CHUNDER MONEE DABEE

9 W. R. 139

23. ———— **Appeal from order rejecting application to set aside ex parte decision**—*Summary appeal* The stamp required for a petition of appeal from an order rejecting an application to set aside an *ex parte* decision under s. 119, Act VIII of 1859, was a two-rupee stamp. Such an appeal was treated as a summary and not a regular appeal. PARBUTTY *v* GREEDHAREE LALL . . . **4 W. R. Mis. 15**

24. ———— **Appeal from order rejecting plaint for misjoinder**—*Miscellaneous appeal—Stamp* An appeal from an order rejecting a plaint for misjoinder is a miscellaneous appeal; and if it is rejected, an appeal from the order of rejection is also of the nature of a miscellaneous appeal, and is to be valued and stamped as such. KOSSELLA KOER *v.* BEHAREE PATUCK

12 W. R. 70

25. ———— **Appeal by mortgagee on question of lien** Where the appeal by the mortgagee was not with reference to the property, but to a mortgage lien —*Held*, that the valuation for the purpose of stamp in such appeals should be with reference to the value of the lien for the mortgage-debt of incumbrance, and not with reference to the value of the mortgaged property. MAHOMED SHEERUN KHAN *v.* MISSER KOONDUN LALL. BHEEKA *v* NUND KISHORE

Agra, F. B. 158: Ed. 1874, 119

26. ———— **Appeal in suit for profits in respect of several years**—*Court-fees—Dis-*

in respect of several years, the proper Court fee leviable on the memorandum of appeal is one calculated on the aggregate amount of the profits claimed, and not one calculated separately on the amount of profits claimed for each year MUHAMMAD MALICK KHAN *v.* NIRHAI BIBI

I. L. R. 7 All. 761

27. ———— **Appeal from rejection of claim by forest settlement officer**—*Madras Forest Act (V of 1882), s 10—Appeal to the District Court—Court Fees Act, Sch II, Art 11 (a), Art 17, cl. (vi).* An appeal to the District Court from the rejection of a claim by a forest settlement officer under cl. 2 of s. 10 of the Madras Forest Act, 1882, falls under Art 17, cl (vi), and not under Art 11 (a) of Sch II of the Court Fees Act, 1870. KAMARAJA *v* SECRETARY OF STATE FOR INDIA

I. L. R. 8 Mad. 22

28. ———— **Appeal from order disallowing an application to file an agreement to refer to arbitration**—*Court-fee, mode of calculation of—Per* OLDFIELD, J The Court-

I. L. R. 6 All. 553

29. ———— **Appeal against award under Land Acquisition Act**—*Court Fees Act (VII of 1870) ss. 5 and 8* An appeal against an

VALUATION OF SUIT—*contd.*

2. APPEALS—*contd.*

award made by the District Judge under Land Acquisition Act (I of 1894) was filed in the High Court; the appeal memorandum bearing a Court-fee stamp of R10 only was admitted by the Registrar, no question having been raised as to the sufficiency of the stamp On the appeal having been posted for hearing, it was objected on the part of the respondent that the stamp paid was insufficient · *Held*, that the appeal memorandum should have borne an *ad valorem* stamp under Court Fees Act, s 8, and that there having been no decision by the taxing officer under s 5, it was open to the respondent to raise the objection on appeal at the hearing. KASTURI CHETTI *v* DEPUTY COLLECTOR, BELLARY . . . . I. L. R. 21 Mad 269

30. ———— Appeal from order of Judge under Land Acquisition Act (I of 1894) on reference by Collector as to disposal of compensation awarded—*Court Fees Act (VII of 1870)* In an appeal to the High Court from the order of the District Judge made upon a reference by the Collector under ss 18 and 19 of the Land Acquisition Act, 1894, as to the disposal of compensation awarded for land taken up by Government under the Act, the memorandum of appeal must be stamped as an appeal from an original decree. SHEO RATTAN RAI *v* MOHRI

I. L. R. 21 All. 354

31. ———— Appeal from order disposing of dispute under Civil Procedure Code, s. 322B—*Dispute as to extent of judgment debtor's liability to claim—Nature of appeal—Court Fees Act (VII of 1870), Sch II, Art 11.* An appeal from the decision of a dispute under s 322B of the Civil Procedure Code falls directly within the exception of Art. 11, Sch. II of the Court Fees Act (VII of 1870), and the memorandum of appeal should therefore be presented as for a decree in a suit upon an *ad valorem* stamp *Srinivasa Ayyangar* v. *Pria Tambi Nayakar, I L R 4 Mad. 420*, dissented from AHMAD KHAN *v* MADHO DAS . . . . . I. L R. 7 All. 565

32. ———— Appeal in partition suit—*Court Fees Act, Sch II, Art 17, cl 6—Stamp on Memorandum of appeal in partition suit.* The

See BADYANATH ADYA *v* MAKHAN LAL ADYA I. L. R. 17 Calc. 680

33. ———— Appeal from decree for possession disallowing perpetual character of leases. A suit for possession of certain lands having been decreed on the ground of plaintiff's

VALUATION OF SUIT—*contd.*

2. APPEALS—*contd.*

right of occupancy, but the perpetual (mirasi) character of the leases under which the claim had been made having been disallowed, an appeal was preferred to have it declared that the leases were perpetual *Held*, that, as the value of the claim would be the difference in the value of the land as held under a mirasi tenure at a fixed

34. ———— Appeal from decree in suit for possession and mesne profits—*Mesne profits to be determined in execution of decree—Valuation of appeal against decree.* In a suit for land with mesne profits a decree was passed for the plaintiff in which the amount of mesne profits was left to be determined in execution, the date from which they should be computed being the date of the suit The defendant appealed against the decree on the ground that he should not have been decreed to pay either mesne profits or costs. In the valuation of the appeal for the purposes of the Court Fees Act, nothing was included on account of the mesne profits *Held*, that no stamp duty was payable in respect of the mesne profits subsequent to the institution of the suit. MAIDEN *v.* JANAKIRAMAYYA . I. L. R. 21 Mad. 371

See RAMAKRISHNA BHIKAJI *v.* BHIMABAI . . I. L. R. 15 Bom. 416

35. ———— Appeal under cl. 10 of ... **N.-W.P., from**
32 of the
Fees Act
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appeal under s 10 of the ... manding
cedure
AHABIR
I. 178

36. ———— Appeal under Agency Rules, No. 22, under Act XXIV of 1839—*Court Fees Act (VII of 1870)* An appeal preferred to His Excellency the Governor in Council under Rule No 22 of the Agency Rules framed under Act XXIV of 1839 against the decision of the Governor's Agent at Vizagapatam and referred by Government to the High Court for disposal is not chargeable under the Court Fees Act. REFERENCE UNDER COURT FEES ACT, S. 5 I. L. R. 22 Mad. 162

37. ———— Appeal in suit to enforce a right of pre-emption—*Appeal by purchaser—Court-fee—Court Fees Act (VII of 1870) s. 7 (i) and (ii)* Where, in a suit to enforce a right of pre-emption, a decree was passed against the vendees-defendants, and they appealed from

VALUATION OF SUIT—*contd.*

2. APPEALS—*contd*

the same on the grounds that they were entitled to receive from the plaintiffs-pre-emptors a sum larger than that found by the Court of first instance to have been the purchase-money, and also that the plaintiffs had estopped themselves from asserting the right by refusing to purchase —*Held*, that the nature of the suit was not changed in appeal, and that, on the contrary, the subject-matter of the dispute between the parties was the right of pre-emption the value of which, for the purposes of *Court fee, was to be determined in manner directed* by s. 7, cl (vi), of the Court Fees Act, VII of 1870 *Ram Lakhan Rai v Bandan Rai, I L R 2 All. 711*, distinguished Where an appeal is preferred in a suit for pre-emption, on the ground that the right to pre empt has or has not been established, as the case may be, no matter what other pleas may be taken, the value of the subject matter in dispute, for the purposes of the Court Fees Act, must be determined as in terms provided in art (vi) of s 7 of the Act Where the question in appeal relates solely to the amount to be paid by the pre-emptor, the Court fee should be calculated *ad valorem* on the difference between the amounts alleged as the sale price on the one side and the other HAFIZ AHMAD *v* SOBHA RAM

I. L. R. 6 All 488

38. ———— Appeal in suit for redemption—*Court Fees Act (VII of 1870), s 7, cl 9—Madras Civil Courts Act (Mad Act III of 1873), s 13—Suits Valuation Act (VII of 1887), s 11—District Judge, jurisdiction of* In a suit in the Court of a Subordinate Judge to redeem certain land on payment of R1,625, being a quarter of

the land exonerated only *Held*, (i) that the

I. L. R. 16 Mad. [illegible]

39. ———————— *Court Fees Act (VII of 1870), s. 17—Claim by Mortgagor for rent in same suit—Court-fee on appeal* A suit to redeem a mortgage for R3,500 and to recover a certain sum on account of rent was dismissed so far as the prayer for redemption was concerned, and also part of the claim for rent was disallowed. It did not appear that the arrears of rent were intended to be set off against the mortgage-debt The plaintiff appealed *Held*, that the Court-fee

VALUATION OF SUIT—*contd.*

2 APPEALS—*contd.*

40. ——— Appeal in suit for redemption of usufructuary mortgage—*Bengal Civil Courts Act (VI of 1871), s 22* The plaintiffs sued for the possession of certain immoveable property, alleging that they had mortgaged such property to the defendants, and that the mortgage-debt had been satisfied out of the profits of the property The defendants set up a defence to the suit which raised the question of the proprietary right of the plaintiffs to the property. The value *of the mortgagees' interest in the property was*

matter in dispute," within the meaning of s 22 of Ac[illegible]

gagee

this

been

Appeal No 1039, of 1877, dissented from GOBIND SINGH *v* KALLU . . I. L. R. 2 All. 778

41. ——— Appeal from decree making property liable for mortgage-debt—*Court Fees Act (VII of 1870), s. 6, Sch. II, Art. 17.* In a suit on a mortgage-bond a decree was passed for payment of principal and interest, and in default for sale of the mortgaged property Some of the defendants filed a memorandum of appeal against so much of the decree as declared the liability of the property, affixing a stamp of R10 only. *Held*, that the proper stamp to be paid was not R10 as in the case of the declaratory decree, but on the value of the debt not exceeding the value of the property. VENKAPPA *v* NARASIMHA

I. L. R. 10 Mad. 187

42. ———— Appeal from decree for ejectment and mesne profits—*Court Fees Act (VII of 1870), s 7—Court-fee on Memorandum of appeal* A memorandum of appeal from a decree directing ejected and awarding mesne profits is chargeable with Court fees calculated both on the land and on the mesne profits. BRAHMAYYA *v* LAKSHMINARASIMHAM

I. L. R. 16 Mad. 310

43. ——— Appeal in suit for ejectment—*Claim by tenants for improvements of greater value than plaint valuation—Appeal by tenants for improvements—Court-fees payable on such appeal.* In a suit for ejectment, in which the plaint land was valued at R50 and Court-fee paid on that valuation, the tenants claimed R500 as compensation for improvements, which claim was disallowed The tenants appealed on the ground

VALUATION OF SUIT—*contd*

2 APPEALS—*contd*

Held, that, as the claim for improvements was not the subject-matter of the suit, but was merely incidental to the decree for possession, and on grounds of convenience, the fee payable by an appellant in such a case should be that payable in a suit for possession of land REFERENCE UNDER COURT FEES ACT, s 5 . **I. L. R. 23 Mad. 84**

44. ———— Appeal, memorandum of, under Bengal Tenancy Act (VIII of 1885), s. 108, cl. 3—*Court Fees Act (VII of 1870), Sch. II, Art. 17, cl. 6.* The Court-fee payable on a memorandum of appeal presented to the High Court under s. 108, cl 3 of the Bengal Tenancy Act of 1885 is that prescribed by Art. 17, cl 6, of Sch. II of the Court Fees Act PETU GHORAI v. RAM KHELAWAN LAL BHUKUT

I. L. R. 18 Calc. 667

45 ———— Court-fees stamp on me-

A second appeal from an order rejecting an application for execution of a partition-decree under the Gujarat Talukhdars Act (Bombay Act VI of 1888) is not within the contemplation of Art 1, Sch. I, but is an application falling under Art. 1 of Sch II of the Court Fees Act (VII of 1870). The Court-fee stamp of R2 should therefore be affixed to the momorandum of appeal. JAMSANG DEVABHAI v GOYABHAI KIKABHAI **I. L. R. 16 Bom. 408**

46. ———— Appeal from decree payable by instalments—*Court Fees Act (VII of 1870), s 16, and Sch. I, Art 1—Court-fee on appeal*

tween the value of the relief which he claims and the relief granted by the decree appealed against Where a decree was made payable by three instalments and the plaintiff appealed on the ground that it should not have been made so payable .—*Held*, that the Court-fee should be calculated upon the difference between the amount claimed in the Court below and the sum of the present values of the three instalments payable on the dates mentioned in the decree. LUKHUN CHUNDER ASH v KHODA BUKSH MONDUL . . **I. L. R. 19 Calc. 272**

47. ———— District Judge, jurisdiction of—*Madras Civil Courts Act (III of 1873), s 13 (2)—Appeal from Subordinate Judge* Certain members of a Moplah family sued the others in

which an appeal was preferred to the District

claimed and not the value of the property from which that share has to be taken, that is the value of the subject-matter of the suit within the meaning of cl. 2, s. 13 of the Madras Civil Courts Act, and therefore the District Court had jurisdiction to entertain the appeal. KUNHIKUTTI v ACHOTTI

I. L. R. 14 Mad. 462

48. ———————— *Madras Civil Courts Act (Mad. Act III of 1873), s. 12—Valuation of relief—Suit for partition* In an appeal

the appeal lay to the District Court *Krishnasami v Kanakasabai, I L R 14 Mad. 183*, followed. NARAYANAN v. NARAYANAN

I. L. R. 15 Mad. 69

49. ———————— *Madras Civil Courts Act (III of 1873), s. 13—Civil Procedure Code (Act XIV of 1882), s 331.* The plaintiff, being the holder of a decree of a Subordinate Court for more than R5,000, was obstructed in execution by the present defendants. He applied to the

favour of the plaintiff *Held*, that the valuation

valued above that sum, and that the appeal lay to the District Judge, and not to the High Court. KALIMA v NAINAN KUTTI. MAHOMED v NAINAN KUTTI . . . **I. L. R. 31 Mad. 520**

50. ———————— *Suits Valuation Act (VII of 1887), s 8—Valuation for purposes of Court-fees and for purposes of jurisdiction—Suit for account* In a suit for an account the valuation entered in the plaint for the purpose of fixing Court-fees determines the question of jurisdiction, the valuation for both purposes being the same under s 8 of Act VII of 1887. The plaintiff sued for an account, and valued the relief sought at R130 The suit was filed in the Court of a Subordinate Judge of the first class The Subordinate Judge rejected the claim Thereupon the plaintiff appealed to the High Court, valuing his claim in appeal at R10,500 *Held*, that the appeal lay to the District Court, and not to the High Court. BHAGVANTRAI MUNSHI v MEHTA BAJIRAO

I. L. R. 18 Bom. 40

VALUATION OF SUIT—*contd*

2. APPEALS—*contd.*

51. — — — — — — *Suits Valuation Act (VII of 1887), s 8—Suits for account—Court-fee stamp—Amount of claim as fixed by plaintiff—Relief incidental to the principal relief* According to s. 8 of the Suits Valuation Act (VII of 1887), in suits for taking an account the Court-fee stamp and jurisdiction are both determined by the amount of claim as fixed by the plaintiff In a suit for taking an account the plaint having contained several items which were all incidental to the chief item of relief, the plaint was held to be substantially one to have a minor plaintiff's estate administered, that is, to have accounts taken and the accounting party ordered to pay what (if any) should be found due from him on the balance of

Court. BAI AMBA *v* PRANJIVANDAS DULLABHRAM I L. R. 19 Bom 198

52 — — — — *Suits Valuation Act (VII of 1887), s 8—Suit for account—Court Fees Act (VII of 1870), s 7 (iv), cl (f), and s 11—Bombay Civil Courts Act (XIV of 1869), s 26* In

The defendants appealed to the High Court from the decree of the Subordinate Judge The plaintiffs objected that the appeal lay to the District

v BEJANJI JAMSEDJI . I L. R. 20 Bom. 265

53. — *Bombay Civil Courts Act (XIV of 1869), s 26—Administration suit—Suit filed in second class Subordinate Judge's Court—Decree in such a suit—Appeal from such decree.* The plaintiff filed an administration suit

came to R5,729, and that the defendant was indebted to the estate in the sum of R5,199 He drew up a preliminary decree, directing (*inter alia*) that the defendant should pay this amount into Court within two weeks. Against this order the defendant appealed to the District Court The District Judge returned the appeal for presen-

VALUATION OF SUIT—*contd.*

2 APPEALS—*contd.*

54. — *Court Fees Act (VII of 1870), Sch I, Art. 1, Sch. II, Art. 17—Suit on bond* In a suit upon a hypothecation-bond it was found by the Court of first appeal that the bond and the debt secured thereby were binding on the first defendant, but on the second defendant. The plaintiff preferred a second appeal against the

I. L. R. 15 Mad. 808

55. — — *Suit for ejectment—N.-W P Rent Act, s 93, cl (h)—General Clauses Act (I of 1887), s 39, cl (13)—Subject-matter of suit—Appeal valued for purposes of jurisdiction at a higher amount than the suit* Where a plaintiff in a suit under s 93 of the N.-W. P. Rent Act valued his suit at R46-3, which valuation was not objected to either by the defendant or the Court, and subsequently, being defeated in his suit preferred an appeal, which he valued at a very much greater amount —*Held,* that he must be bound by the valuation put by him upon his suit, and could not by alleging a greatly enhanced value obtain an appeal which would not have lain on the valuation stated in the plaint *Ram Raj Tewari v Girnandan Bhagat, I. L R 15 All 63,* distinguished *Mahabir Singh* v. *Behari Lal, I. L. R. 13 All 320,* referred to RADHA PRASAD SINGH *v* PATHAN OJAH . . I L. R. 15 All. 363

56. — — — — — *Court Fees Act (VII of 1870), s 10, cl 2, s 12, cl. 11, Sch. II, Art.*

against which the defendant appealed to the District Court While the appeal was pending, the District Judge, holding that the Court fee paid on the plaint was insufficient, ordered that the plaintiffs should pay the balance due on an *ad valorem* computation of the fee, and in default, that the suit should stand dismissed. The plaintiffs first became aware of this order on the 26th March; the balance was not paid within the time fixed by the District Judge for the payment to be made, and on the 28th March he accordingly made an order dismissing the suit *Held,* that the plaint was sufficiently stamped, and that, in any case, the order dismissing the suit while the appeal was still pending was irregular. KAMMATHI *v.* KUNHAMED . . . . I. L. R. 15 Mad. 288

57. — *Judge on appeal dealing with valuation of suit irregularly—Appeal by one of several defendants—Court Fees Act, s. 10, cl. (2), s. 12, cl. (2).* The plaintiff sued four persons to recover, with arrears of rent, possession of three parcels of land and obtained a decree in the

VALUATION OF SUIT—*contd.*

2. APPEALS—*contd.*

Court of a District Munsif. The suit was valued at R489-8-0. Defendant 4, who claimed to be entitled

he made an order, Original suit rejected He subsequently referred the appeal for disposal to a Subordinate Judge, who accordingly passed a decree, allowing the appeal of defendant 4 with costs On appeal against the above order and

58. ——— *Suit for declaration of title and for injunction—Consequential relief—Court Fees Act (VII of 1870), s 7, cl 4—Suits Valuation Act (VII of 1887), s 8* Where plaintiffs sued for a declaration that they were entitled to share in certain talukhdari estates and for an injunction to restrain defendant from cutting and removing timber from certain forests, or, if the injunction was not granted for an order to defendant to keep a correct account of the timber removed, the first class Subordinate Judge rejected the claim for want of jurisdiction —*Held*, that the suit was one for a declaration and consequential relief under s 7, cl. 4 (*c*), of the Court-fees Act, and that, as the claim was valued at R230 only, the appeal lay under Act VII of 1887, s 8, to the District Court. An injunction is in the nature of consequential relief GULAB SINGJI *v* LAKSHMANSINGJI . . . I. L. R. 18 Bom. 100

59. ——— *Suit for injunction and specific performance—Suits Valuation Act (VII of 1887), s 8—Court Fees Act (VII of 1870)—Valuation for purposes of jurisdiction* The provisions of s 8 of Act VII of 1887 apply to Appellate Courts as well as to Courts of first instance, and the value of the subject-matter of suits

District Court, and not to the High Court BAI VARUNDA LAKSHMI *v.* BAI MANEGAVRI
I. L. R. 18 Bom. 207

60. ——— *Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887), s 21, sub-s (1)—" Value of the original suit"*

original suit" in sub-s. (1), s 21 of the Bengal, N.-W. P., and Assam Civil Courts Act (XII of

of any design to change the venue of appeal, the question whether "value" in the said section should be taken to be *bonâ fide* value need not be

61. ——— *Court Fees Act (VII of 1870), s 16, and Sch. II, Art. 71, cl. iii—Declaratory decree, suit for—Consequential relief—Right of priest to charao (offerings to idol)—Suit for arrears of maintenance.* In a suit upon an ekrar executed by the priest of an idol for recovery of arrears of maintenance and for a declaration that the money due was realizable from the surplus

appealed only against the order refusing the declaration, the memorandum of appeal bearing a Court-fee stamp of R10. The respondent objected that

fee was
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nd cl. iii,
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10 Mad
Janardan,
JANUND

DATTA JHA *v* SAILAJANUND DATTA JHA
I. L. R. 23 Calc. 645

62. ——— *Fee payable on appeal—Suit for declaratory decree—Possibility of valuing subject-matter—Original valuation by plaintiff—Court Fees Act (VII of 1870), s 7 (iv)*

VALUATION OF SUIT—*contd.*

2. APPEALS—*contd.*

63. ———————— *Memorandum of appeal to special Judge under Bengal Tenancy Act—Court Fees Act (VII of 1870), ss 12 and 17, Sch II, Art 1, cl (b), part II, Art 17, cl (vi)—Bengal Tenancy Act, s 104, cl (2), s 108, cl (2) and s 189—Joinder of parties in one application—Rule 25 of Rules of Government of India under Bengal Tenancy Act* A number of tenants were

The appeal was dismissed by the Special Judge, on the ground that as many Court-fees of R10 each as there were tenants defendants had not been paid and the appellants petitioned the High Court to set aside the order under s 622 of the Civil Pro-

the Act by which the landlord was authorised to join as defendants several defendants in one application for settlement of rents *Held*, also, that the decision of the Special Judge did not dispose of any question relating to valuation, far less of any question relating to the valuation of a suit, and the decision was not final under s 12 of the Court Fees Act, and that the proceedings in this case could not properly be regarded as a suit and

64. ———————— *Court Fees Act (VII of 1870), Sch. I—Relief in respect of costs—Distinct relief.* When apart from, and independently of, any other reliefs which an appellant

65. ———————— *Memorandum of appeal insufficiently stamped—Conditional order admitting appeal—Deficiency made good after period*

VALUATION OF SUIT—*contd.*

2. APPEALS—*contd.*

Judge for admission, and it then bore a report dated the 7th November by the officer appointed under s 5 of the Court Fees Act, "Report will be made on receipt of record." The Judge made an order, "Admit, subject to stamp report," and the memorandum was then received by the office, and the appeal was entered on the register. On the

that the appeal had never been validly presented

declarations were asked for and obtained, and were by the appeal sought to be set aside; and it was not the province of the taxing officer or of the

I. L. R 12 All. 129

66. ———————— *Decree for redemption conditional on payment of a certain sum—Appeal by mortgagor—Court fee payable on memorandum of appeal—Court Fees Act (VII of 1870), s. 7, cl. 4* Where a mortgagor sues for redemption on the allegation that the mortgage-debt has been satisfied, and a decree for redemption is passed on payment of a certain amount, and the mortgagor appeals against the amount he is ordered to pay, the Court-fee payable on the memorandum of appeal must, under s. 7, cl. 9, of Act VII of 1870, be computed according to the principal money expressed to be secured by the instrument of mortgage, and not according to the balance which the mortgagor alleges to be due. *Semble:*

mentioned in the decree and the amount alleged by the appellant to be due. PIRBHU NARAIN SINGH *v.* SITA RAM . I. L. R. 13 All. 94

67. ———— Improper valuation—*Suits Valuation Act (VII of 1887), s. 11—Improper valuation for jurisdictional purposes—Case not finally*

VALUATION OF SUIT—*contd.*

2. APPEALS—*contd.*

disposed of by lower Appellate Court, but only remanded for findings—Validity of order of remand. S 11 of the Suits Valuation Act (VII of 1887) has the effect of curing a want of jurisdiction caused by improper valuation, not only in cases where there has been a final disposal by the lower Appellate Court, but also where a case has been remanded by the lower Appellate Court to the Court of first instance for a finding. RAMAN *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL (1901)

I. L. R. 24 Mad. 427

68. ——— **Increase of valuation**—*Jurisdiction—Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887), s. 21* Plaintiff sued for an account, and valued the suit at R2,000, but added that if any further sum were found due he

plaintiff filed an account claiming that R11,000 were due, and prayed for a decree

and he preferred an appeal to the District Judge, valuing his appeal at R4,500 The District Judge held that the appeal did not lie to him, as the value of the suit was R9,000 and not R2,000 *Held*, that the appeal lay to the District Judge, as the value of the suit must be considered as that stated in the plaint (R2,000) NOGENDRA NATH MOZUMDAR *v* RUSSIK CHANDRA RAI (1901)

6 C. W. N. 348

69. ——— **Partition**—*Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887), s. 21—(N.-W P* ... *1873), ss 113,* ... *revenue Court of* ... *Held,* that s. ... Provinces a ... pplies to partit ... of the North-Western Provinces Land revenue Act, 1873, a Court of Revenue has determined a question of title, and that "the value of the original suit," if not the value of the entire property sought to be partitioned, is at any rate the value of the share which the applicant for partition seeks to have divided off SHEO SINGH *v* BALDEO SINGH (1903)

I L. R. 25 All. 277

70. ——— **Suit for foreclosure**—*Appeals—Appeal from decree making property liable for mortgage-debt—Court Fees Act (VII of 1870), Sch. I, Art 1—Value of the subject-matter in dispute—Form of mortgage—Creation of charge on property—Words creating simple mortgage—Paibandh—Intention of parties—Registration—Effect of registration in the wrong book—Extinguishment of mortgage by payment—Effect of payment of prior mortgage by subsequent mortgagee—Intention of parties to keep mortgage alive—Assignment of mortgage—Surogation.* Where the purchaser of mortgaged property being a defendant in the mortgagee's suit for foreclosure, preferred an appeal against the decree for foreclosure made in the suit, the amount found due on the mortgage being over a lakh of rupees:—*Held* (for the purpose of ascertaining the Court-fee payable on the memorandum of appeal) that the value of the property affected by the decree must be taken to be R2,500, being the amount for which the appellant had purchased the property. *Venkappa v. Narasimha, I. L. R. 10 Mad. 187,* followed By a bond, being on the face of it an ordinary bond, the obligor agreed to repay the debt and admitted that, if he failed to do so, the obligee would be entitled to recover the debt by sale of a certain factory belonging to him and from his person and other properties, and that the property referred to in the bond will be held

have it registered as a mortgage was evidence that the parties intended to treat it as an agreement rather than as a mortgage. *Najibulla Mulla v. Nusir Mistri, I. L R. 7 Calc. 196,* referred to Plaintiffs paid out of their own funds the amount due under a mortgage bond payable by five annual

last instalment, executed at *C's* request an assignment of the mortgage in their favour. On the 21st December 1895, *C* being indebted to the plaintiffs in a large amount recoverable only out of the produce of the factory had executed in their favour an agreement to give them a first mortgage on the concern and certain other properties, and on the 13th November 1896 *C* executed two other deeds creating in their favour a valid charge on the said concern and certain other properties. *Held,* that, although there was no direct evidence of any formal bargain or agreement, the presumption was that the plaintiffs, when they paid off the instalments due under the mortgage of the 8th April 1894, intended that the mortgage should be kept alive for their benefit and that in itself entitled them to come in as first mortgagee. *Held,* further, ... December ... rage, and ... ber 1896 ... ne mortgage ... the last three instalments due to the first mortgagee, they were entitled to come in by subrogation as first mortgagee, and further that, the mortgage having ... to them under *C's* ... e mort- ... as been ... inten- ... as been ... olallas ... R. 10

VALUATION OF SUIT—*concld.*

2. APPEALS—*concld.*

Calc. 1035 L. R. *11 I A 126*, *Dinobundhu Shaw Chowdhury v Jogmaya Dasi, I L. R 29 Calc. 154* L. R. *29 I A 9*, *In re Wrexham, &c, Railway*, [1899] *1 Ch. 440*, *Mohesh Lal v Bawan Das, I L R 9 Calc 961* · L R *10 I. A 62*, *Tulsi* ... referred to. J

VALUE OF PROPERTY.

——— as stated in sale proclamation; gross inadequacy of—

See Appeal—Execution of Decrees—Questions in Execution
I. L. R. 30 Calc. 617

——— inquiry as to—

See Court fees Act (VII of 1870), s 19 H . . 6 C. W. N 898

——— statement in will as to—

See Evidence—Civil Cases—Recitals in Documents I. L. R. 1 Bom. 561

Value-payable Articles

See Small Cause Courts, Presidency Towns I. L R 28 Mad. 213

VARIANCE BETWEEN PLEADING AND PROOF.

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1. General Cases	12792
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See Appeal—Grounds of Appeal.
I. L. R. 15 Mad. 503

See Appellate Court—Exercise of Powers in various Cases—Plaint
I. L. R. 19 Bom. 303

See Estoppel—Estoppel by Deeds and other Documents

See Hindu Law—Custom—Inheritance and Succession
I. L. R. 21 Bom 110

See Hindu Law—Partition—Partition of Portion of Property.
I. L. R. 18 Bom. 611

See Hindu Law—Partition—Right to Partition—Purchaser from Co-parceners . I. L. R 20 Mad. 243

See Issues—Fresh or Additional Issues

See Landlord and Tenant—Ejectment—Notice to Suit
I. L. R. 17 Bom 631

See Plaint—Amendment of Plaint

See Relief . I. L. R. 15 Mad. 489
I. L. R. 19 Bom. 323

VARIANCE BETWEEN PLEADING AND PROOF—*contd.*

See Title—Evidence and Proof of Title—Long Possession.
I. L. R. 2 Calc. 418

See Written Statement
I. L. R. 1 Bom. 209

1 GENERAL CASES

1. ——— **Decision on point not raised in pleadings or issues.**—A plaintiff must recover *secundum allegata et probata*, and no decree should ...

Jankee v Jhanjoo 2 N. W. 407

Mooktakeshee Debea v. Collector of Burdwan . . . . 12 W. R 204

Tara Chand Roy v Nobin Chunder Roy
21 W. R. 132

Protab Chunder Borooah v. Collector of Gowalpara 22 W. R. 216

2. ——— **Basis of decision of case**—*Pleadings.* ... founded up... pleadings, o... case thereb... *Churn Bhutto, 11 Moo. I. A 7*, referred to Mylapore Iyasawmy Vyapoory Moodliar v Yeo Kay
I. L. R. 14 Calc. 801
L. R. 14 I. A 168

3 ——— *Exception to rule "Secundum probata et allegata"*—*Admission of* ...

4 ——— **Amendment of case**—*Mistake or misapprehension.* A plaintiff can be allowed to amend his case only when he has an honest case, but either through mistake or some misapprehension he has not placed the real facts before the Court Bhyro Dutt v. Lekhranee Kooer
16 W. R. 123

5. ——— *Civil Procedure Code, 1859, Operation of, as compared with old procedure in equity* Under the Civil Procedure Code, parties are not bound so strictly to the pleadings as in any equity suit under the old procedure, if their being so bound would work injustice Dossee v. Tarrachurn Coondoo Chowdhry . . . . Bourke. A. O. C. 48

6 ——— **Variance in plaint**—*Dismissal of suit, ground for.* *Held*, by a majority, that the Code of Civil Procedure does not require the dismissal of a suit by reason of any variance in the plaint Mahomed Reezaoodeen v. Hossein Buksh Khan . . . . 1 W. R. 300

VARIANCE BETWEEN PLEADING AND PROOF—*contd.*

1. GENERAL CASES—*contd.*

7. ———— **Raising issues after variance is shown.** *A plaintiff will not be allowed to set* up one case, and, having proved another, to ask for issues to be raised to suit the proof; but when a plaint and its proof necessarily lead to one or more particular issues, it is the duty of the Court, if these issues do not come by surprise on the defendant, to raise such issues, and to give the relief thereon to which the plaintiff is entitled. OBHOYCHURN MULLICK *v.* WOOMES CHUNDER PAUL . . . . . . 2 Hyde 263

8. ———— **Proof of cause of action not alleged**—*Dismissal of suit, ground for—Claim on one cause of action, evidence showing another.* Where a plaintiff sues on one cause of action and in support thereof gives evidence which, if it establishes anything, establishes a different cause of action, the Court acts properly in dismissing his suit MUDHOOSOODUN GOSSAMEE *v* HILLS 10 W. R. 242

9. ———— **Amount proved exceeding amount claimed**—*Decree* Where the amount to which the plaintiff would be entitled on the evidence exceeds that specified in the plaint, plaintiff is restricted to the amount so specified NATHOORAM *v.* JARDINE, SKINNER & CO. Cor 118

10. ———— **Presumption from failure to prove allegations**—*Onus of proof.* An adversary is entitled to the benefit of such presumptions as naturally arise from a party's failure to prove his allegations, even though the onus was in the first instance on the former GUNEE BISWAS *v.* SREE GOPAL PAUL CHOWDHRY . 8 W. R. 395

11. ———— **Failure to prove precise case pleaded**—*Decree, right to* A previous ruling in *Beejoynath Chatterjee* v *Lukhee Monee Dabee, 12 W R, 248,* explained not to mean that a plaintiff must either get the thing he claims or nothing at all, but that having come into Court upon one title, which he asks to have declared and fails to prove, a plaintiff cannot claim the declaration of another GOLUCK CHUNDER SIRCAR *v.* ISHAN CHUNDER DEB . . 23 W. R. 437

12. ———— **Suit for possession alleging fraud**—*Change to suit for redemption* Where in a suit for possession the plaintiff went to trial on the question of fraud, and that question was tried out, he is not entitled upon appeal to abandon that issue and to ask the Court to treat his suit as one for redemption RAM DAO MONDAL *v* INDROMONI DASI . . . . . . 3 C. W. N. 325

13. ———— **Right to make party liable in different character**—*Suit against party personally—Representative's liability* In a suit to

ture, where it was found that the sale of the indigo had yielded more than the amount advanced, but had been credited by the plaintiff to old debts *owing him by the defendant's father instead of to* the defendant's personal debt:—*Held,* that the plaintiff had violated the terms of the agreement, and had not in good faith attempted to make the defendant personally liable, and he could not be allowed to proceed against the defendant as representative of his father. PERROUX *v* LUCHMEEPUT SINGH . . . . . . 12 W. R 113

14. ———— **Unestablished defence**—*Decree, right to.* The Court should not necessarily decree the plaintiff's claim in full because the defence set up by defendant has entirely failed. MUTLOOB ALI *v.* KIRIA . . 1 Agra 276

15. ———— **Defence not set up by defendant**—*Inconsistent defence.* It is not competent to a Court to set up a defence not only not made by the defendant, but inconsistent with his own statement. SHURUT SOONDUREE DABEE *v.* PURESH NARAIN ROY . . 13 W. R 464

RADHA BINODE DUTT *v.* KOOTABODE MUNDUL 15 W. R 363

CHITTRA COOMARY BEBEE *v* RAM LALL MOOKERJEE . . . . . 18 W. R. 334

RAJARAM BANERJEE *v.* SONATUN ROY 23 W R. 404

... establish case set ... to ... ceed ... The ... nd- ... ing

to the plaintiff, that the tenancy had commenced some eleven years before suit, and that the defendant had for the last three years ceased to pay rent, and had recently denied the plaintiff's title. The defendant denied that the plaintiff was the owner of the house, or that he had leased it to the defendant He pleaded also that he had been in adverse possession for more than twelve years. The plaintiff *failed to prove* the allegation of ... by him, and it was not shown that ... od ... nit- ... re, ... to ... os- ... not ... ar, entitled to a decree. *Naiku Khan v. ... Ali Bakhsh, I. L R. 15 All., 186; Ali Husain v. Ali Bakhsh, All. Weekly Notes (1889), 176;* and *Balmakund v. Dalu, All Weekly Notes (1901), 157,* referred to. HAJI KHAN *v.* BALDEO DAS (1901) I. L. R 24 All. 90

17. ———— *Practice—Pleadings—Failure of plaintiff to prove the whole case upon which he came into Court—Plaintiff entitled to succeed on case proved if sufficient to support a decree.* The plaintiff came into Court alleging (I)

VARIANCE BETWEEN PLEADING AND PROOF—*contd*

1. GENERAL CASES—*concld.*

that he was the proprietor of a certain building, and (ii) that he had leased a part of the said build-

defendant had been in any way taken by surprise. *Adul Gani* v *Babni, All Weekly Notes, (1903) 18*, followed *Haji Khan* v. *Baldeo Das, All Weekly Notes, (1901) 188*, referred to *Naiku Khan* v *Gavani Kuar, I L R 15 All 186*, overruled. *Lakshmibai* v *Hari-bin Ravji, 9 Bom H C Rep, 6, Ramchandra* v *Vasudev, I L R. 10 Bom 451*, and *Bajrang Das* v *Nand Lal, All Weekly Notes, (1884) 285*, distinguished. BALMAKUND *v* DALU (F B, 1903) . . . I. L R. 25 All. 498

2 SPECIAL CASES.

1. ———— Account, suit for balance of—*Failure to prove balance alleged—Issues—Civil Procedure Code, 1859, s 141* *Held*, in contravention of various rulings of the late Sudder Court, that a suit brought on an alleged settlement of accounts, and balance struck and admitted,

issues that may be necessary to determine the real

RAMSAHOY *v* SEETHOO
1 N. W. 28: Ed. 1873, 26

2. ———— Accretion—*Gradual accretion to a formation of dry land already existing, and appropriated to an owner of land, on a river's bank —The ownership of the bed of the river was not the subject of contest below—Variation of claim disallowed* Although there is not in Madras, as there is in Bengal, an express law embodying the principle that gradual alluvion enures to the land

VARIANCE BETWEEN PLEADING AND PROOF—*contd.*

2. SPECIAL CASES—*contd.*

to which the accretion is made, following the ownership of that land, the rule is equally well established in both those provinces. Both parties were riparian proprietors of adjoining estates on both banks of the river Godavari The plaintiff claimed the right to newly-formed land, in mid-stream, which she alleged to have been formed by accretion upon an already existing lanka or alluvial island which belonged to her. On that point there were concurrent findings against her The accretion had taken place upon a lanka owned, not by her but by the Government, and higher up stream than hers. *Held*, that the plaintiff must abide by the ground of claim which she had presented below, that being that the new land was formed by gradual accretions to definite and visible portions of a lanka previously belonging to her This she could not now vary to a claim founded on an ownership of the river-bed on the strength of her being zamindar and owner of the land on both banks of the river, without either issue or evidence directed to such sub-aqueous ownership. BALUSU RAMALAKSHMAMMA *v* COLLECTOR OF THE GODAVARI DISTRICT . . . I. L. R. 22 Mad. 464
L. R. 26 I. A. 107

3. ———— Alienation, suit to set aside —*Variance between case in plaint and evidence—*

the owner of a share in a joint ancestral estate is not competent to alienate his share without the consent of the other heirs *Held*, that such variance could not be allowed, and that the plaintiff must prove his case as laid in the plaint SRI PRASAD *v* RAJ GURU TRIAMBUKNATH DEO
6 B. L. R. 555: 14 W. R. 386

4. ———— Alleged inconsistency in pleadings—*Construction of solehnama—Estoppel*

and sued as such, but was not so in fact. It appeared, however, that a solehnama had been entered into between him and the heir by virtue of which he had acquired all the rights of the heir in the property in suit. It did not appear that any ob-

VARIANCE BETWEEN PLEADING AND PROOF—*contd.*

2. SPECIAL CASES—*contd.*

Moo, I A. 7. Held, that, if this objection had been taken in the first Court, the plaint and issues might and ought to have been amended, but as it was not so taken, and the substance of the case in the plaint was that sale by the widow was invalid beyond her own interest, under the circumstances of the case there was no weight in the contention of the appellant NURUL HOSSEIN *v* SHEOSAHAI LAL . . . . . I. L. R. 20 Calc. 1
L. R. 19 I. A. 221

5 ——————— *Failure to prove case—Raising fresh case on appeal* In a suit to

the sale was made under pressure of a foreclosure

as twenty years ago, but the Privy Council, agreeing with the High Court, refused to allow him to do so HUMEEDA *alias* KHAJOO *v* AMATOOL MEHDEE BEGUM . . 17 W. R. P. C. 106

6 ——— Company—*Contributories, list of—Amendment of plaint* Where the holder of shares in a company was described in the list of contributories, against whom a balance order by the Court of Chancery had been made, as "Devji Bhanji, cotton merchant," and as being sued "in his own right "—*Held,* that the plaintiff's company could not be allowed to give evidence that the

Bhanji, and to make him personally liable as the holder of the shares. *Weikersheim's Case, L R. 8 Ch. Ap., 831,* distinguished LONDON, BOMBAY AND MEDITERRANEAN BANK *v* BHANJI ZUTANI
I. L. R 2 Bom. 116

7. ——— Compromise—*Failure to prove case—Right to succeed on ground not alleged.*

that he was not entitled to a decree on the ground taken on appeal that the document was invalid

VARIANCE BETWEEN PLEADING AND PROOF—*contd.*

2. SPECIAL CASES—*contd.*

as being unregistered, declaring that it did not affect his interests. MADHUB ALI KHAN *v* HOSSAIN REZA KHAN . . . 4 C. L. R. 52

8. ——— Contract—*Assumption of facts,*

sought by the plaint is grounded on a contract, the case must not be determined upon an alleged equity resulting from a different state of facts and inconsistent with that alleged by the plaintiff. ESHAN CHUNDER SINGH *v.* SHAMACHURN BHUTTO
2 Ind. Jur. N. S. 87 · 6 W. R. P. C 57
11 Moo. I. A. 7

Followed in DOSS RAM DOSS *v* MOHENDRO ROY DECHA . . . . . . 18 W. R. 274

9 ——————— *Issues—Amendment of plaint—Variance between case in plaint and evidence* The plaintiffs sued the defendants for damages for breach of contract, alleging in their plaint that they had agreed to sell, and the defendants to purchase, certain indigo seed, but ... take delivery, ... ng to ... laint- ... ct as ... stated *alleged in the plaint, but the* ... by them, was that they (the plaintiffs) were to purchase seeds as agents for the defendants The ... and that the

whether, under the circumstances, the ... were liable to pay the price of the seed; and if they did not, the Court ought to have amended ... The object ... r in dis- ... rt, upon ... he real ... BETTS ... R. 181

... ment, suit for—*Failure*

VARIANCE BETWEEN PLEADING AND PROOF—*contd*

2 SPECIAL CASES—*contd*

11. ———— *Suit for ejectment against defendant as tenants and on failure as trespassers—Case set up in appeal which was not that set up in the Court of first instance* The plaintiff came into Court on the allegation that she was the owner of a certain house, and that the defendants were her tenants at a certain rent, and she sought to eject the defendants for non payment of rent The Court of first instance having found her allegations of tenancy to be untrue, she

heard in support of a new plea of which the defendants had had no notice until the case was in appeal *Lakshmibai v Hari bin Raoji, 9 Bom 1,* referred to NAIKU KHAN v GAYANI KUAR

I. L. R. 15 All. 186

12 ———— *Suit for ejectment of defendants as trespassers—Decree declaring right to rent as landlord* In a suit to eject the defendants as trespassers, although it was found that the latter were not so, the lower Appellate Court notwithstanding gave a decree declaring the plaintiff's title to receive rent from the defendants. *Held,* that the entire suit ought to have been dismissed, inasmuch as the defendants

13. ———— *Title to relief completed pending a suit—Amendment of plaint*

I. L. R. 21 Mad. 288

14. ———— **Encroachment, suit to prevent.** Where the plaintiff suing to prevent an

GORDHANDAS . . I. L. R. 17 Bom. 648

VARIANCE BETWEEN PLEADING AND PROOF—*contd*

2. SPECIAL CASES—*contd*

15. ———— **Fraud**—*Failure to prove specific case of fraud* Where the plaintiff in his pleadings pledged himself to prove a specific case of fraud, and made his cause of action entirely dependant on that, he was not allowed to succeed, when he failed to prove fraud, on a collateral matter. SAHEB ROY v GUJADHUR PERSHAD NARAIN SINGH

22 W. R. 221

16 ———— *Compromise by official assignee—Insolvency Act, 11 & 12 Vict, c 21, ss 28 and 29—Charges with a view to establish fraud—Practice—Pleading—Amendment of pleading—Restriction of power to amend.* The account of an estate formerly in the hands of a

taking the account From the representatives of the latter, he being now deceased, the successor in office of the assignee claimed repayment The

that, if he did know of it, he had no power to consent to it, and that his consent would not be binding, the payment being a fraud upon the Court *Held,* that the amendment at the stage when it was made was not permissible. It is a well-known rule that a charge of fraud must be substantially proved as laid, and that, when one kind of fraud is charged, another kind cannot, on failure of proof, be substituted for it The High Court having decreed the claim on a finding of fraud different from either of the above:—*Held,* that on this ground alone the judgment might have been reversed *Montesquieu v Sandys, 18 Ves Jun. 302,* followed ABDUL HOSSEIN ZENAIL v. TURNER . . . I. L. R 11 Bom. 620

L. R. 14 I. A. 111

17. ———— **Hathchitta, suit on**—*Hathchitta given for amount of adjusted account—Failure to prove hathchitta—Frame of suit.* Where

VARIANCE BETWEEN PLEADING AND PROOF—*contd.*

2. SPECIAL CASES—*contd.*

1 C. W. N. 710

18. ———— Mortgage—*Suit for redemption—Decree on mortgage set up by defendants and not on that alleged by plaintiff* In a suit to redeem, the plaintiff produced a mortgage the genuineness of which the defendants denied, but they produced a mortgage from the plaintiff's ancestors to their ancestors The Principal Sudder Ameen made a decree for the restoration of the lands according to the terms of the mortgage produced by the defendants. The Civil Judge reversed the decision. *Held*, on special appeal, that the Principal Sudder Ameen was justified in making the decree which he gave, it not being inconsistent with the relief prayed for by the plaint UNICHA KANDYIB KUNHI KUTTI NAIR *v.* VALIA PIDIGAIL KUNHAMED KUTTI MARACCAR . . . . . . 4 Mad. 359

19. ———— *Suit for redemption—Evidence given of other mortgage than the mortgage in respect of which suit brought—Evidence*

defendants in 1825. At the hearing the deed of mortgage in respect of which the suit was brought was produced, but another mortgage of about the same date was produced and proved by the plaintiff The lower Courts passed a decree for the plaintiff The defendants appealed *Held* (reversing the decree of the lower Courts), that where a particular instrument is sued on as the basis of a right, it is incumbent on the plaintiff to establish his case on that particular cause of action, not on a cause of action, merely bearing the same common name, or of the same description, and so included in the same class. Under s 35 of the Evidence Act, I of 1872, a statement by the survey officer that the name of this or that person was entered as occupant would be admissible if relevant, but it would not be admissible to prove the reasons for such an entry as facts in another case. GOVINDRAV DESHMUKH *v.* RAGHO DESHMUKH

I. L. R. 8 Bom. 543

20. ———— *Change of nature of suit* The plaintiff sued to redeem a mortgage, alleging that it was made in the year A.D 1821

date alleged by the defendant, but that the suit was not time-barred, as the mortgagor's title had been acknowledged by the mortgagee within the

VARIANCE BETWEEN PLEADING AND PROOF—*contd.*

2. SPECIAL CASES—*contd.*

period of limitation. He accordingly made a decree for

plea of th

plaintiff.

with the

but reversed its decree on the ground that the plaintiff was not entitled to succeed on a state of facts inconsistent with the case set forth in the plaint, observing that a plaintiff ought not to be allowed to change his cause of action. *Held* by the High Court, on second appeal, that the decree made by the first Court in favour of the plaintiff *did not in any way proceed upon a cause of action* different from that made in the plaint, and that the cause of action remained the same, namely, the right of the mortgagor to redeem from a mortgagee. A plaintiff ought not to be allowed to alter his case so as to convert a suit of one character into a suit of another and inconsistent character. LAKSHMAN BHISAJEE *v* HARI DINKAR DESAI

I. L. R. 4 Bom. 584

21. ———— *Alteration of case* ... of land

treating the above decree as ... of the parties from the time when it was made *Held*, that the plaintiff, not having sought by his plaint to redeem the mortgage, or alleged that ... could not in the ... m such ... within ... ifferent ... below. ... missed. ... SMASJI

SHET . . . I. L. R. ... n. 461

22. ———— *Suit for redemption by purchaser of equity of redemption—Evidence given by defendants of other mortgage than the Mortgage in respect of which suit brought—Right of plaintiff to have plaint amended and the question of latter mortgage determined.* The plaintiff as purchaser of the equity of redemption sued for redemption. He alleged a mortgage, dated A.D. 1840, for R175. The defendants admitted a mortgage, but alleged that it was executed at a different time and for a larger sum. After the evidence was given, but before the judgment was delivered, the plaintiff applied to amend the plaint and to set up the mortgage admitted by the defendants. His application was refused, and the Court dismissed the suit on the ground that he had failed to prove the particular mortgage alleged in the plaint. The District Judge confirmed the decree, but observed

VARIANCE BETWEEN PLEADING AND PROOF—*contd.*

2. SPECIAL CASES—*contd.*

the question of the mortgage for the larger sum inquired into. CHIMNAJI v SAKHARAM
I L R, 17 Bom. 365

23 ——— *Cause of action set out in plaint—Burden of proof—Civil Procedure Code, 1882, s 50—Suit for redemption of mortgage.* A plaintiff is only entitled to succeed upon the cause of action alleged by him in his plaint. So, where plaintiffs came into Court alleging a mortgage of the year 1854 made by their

plaintiffs came into Court *Read* v *Brown, L R. 22 Q. B. D, 128, Murti* v. *Bhola Ram, I. L R. 16 All 165, Salima Bibi* v *Muhammad, I. L. R. 18 All 131, Ratan Kuar* v. *Jiwan Singh, I L R. 1 All. 194, Parmanand Misr* v. *Sahib Ali, I. L. R. 11 All 438; Zingari Singh* v *Bhangwan Singh, Weekly Notes, All (1889) 187, Krishna Pillai* v. *Rangasami Pillai, I L. R. 18 Mad. 462; Govindrav Deshmukh* v. *Ragho Desmukh, I L. R 8 Bom. 543;* and *Eshenchunder Singh* v. *Shamachurn Bhutto, 11 Moo. I. A 7,* referred to. *Lakshman Bhisaji Sirsekar* v *Hari Dinkar Desai I. L. R 4 Bom 584,* and *Chimaji* v *Sakharam, I. L. R 17 Bom. 365,* dissented from. SHEO PRASAD v. LALIT KUAR I. L. R 18 All. 403

24 ——— *Mortgage sued on not proved—Admission by defendants of mortgage right—Right of redemption.* The plaintiff sued to redeem a kanom of 1859 The kanom was not proved, but it appeared that the defendants in possession had in various documents admitted that

less than sixty years from the date of some of the

other as to which the defendants had made the admissions in question KRISHNA PILLAI v. RANGASAMI PILLAI . I. L. R. 18 Mad. 462

25. ——— *Mortgage sued on inadmissible in evidence for want of registration —Secondary evidence—Inadmissible mortgage, consolidating two prior mortgages—Redemption, right of—Decree to redeem prior mortgages* In a suit

VARIANCE BETWEEN PLEADING AND PROOF—*contd.*

2 SPECIAL CASES—*contd.*

26. ——— *Suit for redemption of immoveable property brought as donee—Title of plaintiff as reversioner.* In a suit for the redemption of immoveable property brought by the plaintiff as donee from a Hindu widow of the equity of redemption, the plaintiff's right to the property as reversioner cannot be inquired into notwithstanding an allegation in the plaint that he was a near relative of the husband of the donor. JAGANNATH VITHAL v APAJI VISHNU
5 Bom. A. C. 217

27 ——— *Procedure.*

KOOER. SASTA KOOER v. KUNDUN LAL
8 W. R. 369

But *see* BOISTUB DOSS KOONDOO v. HURO NARAIN HALDAR . . . . 17 W. R. 408

28. ——— *Usufructuary mortgage—Failure of claim to enforce lien—Compensation for breach of contract to give mortgagee possession.* A usufructuary mortgagee, the mortgagor having broken his agreement to give him possession of the mortgaged property, sued the

29. ——— *Usufructuary mortgage—Suit to enforce hypothecation—Compensation for breach of contract—Money lent—Money had and received for plaintiff's use.* An instru-

VARIANCE BETWEEN PLEADING AND PROOF—*contd.*

2. SPECIAL CASES—*contd.*

ment of mortgage provided that the mortgagors should deliver possession of the mortgaged property to the mortgagee, and the latter should retain possession, setting off profits against interest, until the

as one for compensation in damages for breach of contract, or for money had and received for the plaintiff's use, or for money lent, and the suit should be determined on its merits SHEO NARAIN *v.* JAI GOBIND . . I. L. R. 4 All. 281

30. ———— Partition—*Failure of suit—Right to declaration of share.* Where the main object of a suit framed and valued as a suit for partition of a portion of the estate fails, the plaintiff is not entitled to turn round and ask for a declaration as to the extent of his share RUTTUN MONEE DUTT *v.* BROJO MOHUN DUTT

22 W. R. 333

Affirming s c . . 22 W. R. 11

31. ———— Possession—*Moveable property—Making different case on appeal* In a suit for delivery over to plaintiff of papers said to be in the possession of defendant, the answer of the latter was that he had made over the papers to the plaintiff's son This plea was put in issue in the first Court, which found that some papers had been delivered as alleged, and made a decree ordering the delivery of certain other of the papers. On appeal the attention of the Judge was principally directed to the point whether the receipt of the papers by the plaintiff's son was a receipt by him as plaintiff's agent *Held*, that this point was a departure wholly from the case made below, and ought not to have been entertained on appeal. PUNCHANUN ROY *v.* TROYLUCKHOMOHINEE DOSSEE

14 W. R. 466

32. ———— *Immoveable property—Separate acquisition. Held*, that the question of possession was not a proper one for decision when a plea of limitation was overruled, and the claim was found to be based, not on the fact of possession, but of the claimant being a member of the joint family and the property acquired by joint funds NUND RAM *v.* CHOOTOO

1 Agra 255

33. ———— Possession, suit for—*Accrual of cause of action—Limitation* In a suit by an execution purchaser to recover possession of landed property, where defendant pleads limitation and plaintiff proves facts from which the Court is unable to draw conclusions of law for itself, plaintiff ought not to be strictly bound to the accrual of the cause of action alleged in his plaint, so long as that arose within twelve years before commencement of the suit MARIAM BEGUM *v* RYE CHURN DUTT . . . . 13 W. R. 269

34. ———— *Misdescription as to situation of lands—Identification* Where lands

claimed situated in the latter. RAMGOPAL BARICK *v.* SHIB PERSHAD SIRCAR . 12 W. R. 483

35. ———— *Failure to prove pottah.* In a suit for possession by two raiyats claiming under different pottahs from the same zamindar, when the defendant's pottah fails, he still has a right to have a judicial determination of his claim to occupancy. BYDNATH SHAHA *v.* JADUB CHUNDER SHAHA . . 3 W. R. 208

36. ———— *Suit for possession on specific title—Right of occupancy.* A plaintiff who succeeds in proving the facts stated

RAWUT 121

37. ———— *Decree on ground not alleged in plaint.* The plaintiff sued for a declaration of mirasi mokurrari rights to certain lands and for mense profits, alleging that he had

38. ———— *Adverse possession*

years' adverse possession had been proved, and that, as it

the title of adverse possession proved. The lower Appellate Court considered that the plaintiff had

VARIANCE BETWEEN PLEADING AND PROOF—*contd.*

2. SPECIAL CASES—*contd.*

proved that he and his vendor had held adverse possession for a period of over twelve years and gave the plaintiff a decree on the strength of that title. The defendant appealed to the High Court, and it was contended on his behalf that the plaintiff was not entitled to succeed upon a title of adverse possession when it was not alleged in his plaint, and no issue had been laid down in respect of it. *Held*, that, as the suit was one for possession, and the defendant had express notice in the lower Appellate Court that the plaintiff relied on the title of adverse possession, and as he took no objection, on the ground that he should be allowed an opportunity to call evidence to rebut it, and as he had consequently not been prejudiced by the course adopted by the lower Appellate Court, the decree of that Court should be confirmed. *Bijoya Debia* v. *Bydonath Deb*, *24 W. R. 444*, and *Shiro Kumari Debi* v. *Gobind Shaw Tanti*, *I. L. R. 2 Calc. 418*, distinguished. *Joytara Dassee* v. *Mahomed Mobaruck*, *I. L. R. 8 Calc. 975*, discussed. SUNDURI DASSEE *v.* MUDHOO CHUNDER SIRCAR . . . . I. L. R. 14 Calc. 592

39. ———— *Relief granted*

zur-i-peshgi lease in respect of that share, the

case was taken up for trial, the plaintiffs were

40 ———— *Defendant sued as*

moment it is shown that the defendant is not in possession as a trespasser, but holds as a tenant under the plaintiff, the suit must be dismissed, no matter what the character of that tenancy may be. RAM GOLAM SINGH *v.* HEET NARAIN SAHOO 2 C. L. R. 292

41. ———— *Failure to prove allegation of defendant's tenancy—Right to treat him as a trespasser.* Where a plaintiff sued for khas possession on the ground that the defendant was his tenant and had forfeited his tenure by

LALL ROY . . . . . 25 W. R. 440

42. ———— *Failure to prove permanent character of tenancy—Right to decree as tenants.* In a suit for possession of land on the

of their tenure. *Held*, that the plaintiffs were entitled to a decree for possession. *Kalee Coomar Pattur* v. *Khettur Nath Baug*, *17 W. R. 47*, and *Surjoo Pershad* v. *Kashee Rawut*, *21 W. R. 121*, followed. *Bijoya Debia* v. *Bydonath Deb*, *24 W. R. 444*, and *Brindabun Chunder Sircar* v. *Dhananjoy Luskur*, *I. L. R. 5 Calc. 246 : 4 C. L. R. 443*, distinguished. SHIB CHUND LAHIRI *v.* JOYMALA DASI . . . . . . 7 C. L. R. 103

43. ———— *Suit on ground of forcible dispossession where defendant's possession is found to be permissive.* A suit to recover possession of land on the ground of forcible dispossession, in which it was pleaded by defendant and found as a fact that the defendant's holding was of a permissive character, should be dismissed at once, the defendant's possession not being a wrongful one of the kind alleged by plaintiff. The rightly mode of action in such a case would have been for plaintiff to serve the defendant with notice to quit the land, and thereby put an end to the permission relied upon by him. PHILLIPS *v.* NUNDCOOMAR BANERJEE . . . . 8 W. R. 385

44. ———— A plaintiff's fail-

CHOWDHRY *v.* GOBIND CHUNDER MOITRO 15 W. R. 178

BOGA KOLITA *v.* THOOLESSUR KAYASTA 24 W. R. 357

TORAB ALI *v.* MAHOMED AMEER HOSSEIN 3 C. L. R. 105

45. ———— *Suit for confirmation of possession—Proof that plaintiff was out of possession—Change in form of suit.* The plaintiff

VARIANCE BETWEEN PLEADING AND PROOF—*contd.*

2. SPECIAL CASES—*contd.*

sued for an adjudication of his right to, and confirmation of possession of, certain lands, on the allegation that they had been conveyed to him by one of the defendants and that he was in actual possession thereof, and that his title thereto had been impeached by the subsequent sale of the same lands by his vendor to the other defendant. The Court of first instance found that the plaintiff's allegation of possession was false, and dismissed the suit [illegible]
dismissed, [illegible]
ward a *bo* [illegible]
stance, the [illegible]
the Court, in the absence of such special circumstances no such assistance would be afforded TERIETPUT SINGH *v* GOSSAIN SUDERSAN DAS
I. L. R. 4 Calc. 46

46. ——— *Failure to prove case in plaint—Right to decree on other grounds* At a sale held under Bengal Act VIII of 1865, the defendant purchased a shikmi tenure, and obtained possession thereof. Subsequently he ousted the plaintiff from certain lands, and hence the suit by the plaintiff for recovery of possession thereof, on the ground that the property in dispute was a lakhiraj tenure created by the Raja of Tippera, and that the plaintiff was owner thereof, partly by purchase and partly by inheritance. The lower Appellate Court found as a fact that the late shikmidar, and not the Raja, had granted the *lands in dispute as bramatar, but not in favour of* the person through whom the plaintiff claimed. The Court, however, passed a decree in favour of the plaintiff, as he had been unlawfully dispossessed. *Held*, that the plaintiff, having failed to prove the case as set up by him and upon which he claimed, could not be entitled to a decree upon grounds other than those stated in the plaint. ISWAR CHANDRA CHUCKERBUTTY *v* BISTU CHANDRA CHUCKERBUTTY
3 B. L. R. Ap. 97 : 12 W. R. 32

47. ——— *Failure to prove case—Changing case on appeal.* Each of two proprietors, *A* and *B*, separately mortgaged the whole of the joint property to different persons *B's* [illegible]

sive, and that *B* had no interest in the property. All these allegations were found to be false by the lower Appellate Court. *Held*, on special appeal, that the plaintiff could not recede from the case he had made in the lower Courts, and claim to be entitled to a decree for *A's* interest in the house DURSUN SAHOO *v* PRYAG RAM **2 C. L. R. 538**

48. ——— *Failure to show alternative case—Right to change case in special appeal.* Suit for possession of certain property as part of a joint family property sold by a widow without authority. Plaintiff applied to appeal specially on the ground, but could cite no authority in support of it, that when the eldest member and manager of the family purchases out of his own separate funds, because the family is joint, the property must be considered as joint property. Having failed in this character, the Court declined to allow him in special appeal to come in as a reversioner, and ask for a decree declaring the widow's act void as against reversioner. MADHO PERSHAD *v.* LALLA JEETUN LALL **17 W. R. 98**

49. ——— *Joint claim—Right to succeed on proof of separate title.* Where the plaintiffs in a suit put forward a joint claim, it is not enough that one of them makes out his title; the suit should be dismissed unless the joint claim is established. RAM COMUL CHUCKERBUTTY *v.* NUND RAM COOLAL . . **10 W. R. 263**

SHEO NUNDUN PERSHAD *v.* MUKDOOM BUKSH
20 W. R. 364

50. ——— *Joint claim—Right to succeed on proof of title to less share separately.* A plaintiff, suing on the ground that she was jointly entitled, was not allowed to succeed in the suit where it was shown she was only entitled to a less share in her own separate right. HURRO MONEE DOSSEA *v* ONOOKOOL CHUNDER MOOKERJEE . . . . **2 W. R. 461**

51. ——— *Claim to exclusive possession—Proof of right to joint possession.* When a plaintiff in a suit asks for one thing (*e g*, exclusive possession), a Court ought not to give him a decree because he proves that he is entitled to another thing (*e.g*, joint possession) BEEJOYNATH CHATTERJEE *v* LUCKHEE MONEE DABEE
12 W. R. 248

SREENARAIN CHUCKERBUTTY *v* MILLER
15 W. R. O. C. 7

52. ——— *Claim to separate possession—Proof of joint possession—alteration of claim.* When a plaintiff who claims property on the allegation that he purchased it from a person to whom it exclusively belonged, fails to prove that the property was the separate property of his vendor, he cannot have a decree for the share of the property to which his vendor was entitled as a member of a joint family. GOUR BEHAREE RAM BHUGGUT *v.* SHEORUTTUN KOOWAR
10 W. R. 243

53. ——— *Suit for exclu-* [illegible] *at hearing* [illegible] ...ly be [illegible] ...se not [illegible] ...dence, [illegible] ...led a [illegible] ...lant is [illegible]
specific issue is raised on it, and [illegible] given an opportunity of meeting it. PARASHRAM *v.* MIRAJI . . **I. L. R. 20 Bom. 569**

VARIANCE BETWEEN PLEADING AND PROOF—*contd.*

2. SPECIAL CASES—*contd.*

54. ———————— *Suit for exclusive possession—Proof of hearing of joint ownership—Procedure.* The plaintiff sued for possession of certain land. The lower Court held that the land was the joint property of the plaintiff and defendant, but finding that the plaintiff had been in exclusive possession allowed his claim and gave him a decree. On second appeal :—*Held*, that exclusive possession could not be awarded unless exclusive title was proved. On plaintiff's application, which was not opposed by the defendant, the decree of the lower Court was varied, and the plaintiff was awarded joint possession of the property in suit. NANA *v.* APPA

I. L. R. 20 Bom. 627

55. ———————— *Failure of proof of right to sole possession—Decree on admission of defendant of joint possession.* Where a plaintiff sued for sole possession and a declaration of sole title, and the defendant admitted that he was in joint possession but the plaintiff went on with his suit in order to get a decree that he was solely entitled and in sole possession, and failed to prove his case, he was *held* not entitled to a decree founded on joint possession. LUKHUN SINGH *v.* NUFFUR SING . . . . . . 16 W. R. 311

56. ———————— *Suit for possession of share—Decree for joint possession.* In a suit to recover possession of a third part of a khanabari, where the first Court, considering that there never had been a partition in definite shares, ordered restoration to the sort of possession plaintiff had enjoyed previous to being dispossessed — *Held*, that there was no objection to the decree [illegible]

19 W. R. 195

Dissenting from BEEJOYNATH CHATTERJEE *v.* LUCKHEE MONEE DABEE . . 12 W. R. 248

57. ———————— *Claim to share of property as being partitioned—Relief inconsist-* [illegible]

recover to the extent of the interest which he had in the land, if found to be joint property. FUKKER DASS POOROHEET *v.* GOPAL MOOKERJEE

12 W. R. 107

58. ———————— *Suit for possession on allegation of partition—Failure to prove division—Change of case on appeal.* Plaintiffs, being members of a joint Hindu family alleging division, and a sale to them by other members of their share in the family property more than twelve years before suit, sued to eject a more recent purchaser. The plaintiffs failed to prove division as alleged. One of the members of the family who was in possession of the property to which the sale deed related did not join in executing it. *Held*, that the plaintiffs, having failed to prove division as alleged, were not entitled in second appeal to have their suit treated as a suit for partition. MUTTUSAMI *v.* RAMAKRISHNA

I. L. R. 12 Mad. 292

59. ———————— *Claim to property on separate title—Right to decree on joint title.* The plaintiff alleged in his plaint that the defendant had erected a hut, or challa, upon ground to which he, the plaintiff, was separately entitled. The lower Appellate Court found that the land in dispute was the joint property of both parties, and that the defendant was not at liberty to erect the hut without the express permission of the plaintiff, and ordered the demolition of the challa. *Held*, that the plaintiff was not entitled to a [illegible]

3 B. L. R. Ap. 111   12 W. R. 69

60. ———————— Pre-emption, suit for—*Claim to right in different ways.* In a suit to establish a right of pre-emption, where the plaint is framed on right of Shufeh Khuleet, the plaintiff ought not to be allowed to shift his ground and make out a new case as Shufeh Jah. GOBIND ROW *v.* GIRDHAREE SAHOO . 24 W. R. 355

61. ———————— Principal and agent—*Suit by principal against agent—Failure of suit on grounds pleaded.* A bank sued *H*, its agent, who [illegible]

H on the ground that he had not exercised ordinary [illegible]

[illegible] on the ground that *H* had been appointed without authority and had failed to prove its case, the suit should have been dismissed. HAMILTON *v.* LAND MORTGAGE BANK OF INDIA

I. L. R. 5 All. 458

62. ———————— Rent—*Suit for arrears of rent—Failure to prove contract—Claim for use and occupation.* Where a plaintiff sued for rent and

VARIANCE BETWEEN PLEADING AND PROOF—*contd.*

2. SPECIAL CASES—*contd.*

sued for an adjudication of his right to, and confirmation of possession of, certain lands, on the allegation that they had been conveyed to him by one of the defendants and that he was in actual possession thereof, and that his title thereto had been impeached by the subsequent sale of the same lands by his vendor to the other defendant. The Court of first instance found that the plaintiff's allegation of possession was false, and dismissed the suit. *Held*, on appeal, that the suit was rightly dismissed, for though a plaintiff who brings forward a *bonâ fide* case, which he proves in substance, though not in form, would be assisted by the Court, in the absence of such special circumstances no such assistance would be afforded TERIETPUT SINGH *v* GOSSAIN SUDERSAN DAS

I. L. R. 4 Calc. 46

46. ——— *Failure to prove case in plaint—Right to decree on other grounds.* At a sale held under Bengal Act VIII of 1865, the defendant purchased a shikmi tenure, and obtained possession thereof. Subsequently he ousted the plaintiff from certain lands, and hence the suit by the plaintiff for recovery of possession thereof, on the ground that the property in dispute was a lakhiraj tenure created by the Raja of Tippera, and that the plaintiff was owner thereof, partly by purchase and partly by inheritance The lower Appellate Court found as a fact that the late shikmidar, and not the Raja, had granted the lands in dispute as bramatar, but not in favour of the person through whom the plaintiff claimed. The Court, however, passed a decree in favour of the plaintiff, as he had been unlawfully dispossessed. *Held*, that the plaintiff, having failed to prove the case as set up by him and upon which he claimed, could not be entitled to a decree upon grounds other than those stated in the plaint. ISWAR CHANDRA CHUCKERBUTTY *v.* BISTU CHANDRA CHUCKERBUTTY

3 B. L. R. Ap. 97 : 12 W. R. 32

47. ——— *Failure to prove case—Changing case on appeal* Each of two proprietors, *A* and *B*, separately mortgaged the whole of the joint property to different persons. *B's* mortgagee, who was prior in time, obtained a decree on his bond, sold and purchased the house. In a subsequent suit for confirmation of right and possession by *A's* mortgagee, he charged that the other bond and decree were fraudulent and collusive, and that *B* had no interest in the property. All these allegations were found to be false by the lower Appellate Court *Held*, on special appeal, that the plaintiff could not recede from the case he had made in the lower Courts, and claim to be entitled to a decree for *A's* interest in the house. DURSUN SAHOO *v.* PRYAG RAM 2 C. L. R. 538

48. ——— *Failure to show alternative case—Right to change case in special appeal.* Suit for possession of certain property as part of a joint family property sold by a widow without authority. Plaintiff applied to appeal specially on the ground, but could cite no authority in support of it, that when the eldest member and manager of the family purchases out of his own separate funds, because the family is joint, the property must be considered as joint property. Having failed in this character, the Court declined to allow him in special appeal to come in as a reversioner, and ask for a decree declaring the widow's act void as against reversioner. MADHO PERSHAD *v.* LALLA JEETUN LALL 17 W. R. 98

49. ——— *Joint claim—Right to succeed on proof of separate title.* Where the plaintiffs in a suit put forward a joint claim, it is not enough that one of them makes out his title; the suit should be dismissed unless the joint claim is established. RAM COMUL CHUCKERBUTTY *v.* NUND RAM COOLAL . . 10 W. R. 262

SHEO NUNDUN PERSHAD *v.* MUKDOOM BUKSH 20 W R. 364

50. ——— *Joint claim—Right to succeed on proof of title to less share separately.* A plaintiff, suing on the ground that she was jointly entitled, was not allowed to succeed in the suit where it was shown she was only entitled to a less share in her own separate right. HURRO MONEE DOSSEA *v* ONOOKOOL CHUNDER MOOKERJEE . . . . 2 W. R. 461

51. ——— *Claim to exclusive possession—Proof of right to joint possession.* ... thing (e g ... him ... to ... ATH ... 15 ... 348

SREENARAIN CHUCKERBUTTY *v.* MILLER 15 W. R. O. C. 7

52 ——— *Claim to separate possession—Proof of joint possession—alteration of claim* When a plaintiff who claims property on the allegation that he purchased it from a person to whom it exclusively belonged, fails to prove that the property was the separate property of his vendor, he cannot have a decree for the share of the property to which his vendor was entitled as a member of a joint family GOUR BEHAREE RAM BHUGGUT *v.* SHEOBUTTUN KOONWAR 10 W. R. 243

53. ——— *Suit for exclusive possession—Joint ownership proved at hearing—Procedure.* Exclusive possession can only be awarded on proof of exclusive title If a case not alleged by the plaintiff is disclosed in the evidence, the Court can allow it to be set up, provided a specific issue is raised on it, and the defendant is given an opportunity of meeting it. PARINSAV *v.* MIRAJI . . I. L. R. 20 Bom. 569

VARIANCE BETWEEN PLEADING AND PROOF—*contd*

2 SPECIAL CASES—*contd.*

54 ———————— *Suit for exclusive possession—Proof of hearing of joint ownership—Procedure.* The plaintiff sued for possession of certain land The lower Court held that the land was the joint property of the plaintiff and defendant, but finding that the plaintiff had been in exclusive possession allowed his claim and gave him a decree On second appeal —*Held*, that exclusive possession could not be awarded unless exclusive title was proved On plaintiff's application, which was not opposed by the defendant, the decree of the lower Court was varied, and the plaintiff was awarded joint possession of the property in suit NANA *v* APPA

I. L. R 20 Bom. 627

55. ———————— *Failure of proof of right to sole possession—Decree on admission of defendant of joint possession.* Where a plaintiff sued for sole possession and a declaration of sole title, and the defendant admitted that he was in joint possession but the plaintiff went on with his suit in order to get a decree that he was solely

56. ———————— *Suit for possession of share—Decree for joint possession* In a suit to recover possession of a third part of a khanabari, where the first Court, considering that there never had been a partition in definite shares, ordered restoration to the sort of possession plaintiff had enjoyed previous to being dispossessed —*Held*, that there was no objection to the decree

Dissenting from BEEJOYNATH CHATTERJEE *v* LUCKHEE MONEE DABEE . . **12 W. R. 248**

57 ———————— *Claim to share of property as being partitioned—Relief inconsist-*

12 W. R. 107

58. ———————— *Suit for possession on allegation of partition—Failure to prove division—Change of case on appeal.* Plaintiffs,

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2. SPECIAL CASES—*contd.*

being members of a joint Hindu family alleging division, and a sale to them by other members of their share in the family property more than twelve years before suit, sued to eject a more recent purchaser The plaintiffs failed to prove division as alleged One of the members of the family who was in possession of the property to which the sale-deed related did not join in executing it. *Held*, that the plaintiffs, having failed to prove division as alleged, were not entitled in second appeal to have their suit treated as a suit for partition. MUTTUSAMI *v* RAMAKRISHNA

I. L. R. 12 Mad. 292

59 ———— *Claim to property on separate title—Right to decree on joint title* The plaintiff alleged in his plaint that the

upon a ground which was inconsistent with the case set out in his plaint NABIN CHANDRA MITTER *v.* MAHES CHANDRA MITTER

3 B. L. R. Ap. 111; 12 W. R. 69

60. ———— **Pre-emption, suit for**—*Claim to right in different ways* In a suit to establish a right of pre-emption, where the plaint is framed on right of Shufeh Khuleet, the plaintiff ought not to be allowed to shift his ground and make out a new case as Shufeh Jah. GOBIND ROW *v* GIRDHAREE SAHOO . . **24 W. R. 355**

61. ———— **Principal and agent**—*Suit by principal against agent—Failure of suit on grounds pleaded* A bank sued *H*, its agent, who

appointed without authority and had failed to prove its case, the suit should have been dismissed. HAMILTON *v.* LAND MORTGAGE BANK OF INDIA

I. L. R. 5 All. 458

62. ———— **Rent**—*Suit for arrears of rent —Failure to prove contract—Claim for use and occupation.* Where a plaintiff sued for rent and

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2. SPECIAL CASES—*contd.*

failed to prove any contract, express or implied, to pay it, he was *held* not entitled to change his case and ask for compensation for use and occupation. LUCHMEEPUT DOSS *v.* ENAET ALI

22 W. R. 346

63. ———————— *Suit for arrears of rent—Failure of plaintiff to prove alleged rate of rent—Ascertainment of proper rate—Duty of Court—Form of decree* In a suit for arrears of rent at certain alleged rates in which the plaintiff fails to prove the rates alleged by him, it is not the duty of the Court to ascertain what were the fair rates, unless it is asked to do so The case of *Punnoo Singh* v. *Nirghin Singh, I. L R. 7 Calc. 298*, does not lay down a contrary rule. RASH DHARY GOPE *v.* KHAKON SINGH

I. L. R. 24 Calc. 433

64. ———————— *Suit for rent on unstamped lease—Failure to prove lease—Right to recover damages for use and occupation* The plaintiff alleged that he had given possession to the defendant of a certain estate, in consideration of the payment by the defendant of annual rent for a term of five years; that the defendant had paid the rent for the first three years of the term, but had neglected to pay any for the last two years, and that since the expiry of the term the defendant had remained in possession; and he claimed to recover possession of the property and a certain sum for its use and occupation by the defendant. He also claimed to recover the same sum as damages for the retention of the estate by the defendant, from the date up to which the defendant had last paid rent The agreement between the ...

damages for the use and occupation of the land, as the defendant could not defend his possession, being equally incompetent with the plaintiff to rely on the terms of a contract of which he could not give proof, and as he did not deny the use and occupation alleged, he had no answer to the claim for damages MACGIVERON *v.* WALLACE 5 N. W. 65

65. ———————— *Suit for rent in kind—Evidence of nugdi rent* In a suit for a balance of rent on the allegation that defendants cultivated a portion of plaintiffs' jaghir as bhowli tenants, where defendants denied that they were such tenants and pleaded a mokurari pottah.—*Held*, that, even on the defendants failing to establish their plea, the suit could not succeed as the plaintiffs failed to make out their case and it appeared that the defendants were holding the whole jaghir at a nukdi rent LUCHMEEDHUR PATTUCK *v* RUGHOOBUR SINGH 24 W. R. 284

VARIANCE BETWEEN PLEADING AND PROOF—*contd.*

2. SPECIAL CASES—*contd*

66. ———————— *Suit for declaratory decree—Suit under Bengal Rent Act, 1869.* Where the plaintiff sued under Bengal Act VIII of 1869 for a declaration that certain land was mâl, as well as for assessment of rent thereon and for arrears of rent at the rate assessed, and the suit was dismissed, and on appeal the plaintiff abandoned the two last points in his claim and asked merely for a declaratory decree:—*Held*, that the lower Appellate Court ought, notwithstanding the plaintiff had elected to sue under the Rent Act to have proceeded with that part of the case, and disposed of the appeal as to that only ANUND MOYEE DOSSEE *v* RAYE MONEE DOSSEE

20 W. R. 14

67. ———————— *Suit for kabuliat on allegation of holding specific quantity of land—Failure to prove allegation* In a suit for a kabuliat, on the allegation that the defendant is ... , if ... the ... ied, ... on ... 329

68. ———————— *Suit for rent—Failure to prove kabuliat.* The plaintiff, having ...

years, the Court observing that it would not be the exercise of a sound discretion to allow a party who relies upon a document to set up a fresh case when an issue as to the execution of such document is found against him, and there are good reasons for believing that the document is not genuine. NURROHURRY MOHONTO *v* NARAINEE DOSSEE W. R. F. B. 23: 1 Ind. Jur O. S 9: 1 Hay 34

s c NARAINEE DOSSEE *v.* NURROHURRY MOHONTO . . . . . Marsh. 70

WOODOY NARAIN *v* DURRIAHO ROY W. R. 1864, 187

RAM NAFFER KHARA *v.* DEGUMBER CHATTERJEE W. R. 1864, 259

KUREEMOODDEEN BISWAS *v* HUROCHUNDER GOOHO . . . . . 1 W. R. 305

GOVIND RAMCHANDRA GOKHLE *v* AHMED 5 Bom. A. C. 133

BHOYRUB CHUNDER CHOWDHRY *v* HARADHUN GHOSE . . Marsh. 561: 2 Hay 666

SIMROO KAREEGUR *v.* ANUND CHUNDER ROY Marsh. 57 · Hay. 130

See also JEETOO *v* BEETUN Marsh. 47: 1 Ind. Jur. O. S. 85: 1 Hay 112

FATIMA BEBEE *v.* ARIF SOOKANEE Marsh. 263: 2 Hay 106

So also in the case of a defendant. GOOROO DOSS GHOSE *v.* SRISTEE DHUR DAY W. R. 1864, Act X, 39

VARIANCE BETWEEN PLEADING AND PROOF—*contd.*

2. SPECIAL CASES—*contd*

69. ———————— *Suit for pottah at fixed rate of rent—Failure in proof* In a suit brought by a raiyat to obtain a pottah at a fixed rent under s. 3 of Act X of 1859, on the ground

70. ———————— *Suit on kabuliat which plaintiff fails to prove* Plaintiff sued upon a kabuliat, and filed a pottah in support of it The pottah having been rejected, and the kabuliat not proved, he was *held* not entitled to fall back on a general statement that he has a jote pottah ; that the lands in dispute are part of the same , and that he can oust the defendant, who was duly in possession GOBIND CHUNDER LAHORY *v* JARDINE, SKINNER & CO . . . 7 W. R. 163

71. ———————— *Failure to prove right to pottah—Right to have fair and equitable*

shareholders in the land, and, according to an alleged promise, to give them a pottah. The

shareholders, who ought to have been made parties and the case remanded for trial by the first Court. UTHUR HOSSEIN *v* RAMPHAL ROY . 20 W. R. 75

72. ———————— *Suit for rent—*

whether any and what amount of rent was due on account of the raiyat's occupation of the land LUKHEE KANTO DASS CHOWDHRY *v.* SUMEERUDDI LUSKER
13 B. L. R. F. B. 243 ; 21 W. R. 208

VARIANCE BETWEEN PLEADING AND PROOF—*contd.*

2. SPECIAL CASES—*contd.*

73. ———————— *No alternative claim for use and occupation—Damages for use and occupation* In a suit for rent, when no alternative claim is made for use and occupation, no damages can be decreed for use and occupation. *Lukhee Kanto Dass Chowdhry* v *Sumeeruddi Lusker, 13 B L R. 243 : 21 W R. 208,* and *Surendra Narain Singh* v. *Bhai Lal Thakur, I. L R 22 Calc. 752,* referred to and followed *Nityanund Ghose* v. *Kissen Kishore, W. R. Sp No , Act X, 82,* and *Lalun Monee* v. *Sona Monee Dabee, 22 W. R 331,* distinguished RACKHEA SINGH *v* UPENDRA CHANDRA SINGH . I. L. R 27 Calc. 239

74. ———————— *Suit for enhancement of rent—Suit on kabuliat—Amendment of plaint—Decree for rent on failure to prove kabuliat.* In a suit on a kabuliat, where no alternative claim for rent at an old rate is in words expressly asked for in the plaint (although it is disclosed by the plaint that the defendant had previously occupied the land in suit at a rate which the evidence proved to be lower than the rent mentioned in the kabuliat), and where the kabuliat is not proved, it is in the discretion of the Court to amend the plaint or the issues, and to allow an alternative claim to be tried ; and when the omission to make the claim in the plaint appears to have been an inadvertence, it is right that the Court should do so *Lukhee Kanto Dass Chowdhry* v. *Sumeeruddi Lusker, 13 B L R 243,* commented upon ROUSHAN BIBEE *v* HURRAY KRISTO NATH
I. L R. 8 Calc. 926

75. ———————— *Suit for enhancement of rent—Statements in plaint* Although in a suit for enhancement the plaintiff should not be tied down too strictly to his statements, yet he must to some extent be limited to the case made in the plaint BONOMALEE CHURN MYTEE *v.* SHOROOP HOOTAIT . 14 W. R. 60

76 ———————— *Suit for enhancement of rent—Failure to prove rent as claimed* If the plaintiff is unable to show that he is entitled

separate rental to each description BHUGWAN CHUNDER ROY CHOWDHRY *v.* JEGUR KHAN
22 W. R. 456

77. ———————— *Suit for enhancement of rent—Failure to prove notice* In a suit originally treated by the plaintiff as a suit for en-

78. ———————— *Suit for enhancement of rent—Suppression of material fact.* A plaintiff must state clearly in his plaint the substance of his claim, *i e.,* the particular mode in

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2. SPECIAL CASES—*contd.*

which his claim arose, as well as the amount of that claim Thus, where a plaintiff allowed the Court below to decide the case as if his contention was an ordinary case between a landlord suing to enhance and a tenant resisting his claim, and the statement of the defendant divulged the material circumstances of the case that the plaintiff's estate was let in farm, the High Court refused to allow the plaintiff on appeal to rest upon an alleged stipulation in a farming lease, the existence of

79. ———— **Right of suit**—*Cause of action not shown in plaint, but proved in course of case.* Where a plaintiff brought a suit for confirmation of his title to an estate, in consequence of the opposition offered by defendant to an application for *partition by a vendee who had purchased a portion* of plaintiff's share and the Court of first instance tried the case on its merits and gave the plaintiff

closed in the opposition which defendant had offered to the partition proceedings, and which had interfered with the enjoyment of his rights by the plaintiff LALLAH MAHTAB ROY *v* DEBEE DUTT SINGH . . . . . . 25 W. R. 204

80. ———— **Specific performance**—*Suit to enforce contract of betrothal—Failure to prove complete betrothal* The plaintiff, on behalf of her infant son, sued the father and guardian of *M B* to recover possession of *M B*, alleging that *M B* had been betrothed to her son, and that under the Hindu law a betrothal was the same as

81. ———— **Title**—*Setting up different title from that alleged* The plaintiff cannot be allowed to set up a different title from that on which he sues and fails to prove. ISHAN CHUNDER CHOWDHRY *v.* SHARODA GOOPTEAH . 12 W. R. 487

82. ———— *Suit for recognition of adoption—Right to show title by inheritance.*

VARIANCE BETWEEN PLEADING AND PROOF—*contd.*

2. SPECIAL CASES—*contd.*

83. ———— *Failure to prove adoption—Right to succeed by inheritance—Civil Procedure Code, s 146—Failure of plaintiff to prove unnecessary averments—Decree on admission of defendant.* In a suit brought by an undivided member of a Hindu family to set aside a sale made by the managing member and to recover a moiety of the land sold, the plaintiff alleged that he had been adopted by his deceased uncle and claimed as adopted son The purchaser denied the adoption, alleged that plaintiff was the natural brother of the vendor, and justified the sale under Hindu law. The lower Courts found that the adoption was not proved, and, of the plaintiff urging that if the adoption was not proved, yet he was entitled to recover by virtue on the admission that he was the *natural brother of the vendor, held that the latter*

the plaintiff was entitled to succeed The rule that the decree should be in accordance with what is alleged and proved is intended to prevent surprise, and is not applicable to a case in which the defendant's own admission is adopted as the ground of decision against him APPAYYA *v.* RAMIREDDI I. L. R. 11 Mad. 367

84. ———— *Title of separate acquisition by purchase—Setting up inconsistent title by joint purchase.* The plaintiff, having set up a title by sole purchase, was *held* not at liberty to change his case entirely, and to come in and set up another and inconsistent title, founded on inheritance or joint purchase. DOSS RAM DOSS *v* MOHENDRA ROY DECHA . 18 W. R. 274

85. ———— *Allegation of title by purchase—Failure to prove alleged title—Possession, title by.* In a suit for declaration of title to and possession of certain property on the allegation of purchase and subsequent forcible ouster it was *held* that the plaintiff, having failed to prove the purchase or the forcible dispossession, could not succeed on mere proof of twenty years' possession. A plaintiff who sues on one title cannot succeed on another entirely different HURO SUNDUREE DEBIA *v.* UNNOPOORNA DEBIA 11 W. R. 550

BIJOYA DEBIA *v.* BYDONATH DEB 24 W. R. 444

86. ———— *Failure to establish particular title—Title by long possession.* Where a plaintiff brought a suit to establish his title, and the lower Court, on a trial of the issue, thought the title was not proved, yet gave plaintiff a decree on the ground of his being in possession for a long time :—*Held*, that the lower Court ought not to have given a decree upon a ground not suggested in the plaint or in the issues tried BHAGO MUTTY BIBEE *v.* MAHOMED WASIL 25 W. R. 315

VARIANCE BETWEEN PLEADING AND PROOF—*contd*

2. SPECIAL CASES—*contd.*

87. ———————— *Failure to prove particular title—Title by right of occupancy—Act X of 1859, s 6* In a suit for possession of land after purchase, where defendant pleaded that he had long held under a miras pottah which both the Courts below found to be false —*Held*, that the defendant could not be allowed in special appeal to come in for the first time with an allegation of a new and separate title, *viz*, a right of occupancy under s 6 Act X of 1859 SOORJO KOOMAR *v* GUNGADHUR ROY . . . 12 W. R. 80

88 ———————— *Failure to prove specific title—Title by possession—Form of plaint.* Where a plaintiff who fails to prove a specific

the plaint KYLASH KAMINEE DOSSIA *v* JUDOO BASHINEE DOSSIA . . . 22 W. R 391

89. ———————— *Allegation of mokurari right and failure to prove it* In a suit to recover possession of land which defendant alleged himself to have held for more than twelve years under a mokurari lease, where the lower Appellate Court, finding that defendant failed to prove his mokurari right, declared he had no title to hold as a squatter —*Held*, that, notwithstanding the failure of the defendant to prove his mokurari.

90. ———————— *Suit in one capacity, proof of right to succeed in another.* A suit was brought by a Hindu widow to recover her

Council held the High Court to be right in treating this objection as one rather of form than of substance, and in giving the relief prayed for. RADHA MOHUN MUNDUL *v.* JADOOMONEE DOSSEE 23 W. R. P. C. 369

91. ———————— *Amendment of plaint—Alternative relief—Ejectment suit—Failure to prove lease—General title.* Where, in an action of ejectment against a tenant holding over the lease sued on was inadmissible in evidence for want of registration, and the plaint was not amended to one containing an alternative claim for partition —*Held*, that the plaintiff could not be allowed to fall back upon his general title and obtain a decree for partition RAMCHANDRA BAPUJI GOKHLE *v* VASUDEV MORBHAT KALE

I. L. R. 10 Bom. 451

92 ———————— *Right to easement in suit for right of ownership—Decision on case not made in pleadings* In a suit brought to

plaint ought not to be decided by the Court. LALJI RATANJI *v* GANGARAM TULJARAM

2 Bom. 184. 2nd Ed. 176

93 ———————— *Title by pre-*

plaintiff's claim to use the land had been put upon his title as owner —*Held*, that, having failed to

94 ———————— *Suit by decree-holder to declare a house subject to attachment in execution as being the property of the judgment-debtor—Decree for plaintiff on ground that judgment-debtor, though not the owner of the house, had an attachable interest in it as permanent tenant—New case made on appeal.* The plaintiff's case being that a certain house was the absolute property of his judgment-debtor, and that therefore he (the plaintiff) was entitled to attach it in execution of his decree, the Subordinate Judge found

interest in the house as permanent tenant, and allowed the plaintiff's claim On appeal to the High Court by the defendant.—*Held*, that the order of the Appellate Court made out an entirely new case for the plaintiff which he had not made himself at any period of the trial, and that the decree of the lower Appellate Court should not be reversed. IRANGOWDA *v.* SESHAPA

I. L. R. 17 Bom. 772

95. ———— Possession, suit for—*Practice—Pleadings—Failure of plaintiff to prove the case set up by him in his plaint—Right to succeed* ... The plaint- ... defendant ... a house ... rupee, but ... that the plaintiff had given the defendant notice to quit

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the house The plaintiff claimed possession and damages, but not arrears of rent. The defendant denied the tenancy alleged by the plaintiff, and asserted that she had been in adverse possession for a period of seventeen years She also asserted that she had purchased the land upon which the

defendant occupied the house as a friend, with the permission of the plaintiff; that the defendant had never before this asserted her title to the house, and that her possession was permissive. *Held,* that plaintiff was entitled, upon the facts found, to a decree for possession, notwithstanding that his case had been that the defendant was his tenant. *Bajrang Das* v. *Nand Lal, All Weekly Notes (1884) 285,* and *Balmakund* v *Dalu, All Weekly Notes (1901) 157,* distinguished ABDUL GHANI *v* BABNI (F.B 1902) . . **I L. R. 25 All 256**

3. ADMISSION OF PART OF CLAIM

1. ———— **Suit for rent**—*Failure to prove jummabundi—Form of decree.* The plaintiff sued for rent at R22 a year on a jummabundi which he alleged was signed by all the raiyats when he came into possession, the defendant denied that he was a party to the jummabundi, but admitted, that he held some portion of the land as tenant of the plaintiff at a yearly rent of R5, and that the balance due by him to the plaintiff was R5-15 The plaintiff failed to prove the jummabundi *Held,* that the plaintiff must, if he accepted the admission of the defendant at all, accept it as a whole and was therefore only entitled to a decree for R5-15, and not to a decree for all the years for which he claimed rent at R4-13 per annum. BONOMALEE CHURN MYTEE *v* HAFIZUDDEEN
13 B. L R. 247 note: 12 W. R. 317

And *see* LUKHEE KANTO DASS *v.* CHOWDHURY SUMERRUDDI LUSKER
13 B. L R. F. B. 243: 21 W. R. 317

and ROUSHAN BIBEE *v* HURRAY KRISTO NATH
I. L R. 8 Calc. 926

2. ———— *Dismissal of suit on failure to prove it—Right to decree on defendant's admission.* Where the plaintiff brought a suit for rent for R185, as rent for two years, which he alleged was payable in produce, and the defendants alleged that the rent was only R29 a year and that the plaintiff had sued them on a former occasion and obtained a decree at that rate, the Judge, finding the defendant's case proved, held that, as the plaintiff had set up a false claim, he was not entitled to a decree, and dismissed the suit. *Held,* on special appeal the plaintiff was entitled to a decree for rent at the rate admitted by the defendant. KISHEN MOHUN MOOKERJEE *v.* RAJOO DEY . **13 B. L. R. 245 note: 19 W. R. 234**

VARIANCE BETWEEN PLEADING AND PROOF—*contd.*

3. ADMISSION OF PART OF CLAIM—*contd.*

ROOKHINI KANT ROY *v.* SHARIKATUNISSA BIBI
13 B. L. R. 246 note: 20 W. R 64

RAJ COOMAR SINGH *v.* CHOTO RAJ COOMAR SINGH . . . **W. R. 1864, Act X, 12**

HULODHUR SEN *v.* SEETUL CHUNDER BHOOMICK
23 W. R. 85

3. ———— *Failure to prove case—Right to decree on admission of defendant—Dismissal of suit* In a suit for rent, based upon an alleged settlement, the plaintiff failed to prove such settlement. *Held,* that no issue having been raised as to what was the fair and proper value of the land, the plaintiff was not entitled to have ... either be ... is- ...)8

4. ———— **Suit for arrears of rent**—*Failure to prove rate—Decree at admitted rate* In a suit for arrears of rent, where the plaintiff fails to prove the rate of rent claimed in the plaint, it is the duty of the Court to find the proper rate ...

5 ———— *Suit on new agreement—Failure to prove agreement—Decree at admitted rate* The defendant held lands under the plaintiff at a certain rate per bigha The ... of rent on a new ... into by the ... the latter ... The lower ... ement had ... e a decree ... the ques- ... ot. *Held,* that the decision was correct. SUFDAR REZA *v.* AMZAD ALI
I. L R. 7 Calc. 703: 10 C. L. R. 121

6. ———— *Failure to prove case—Decree on rent in kind—Failure to prove ... money rent.* In a suit ... plaint- ... nt or ... he en- ... ent into ... ... in the ... at the first Court's view of the facts, and ... defendant admitted that he owed rent in money, decreed the claim to the extent of the admission. *Held,* that the lower Appellate Court was right, and that the reservation of right by the first Court was of doubtful operation. BIBEEJAN *v* BAIJU SINGH . . . . **21 W. R. 438**

VARIANCE BETWEEN PLEADING AND PROOF—*concld*

3 ADMISSION OF PART OF CLAIM—*concld.*

7. ———— Omission to make alternative claim—*Suit for rent—Beng Act VI of 1862, s 10* In a suit for rent, where the claim [illegible]

alternative, was not entitled to a decree at the rate previously paid DWARKANATH BOSE *v* RAM LOCHUN BOSE . . . 23 W. R 465

8. Suit for ejectment—*Entry under unregistered lease—Holding over—Landlord and tenant—Proof of terms of lease—Decree for rent upon admission of different tenure by defendant* The plaintiff sued in 1881 to recover certain land and arrears of rent from the defendant, alleging that the defendants' ancestor entered on the land as tenant in 1865, under a lease for five years, which was not registered The defendant denied the lease of 1865, admitted that she was the tenant of the land, but denied that she could be ejected, and claimed to deduct from the rent certain emoluments *Held*, (i) that the plaintiff could [illegible]

no more NANGALI *v* RAMAN
I. L. R. 7 Mad 226

VARIANCE IN TERMS OF CONTRACT

See PRINCIPAL AND SURETY.
I L. R. 36 Calc. 626

VATAN.

See COLLECTOR I. L. R 18 Bom. 103

See HEREDITARY OFFICES ACT (BOM ACT III OF 1874)

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT BE ADOPTED
I. L. R 27 Bom. 75

See SERVICE TENURE

VATANDARS.

See HEREDITARY OFFICES ACT (BOMBAY).

VATANDARS ACT (BOM. III OF 1874).

See HEREDITARY OFFICES ACT (BOMBAY)

See JURISDICTION OF CIVIL COURT—OFFICES, RIGHT TO.

VENDOR.

See VENDOR AND PURCHASER.

VENDOR—*concld.*

———— appropriation by—

See CONTRACT . I. L. R. 36 Calc. 736

———— petition by—

See REGISTRATION ACT, 1877, s 73 (1871, s 73) . . I. L. R. 1 All. 318

VENDOR AND PURCHASER.

See ACCOUNT I. L. R. 30 Bom. 1

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DEBTS I. L. R. 16 All. 286

See BENAMI TRANSACTION.

See BROKER I. L. R. 20 Bom. 124
I L R. 22 Bom. 540

See CONTRACT . I. L. R. 30 Bom. 1

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY THE COURT (INEQUITABLE CONTRACTS);
I. L. R 25 Bom. 126

BREACH OF CONTRACT . 7 C. W. N. 562

See CONTRACT ACT, s. 73.
15 B. L. R. 276

See CONTRACT ACT, s. 78.
I. L. R. 15 Calc. 1

See COSTS—SPECIAL CASES—VENDOR AND PURCHASER . I. L R. 11 Bom. 272

See DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT
I. L. R. 11 Bom. 272

VENDOR AND PURCHASER—*contd.*

See EASEMENT I. L. R. 18 Bom. 382

See ESTOPPEL—ESTOPPEL BY CONDUCT.
4 B. L. R. P. C. 16
I. L. R. 5 Calc. 669

See FRAUD—WHAT CONSTITUTES FRAUD AND PROOF OF FRAUD.
I. L. R. 13 Bom. 229

See JURISDICTION OF CIVIL COURT—REGISTRATION OF TENURES.
I. L. R. 19 Bom. 43

See LAND-REVENUE
I. L. R. 25 Bom. 714; 752

See LIMITATION ACT, 1877, s 28
I. L. R 27 Mad. 28

See LIMITATION ACT, 1877, SCH. II—
ARTS 62, 97 I. L. R. 25 Bom. 593

ART. 111 I. L. R. 24 Mad. 233

ART. 116 I. L. R. 24 Mad. 233
I. L. R. 25 Mad. 55

See LIMITATION ACT, 1877, SCH. II, ART. 134 (1871, ART. 134)
I. L. R. 1 Bom. 269
I. L. R. 19 Bom. 140

ART. 136 . I. L. R. 23 All. 442

ARTS. 136, 138 I. L. R. 31 Calc. 681

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT . I. L. R. 9 All. 439

See SALE IN EXECUTION OF DECREE—PERSON SELLING PROPERTY OF WHICH HE IS NOT, BUT AFTERWARDS BECOMES, OWNER . I. L. R. 4 Calc. 677

See SALE OF GOODS.
I. L. R. 17 Bom. 62

See SPECIFIC PERFORMANCE—SPECIAL CASES . . I. L. R. 9 All. 705
L. R. 14 I. A. 173
I. L. R. 12 Bom. 658
I. L. R. 22 Bom. 46

1. BILLS OF SALE.

1. ———— **Effect of execution of bill of sale without delivery**—*Specific performance.* It is very questionable in any case whether the effect of the execution of a bill of sale by a Hindu

VENDOR AND PURCHASER—*contd.*

1. BILLS OF SALE—*concld.*

s. c. PERHLAD SEIN *v* BUDHOO SINGH KALIPERSHAD TEWAREE *v.* PERHLAD SEIN.
12 Moo. I. A. 275; 482

2. ———— *Suit to compel transfer of property.* When a bill of sale, though signed and registered, has not been delivered, and no part of the purchase-money has been paid, the vendor cannot be compelled to complete the transfer LALLA INDURJEET LALL *alias* GUJADHUR PERSHAD *v.* JUMOONA . . 5 W. R. 248

3. ———— *Incomplete contract.* A bill of sale, though duly executed, was not delivered to the purchaser, but was deposited with a third party, to be held by him until the purchaser should perform certain acts, the performance of which was the consideration for the sale. The purchaser subsequently by a trick got possession of the bill of sale before he had performed all the acts in question. *Held*, that, under such cir-

W. R. 1864, 222

4. ———— **Vendor under bill of sale remaining in possession**—*Allegation of fraud—Suit to set aside bill of sale.* When a person

SINGH *v.* JOYMUNGUL SINGH.
1 Ind. Jur. N. S. 78

5. ———— **Bill of sale as construed by intention of parties**—*Right of purchaser to sue.* Cases will often arise in which, though a bill of

I. L. R. 6 Bom.

2. BREACH OF COVENANT.

1. ———— **Covenant to restore estate to original owner or heirs at fixed price before selling to another**—*Sale under reservation to keep in actual possession or re-sell it to vendor at fixed price—Subsequent alienation—Right of reconveyance.* Where a share in an estate had been sold under a stipulation that the purchaser should possess it himself as landlord, or, if desirous

VENDOR AND PURCHASER—*contd.*

2. BREACH OF COVENANT—*contd.*

of parting with it, should restore it to the original owner or his heirs at a fixed price; and the purchaser, having been restrained by this agreement

with whom the original owner or his heirs, who still retained the residue of the estate, could keep up friendly relations, the grant of the farmer's lease was a violation of the covenant, and that the heirs of the original owner were entitled to have the share in suit conveyed to them at the stipulated price. RAMNATH SEN LUSHKUR *v.* WISE.
25 W. R 378

2 ——— **Covenant repugnant to interest created**—*Contemporaneous "ikrarnama"—Condition restraining alienation.* M, a co-sharer in a village, transferred to A, another co-sharer, a 2 annas share by deed of sale. Upon the same

alienate or mortgage it or otherwise exercise proprietary rights over it. It was further provided

which rendered it useless as a proprietary right. *Situl Purshad v. Luchmi Purshad, I. L. R. 10 Calc. 30,* referred to. MAHRAM DAS *v.* AJUDHIA.
I. L. R 8 All. 452

3. ——— **Implied covenant for title**—*Transfer of Property Act (IV of 1882), s. 55, sub-s. 2—English Conveyance Act of 1881 (44 & 45 Vict. c. 41), s. 7.* In the absence of any contract to the contrary, there is, under s. 55, sub-s. 2, of the Transfer of Property Act, an implied covenant for title on the part of the vendor. BASARADDI SHEIKH *v.* ENAJADDI MALEAH . **I. L. R. 25 Calc. 298**
2 C. W. N. 222

4. ——— *Breach of implied covenant for title—Transfer of Property Act (IV*

VENDOR AND PURCHASER—*contd.*

2. BREACH OF COVENANT—*contd.*

venant for title under the Transfer of Property Act, s. 55, sub-s. (2). MAHOMED *v.* SITARAMAYYAR
I. L. R. 15 Mad. 50

5. ——— *Breach of covenant for title—Measure of damages.* A purchaser evicted from his holding is entitled to recover from a vendor who has guaranteed his title the value of the land at the date of the eviction. NAGARDAS SAUBHAGYADAS *v.* AHMEDKHAN
I. L. R. 21 Bom. 175

6. ——— *Transfer of Property Act (IV of 1882), s. 55—Suit for damages for breach of covenant implied in registered sale-deed.* On 8th February 1889, the defendant sold to the plaintiff, under a registered conveyance containing no express covenant for title, land of which he was not in possession, and the purchase-money was paid. The plaintiff and the defendant sued to recover possession, but failed on the ground that the vendor had no title. The plaintiff now sued on 7th February 1895 to recover with interest the

I. L. R. 21 Mad. 8

7. ——— **Covenant for quiet enjoyment**—*Sale of property—No title in vendor to part of property sold—Suit by purchaser for damages*

any one were to obstruct you in the enjoyment of the house, we would remove the obstruction so as to put you to no trouble". In the year 1892 the

The failure of consideration took place when the

VENDOR AND PURCHASER—*contd.*

2. BREACH OF COVENANT—*concld*

plaintiff endeavoured to obtain possession of the property and, being opposed, found himself unable to obtain it. *Bassu Kuar* v. *Dhum Singh, I. L. R 11 All 47*, distinguished TULSIRAM v. MURLIDHAR CHATURBHUJ MARWADI (1902)

I. L. R. 26 Bom. 750

8 ——— Covenant to pay arrears of rent—*Contract by vender to pay arrears of rent—Default—Sale of part of the property, effect of—Damages* Plaintiff purchased certain *jotes* from defendants Nos 1 and 2, and there was a stipulation that the arrears which were due to the landlord up to the time of sale were to be paid by the vendors, failing which, if the vendee should have to make the payment, he would be entitled to recover the amount as a loss sustained by him. Subsequent to the plaintiff's purchase, the landlords brought suits for rent due for the period anterior to the date of plaintiff's purchase, and also for a period subsequent thereto In execution of decrees obtained in these suits, property to the extent of 51 *bighas*, covered by the deed of sale was sold. *Held*, that the plaintiff was entitled, if not under the strict words, at all events under the spirit of the terms, of the *kobala*, to recover from the defendants the sum which was due as arrears from them, to pay off which property of the plaintiff ... namely, if ... comply ... UTAB ALI

... N. 905

3 BREACH OF WARRANTY

1. ——— Suit on warranty—*Knowledge by purchaser of title being doubtful.* A purchaser, aware of the doubtful character of the title ...

2. ——— *Sale of whole title —Failure of title—Suit for money had and received.* A vendor legally conveying all his title cannot be sued for money had and received, although the title prove defective Accordingly, where the plaintiff bought two kanam claims, and sued upon them unsuccessfully —*Held*, that he could not recover purchase-money from his vendor's representatives, on the ground that the consideration for the payment had failed. MUHAMMAD MOHIDIN v. OTTAYIL UMMACHE . . . 1 Mad. 390

3. ——— Implied warranty—*Warranty of title by vendor or mortgagor—Right to sue for damages* A seller or mortgagor must always be held impliedly to warrant the title of the property sold or mortgaged; and if it be found that the title is defective, the vendee or the mortgagee can sue for damages or loss on the breach of implied

VENDOR AND PURCHASER—*contd.*

3 BREACH OF WARRANTY—*contd.*

contract, although there may be no express agreement for title. DWARKA DASS v. RUTTUN SINGH

2 Agra 199

4 ——— *Description published in advertisement—Warranty of title—Misrepresentation—Fraud, proof of* A zamindar (*A*) gave certain villages in patni to *B* and received consideration-money and rent from him, but *B* never got possession of them, nor derived any benefit from the patni, it having been found that the villages belonged to a third party as lakhirajdar, who obtained a decree against *A* in a suit to which *B* was made a party. *A* had published and advertisement setting forth a description of the property, and calling upon intending purchasers to come forward. *Held*, that the advertisement published by *A* setting forth a description of the villages was substantially an implied warranty of title and would make him responsible to purchasers deceived by such misrepresentation; and fraud having been shown, the absence of a stipulation to refund would not protect *A* from refunding *Held, also*, that, in cases like this, it would be a sufficient proof of fraud to show that the fact (of ownership) as represented was false, and that the person making the representation had a knowledge of the fact contrary to it NILMONEE SINGH v. GORDON STUART & Co. . . 9 W. R. 371

See KHELUT CHUNDER GHOSE v. KRISTO GOBIND DEB . . . 18 W. R. 278

5. ——— Right to sue on warranty of title—*Right to refund of consideration* A buyer may at once sue on a warranty of title ... a good title ... has ... not ... ich ... ck ... on ... tle its being ascertained that the seller had ... the conditional sale is nullified. SAYEF ALI v. MAHOMED JOWAD ALI . . 7 W. R. 196

6. ——— Covenant against disturbance of possession—*Loss of property by third person enforcing right of pre-emption—Disqualification of purchaser from buying—Covenant for good title to convey—Construction of covenant.* An instrument of sale contained the following condition: "Should any person claim as a co sharer or proprietor of the property, and assert his claim against the purchaser or raise any dispute of any kind, or if from any unforeseen cause the purchaser be deprived of the possession of the property or any portion thereof, or his possession thereof is disturbed in any way, then I (vendor), my heirs and assigns, shall be liable for the purchase money, the profits of the property, and costs of litigation." The purchaser, having lost the property by reason of a person having a right of pre-emption having sued him to enforce such right and obtained a decree, sued the vendor to recover the costs in-

VENDOR AND PURCHASER—*contd.*

3. BREACH OF WARRANTY—*concld.*

curred by him in defending such suit, basing his claim upon the condition set forth above *Held*, that the suit was not maintainable, as such condition referred to flaws or defects in the vendor's title, and was not applicable to a loss accruing to the purchaser from his disqualification to buy GOLAM JILANI v. IMDAD HUSAIN

I. L. R 4 All. 357

7. ——— **Condition that purchaser shall take such title as vendor can give where vendor has no title at all**—*Auction-sale by mortgagee of mortgaged property—Condition of sale—Implied possession of some title in vendor* B having stolen from A the title-deeds relating to a certain property in Bombay in which he had no interest, but which belonged to N, deposited them with the plaintiffs, to whom he also executed an indenture of mortgage of the property comprised in the deeds to secure the repayment of a loan advanced to him by the plaintiffs. The plaintiffs subsequently sold the property at an auction-sale under the power of sale contained in the mortgage The property was put up to action

interest in it The defendant was not present when

I. L. R. 12 Bom. 1

VENDOR AND PURCHASER—*contd.*

4. CAVEAT EMPTOR.

1. ——— **Right of purchaser**—*Warranty of title—Hindu law—Contract—Sale of land in Bombay* In England the law gives to the purchaser of land a right to have a good title to it shown by the vendor. No such rule appears to exist in the Hindu law, and in contracts between Hindus for the purchase and sale of land in Bombay the intention of the parties must be ascertained from the terms of the agreement without regard to any implication. DEVSI GHELA v. JIVARAJ MUKUNDAS . . 2 Bom. 430 : 2nd Ed., 406

2. ——— *Conditions of sale —Defect in title previous to title shown by vendor.* When it is provided by conditions of sale of land that the vendor shall not be bound to show any title prior to an instrument of a certain date, the purchaser may insist upon a defect of title appearing *aliunde* and before that date, and if it be proved to exist may rescind the contract and recover back earnest-money, interest, and expenses. MANCHARJI PESTANJI v. NARAYAN LAKSHUMANJI.

1 Bom. 77

3. ——— **Land sold without warranty**— *Purchaser with invalid title—Liability of vendor.* In the absence of fraud or express warranty of title in a sale of land, the vendee cannot recover from the vendor the expenses incurred in defending a suit for possession brought against him by a third party having a better title. NEELMONEE SINGH DEO v GORDON STUART & Co.

1 Ind. Jur. N. S. 356 : 6 W. R. 152

4. ——— **Liability of purchaser**—*Inquiry as to title—Eviction after purchase.* By the rule of *caveat emptor*, the buyer is bound by law to

vendor or some person claiming under him, the purchaser has no right of action against the vendor. GOUR KISHORE SHAHA v. CHUNDER KISHORE DUTT MOJOOMDAR . . . . 25 W. R. 45

5. ——— **Sale of shares deposited**

1 Ind. Jur. N. S 154

6. ——— **Fraudulent concealment by vendor of defect of title**—*Absence in sale-deed as covenant for title of purchaser—Right to damages.* In 1881 a Hindu executed a sale-deed of a house in

VENDOR AND PURCHASER—*contd.*

4. CAVEAT EMPTOR—*concld.*

the mofussil. The deed contained no covenant for title The purchaser, having been ejected from a portion of the house under a decree, of which the vendor was aware at the time of the sale, sued the vendor for damages The Munsif decreed the claim on the ground that the vendor had fraudulently concealed the existence of the decree. On appeal the District Judge reversed this decree, holding that, as the purchaser had not insisted on a covenant for title, he must be held to have accepted all risks. *Held*, that, if there had been fraudulent concealment as alleged, the purchaser was entitled to damages. GAJAPATHI *v* ALAGIA.

I. L. R. 9 Mad. 89

5. COMPLETION OF TRANSFER.

1. ———— **Oral transfer**—*Hindu vendor and purchaser* Land may pass by mere parol between Hindu vendor and purchaser MOHESH CHUNDER CHATTERJEE *v* ISSUR CHUNDER CHATTERJEE . . **1 Ind. Jur. N. S. 266**

2. ———— **Want of registration**—*Sale complete without payment of purchase-money on registration of deed.* A sale might be complete, and it still might be a condition of the contract that the purchase-money was to be paid afterwards, and the deed in evidence of the contract may not [illegible]

3. ———————— *Transfer of Property Act (IV of 1882), s. 54—Transfer of immoveable property by unregistered deed—Deed of which registration is optional—Suit by purchaser for possession when vendor is out of possession.* S 54 of the Transfer of Property Act is not exhaustive or imperative in requiring that the transfer of immoveable property of less than R100 should be made only by one of the modes there stated so as to confer a valid title. Where the plaintiff brought from the heirs of *M*, who were out of possession, their right, title, and interest in certain immoveable property, and such property was conveyed to the plaintiff by an unregistered deed, registration of the deed (the property being of value of less than R100) not being compulsory, —*Held*, in a suit to recover the property from persons in possession without title, that the sale conferred a valid title on the plaintiff, though not made by registered deed or by delivery of the property. The dictum of Garth, C J., in *Narain Chunder Chuckerbutty v Dataram Roy, I. L. R. 8 Calc 597, 612*, dissented from KHATU BIBI *v* MADHORAM BARSICK . **I. L. R. 16 Calc. 622**

4 ———————— *Transfer of Property (IV of 1882), s 54, para. 3—Transfer of Property Amendment Act (III of 1885), s. 3—Immoveable property of value less than R100,*

VENDOR AND PURCHASER—*contd.*

5. COMPLETION OF TRANSFER—*contd.*

Transfer of—Suit by purchaser for possession when vendor is out of possession. The transfer by sale of tangible immoveable property of a value less than one hundred rupees can be effected only by one of the two modes mentioned in s. 54, para. 3, of the Transfer of Property Act, *viz*, by a registered *instrument or by delivery of possession* *Khatu Bibi v Madhoram Barsick, I. L. R. 16 Calc 623*, overruled. MAKHAN LALL PAL *v.* BUNKU BEHARI GHOSE . . **I. L. R. 19 Calc. 623**

5. ———————— *Transfer of Property Act (IV of 1882), s. 54—Oral sale with possession land worth more than R100* The plaintiff entered into an oral contract to sell certain land to the defendant for R2,500, and he put him into possession. The defendant made default in payment of the purchase-money The plaintiff, having professed to cancel the sale on the ground of this default, sued to recover possession of the land with mesne profits *Held*, that the sale was not complete under s 54 of the Transfer of Property Act, and the plaintiff was entitled to the relief sought by him. PAPIREDDI *v.* NARASAREDDI.

I. L. R. 16 Mad. 464

6. ———— **Transfer of ownership of property**—*Decree for specific performance of contract of sale—Conveyance.* In the mofussil of the Bombay Presidency, the transfer of the ownership of immoveable property to a vendee who has obtained a decree ordering the specific performance of the contract of sale to himself does not wait for the execution of a conveyance,—even if the vendor is required, as he seldom is, to execute such a conveyance,—but is effected by the passing of the [illegible] pur- [illegible] 54

7. ———————— *Possession given in execution of decree.* The formal possession given by a Civil Court under an execution operates, in point of law and fact, as between the parties, as a complete transfer of possession from one party to the other. LOKESSUR KOER *v.* PITAUN ROY.

I. L. R. 7. Calc. 418

8. ———————— *Execution and registration of conveyance—Failure to pay purchase-money and return of conveyance.* *D* sold a house to *P* and executed a deed of conveyance which was duly registered. The purchase-money, however, was never paid by *P*, who consequently never obtained possession. Shortly after the conveyance had been registered, *P* returned it to *D* with an endorsement thereon to the effect that it was [illegible]

VENDOR AND PURCHASER—*contd.*

5. COMPLETION OF TRANSFER—*contd.*

sale of the house by *D* to *P* was not incomplete The deed purported to make an immediate transfer of the ownership of the house to *P*, and *P* accordingly became the owner of the house The endorsement on the conveyance, not having been registered, could not affect the property The plaintiff therefore, as purchaser of the right, title, and interest of *P*, became legal owner of the house, but subject to all *P*'s liabilities, and as *D* had a lien upon the house for the amount of the unpaid purchase-money, the plaintiff could not obtain possession without paying off this charge CHEDMAL MOTIRAM *v*. DAVU BIN DHONDIBA

I. L. R. 2 Bom. 547

9. ———— *Execution of deed of sale—Failure of purchaser to perform preliminaries to possession* The vendor of certain immoveable property agreed to sell such property, and the purchaser agreed to purchase it on the understanding that the purchaser should retain a part of the purchase-money, and therewith discharge certain bond-debts due by the vendor, for the pay-

possession of such property in virtue of such conveyance, that the purchaser not having paid such bond-debts or done anything to account for such part of the purchase-money according to such understanding, the contract of sale had not been completed, and the suit was therefore not maintainable IKBAL BEGAM *v* GOBIND PRASAD

I L R. 3 All. 77

10. ———— *Part payment of purchase-money—Execution, registration, and delivery of sale-deed—Completion of sale—Right of purchaser to sue for possession—Transfer of Property Act (IV of 1882), s 54* Non-payment of the purchase-money does not prevent the passing of the ownership of the property sold from the vendor to the purchaser; and the latter, notwithstanding such non-payment, can maintain a suit for possession of the property, subject to such

having been duly executed and registered and

VENDOR AND PURCHASER—*contd.*

5 COMPLETION OF TRANSFER—*contd*

paid the balance of the purchase-money to the vendor or to a mortgagee of the property, as stipulated in the deed. SHIB LAL *v*. BHAGWAN DAS

I. L. R. 11 All. 244

11. ———— *Sale of immoveable property—Transfer of Property Act (IV of 1882), s 54—Delivery of possession—Registration of sale-deed* Registration of a sale-deed constitutes a sufficient delivery of the deed to pass the interest in land contained therein *Narain Chunder Chuckerbutty v Dataram, I. L. R 8 Calc. 597*, followed. PONNAYYA GOUNDAN *v*. MUTTU GOUNDAN . . **I. L. R. 17 Mad. 146**

12. ———— *Sale of immoveable property—Transfer of Property Act (IV of 1882), s 54—Delivery of possession under deed of sale unregistered where registration is optional—Delivery of property—Share in a tank—Registration Act (III of 1887), ss 17 and 18—Intention of parties—Question of fact—Second appeal.* The defendants purchased a share in a tank in 1884,

under a registered deed of sale. It was found on the facts that the plaintiff purchased with notice of the defendants' previous purchase, and that the defendants had possession of the purchased share from the date of their purchase *Held* (on appeal under the Letters Patent of the High Court) by

Pal v. Bunku Behari Ghose, I L. R 19 Calc 623,

purporting to transfer the ownership of the property and the instrument has not been registered, but

13. ———— *Transfer of Property Act (IV of 1882), s 54—Vendor and purchaser—Deed of sale—Completion of sale—Registration—Non-payment of consideration—Delivery of deed of sale.* Mere registration of a deed of sale, unaccompanied by delivery of the deed to the

VENDOR AND PURCHASER—*contd.*

5. COMPLETION OF TRANSFER—*contd.*

registration should not be taken as conclusive that the title has passed. If it was intended by the parties that the title should pass only upon the consideration money being paid, such intention should be given effect to *Sheo Narain Singh* v. *Darbari Mahton, 2 C. W. N. 207*, approved. MAULADAN *v.* RUGHUNANDAN PERSHAD SINGH

I. L. R. 27 Calc. 7

14. ——————— *Contract of sale—Delivery of possession—Payment of the whole of the purchase-money—Registered conveyance not executed—Transfer—Attachment—Vendor having no attachable interest—Transfer of Property Act (IV of 1882), ss 40, 54, 55 (6) (b)—Trusts Act (II of 1882), s 91.* Under a contract of sale with respect to certain fields, possession was delivered to the vendee, and the whole of the purchase-money was paid to the vendor, but the transfer was not effected, as the necessary registered conveyance had not been executed Subsequently a judgment-creditor of the vendor sought for a declaration that the fields were liable to be attached and sold as the property of the judgment-debtor. Before the case was decided by the Court of first instance, a registered conveyance had been executed. *Held*, that the judgment-debtor was nothing more than a bare trustee and had no attachable interest in the property. *Hormasji Manekji Dadachanji* v. *Keshav Purshotam, I. L R. 18 Bom. 13,* distinguished. KARALIA NANUBHAI MAHOMED OHAI *v* MANSUKHRAM VAKHATCHAND.

I. L. R. 24 Bom. 400

15. ——————— *Transfer of Property Act (IV of 1882), s 54—Sale of land—Non-payment of consideration—Delivery of deed—Completion of purchase* Under s. 54 of the Transfer

alleges the existence of a collateral agreement must strictly prove it. SHEO NARAIN SINGH *v.* DARBARI MAHTON . . 2 C. W. N. 207

16. ——————— **Default in completing contract of sale**—*Partial performance* In suits arising out of the default on both sides to complete a contract for the purchase and sale of land in the mofussil, the Court should proceed as a Court of equity, and should look to the acts and conduct of the parties subsequent to the making of the contract as well as the language of the contract itself; and where the contract has been partially performed and the purchaser put into possession of a portion of the land and allowed by the vendor so to continue long after the period fixed for completion of the contract has elapsed, further time should be given by the Court for the performance of the contract in specie. (TUCKER, *J*, *dissentiente*). BALA VALAD SANKIA *v.* GABAJI BALVANT KULKARNI

2 Bom. 175, 2nd Ed. 168

17. ——————— **Conditional contract**

be "subject to the approval of the purchaser's solicitors" (naming them), and that, if they should not approve of the title, the vendor should refund the earnest-money and pay all costs incurred by the purchaser in investigating the title. The ... title, and ... he agree- ... o recover ... nd costs, that, assuming the objections to be reasonable, the purchaser was entitld to rescind the contract. *Held*, further, that the agreement did not require registration SREEGOPAL MULLICK *v.* RAM CHURN NUSKUR I. L. R. 8 Calc. 856 : 12 C. L. R. 125

18 ——————— **Specific performance**—*Approval of title by purchaser's solicitor—Contract.* ... tract ... being entry was to be given to the purchaser by a fixed date, and that the title-deeds were to be sent to the purchaser's solicitors, and "on approval of the same the purchase-money to be paid prompt:"—*Held*, that the carrying out of the contract was in no way conditional upon the approval of the solicitors, but that their approval was a condition ... of the purchase ... that ... d in ... from *Sreegopal Mullick* v. *Ram Churn Nuskur, I. L. R. 8 Calc. 856.* COHEN *v.* SUTHERLAND

I. L. R. 17 Calc. 919

6. CONDITIONAL SALES.

1. ——————— **Land sold on condition of re-purchase**—*Absolute sale.* Where land was sold on a condition of re-purchase, and no time was mentioned in the instrument of sale :—*Held*, that the sale had not become absolute, and that the plaintiff, having bought the original vendor's rights, was entitled to maintain a suit for recovery of the land. GURUSAMY AIYAN *v.* SWAMIYADHA AIYAN . . . 2 Mad. 450

2. ——————— **Deed of conditional sale**—*Beng. Reg. XV of 1793—Beng Reg. XVII of 1806—Usufruct.* A deed of sale executed in 1201 (1794) was subject to the condition that if the vendors, "from the year 1202 to the year 1203,

VENDOR AND PURCHASER—*contd.*

6. CONDITIONAL SALES—*contd.*

should repay the whole of the consideration-money they should receive back the deed of sale, which shall then become null and void, and if within the said period they fail to pay the said consideration-money, this conditional sale shall become absolute and be considered irrevocable" *Held*, that Regulation XV of 1793 did not operate to prevent the assignment becoming absolute after the expiration

money were satisfied out of the proceeds of estate before the time for the conditional sale becoming absolute, the vendees would acquire a perfect title BULDEO SINGH *v* DHUKRUN SINGH Marsh 632

3. ——— **Purchaser under conditional sale**—*Incumbrances.* A purchaser under a conditional sale takes the property with all *bonâ fide* incumbrances created by his vendor previous to the sale. RADHA MOHUN DEB *v.* NUND LAL DEY . . . 7 W. R. 363

4. ——— **Mortgage by conditional sale**—*Sale with subsequent agreement for re-purchase—Suit for pre-emption—Limitation.* On the 6th of June 1887 one *R K* sold a certain zamindari share to *S.* On the 18th of May 1888 *B* brought a suit for pre-emption of that share Pending the suit, on the 6th of July 1888 the vendor, the vendee,

in any year of the price paid by him. On the 20th of June 1891, the vendor, affecting to treat the transaction of the 6th of June 1887 as a mortgage, made an application purporting to be under s 83 of the Transfer of Property Act, accompanied by payment of the price of the property into Court and prayed for redemption. The vendee refused to take out the money deposited by the vendor, and subsequently on the 13th of November 1891 *R K* applied for repayment to him of the said

that the original transaction of the 6th of June 1887 was an out-and out sale, and was not, and

7. CONSIDERATION.

1. ——— **Validity of contract of sale**—*Agreement without consideration—Right to sell afterwards to another* A mere agreement to sell a certain property, without any consideration passing, cannot bar the right of the vendor on the same day to sell a portion of the property to a third party, or invalidate the third party's purchase. BHYUNKUREE DABEE *v* TARINEE CHURN CHUCKERBUTTY . . . 7 W. R. 38

2. ——— *Non-payment of purchase-money—Intention to pass subject of sale—Failure to pay consideration, effect of.* Although ordinarily, in a transaction of sale, it may be reasonable to suppose that the seller does not intend to pass the property to the purchaser until the purchase-money has been paid or secured, it is not an absolute rule of law that the non-receipt of the consideration-money in full entitles a vendor to make void a sale which is otherwise complete. MOHUN SINGH *v.* SHIB KOONWER.
1 Agra 85

HEERA SINGH *v.* RAGHO NATH SUHAI BHURTH SINGH *v.* RAGHO NATH SUHAI. . 3 Agra 30

3. ——— *Intention of parties—Failure to pay consideration, effect of, after execution and delivery of deed* The intention of the parties from their acts should be ascertained; and when a deed is executed and delivered to the purchaser, a subsequent default by the purchaser in the due payment of the purchase-money would not, in the absence of fraud, make void the sale, or give any other right to the vendor than a right to sue for the money Further, if it be proved that the vendor intended to retain possession until full payment, the Court may pass a decree establishing the purchaser's right subject to execution or payment of consideration. MOHUN SINGH *v* SHIB KOONWER.
1 Agra. 85

4. ——— **Plea of valuable consideration**—*Allegation of seisin of vendor and sale of*

s. c RADHANATH DOSS *v.* GISBORNE & Co
15 W. R P. C 24; 14 Moo. I. A. 1

5. ——— **Failure of consideration**—*Bonus paid for talukh not in existence—Right to*

emptor does not apply to such a case KRISTO LALL MOITRO *v* NOBBO COOMAR ROY.
5 W. R. 232

6. ——— **Proof of payment of consideration**—*Non-payment of*

VENDOR AND PURCHASER—*contd.*

7. CONSIDERATION—*contd.*

receipt of consideration The deed was dated in January 1876, and the suit was instituted in 1884 It was found that the vendor had been in possession during the whole of that period The plaintiff produced no evidence in proof of the payment of consideration *Held*, that although, under ordinary circumstances, the party to a deed duly executed and registered who alleges non-payment of consideration is bound to prove his allegation, the fact that the plaintiff and his predecessor had silently submitted to the withholding of possession for upwards of eight years, combined with the continuous possession of the vendor, favoured the allegation of the latter that possession had been withheld because of the non payment of consideration, and raised such a counter-presumption as to make it incumbent on the plaintiff to give evidence that consideration had in fact passed *Held*, therefore, that in the absence of such evidence, and of evidence to explain the fact of the plaintiff being out of possession, the suit failed ACHOBANAIL KUARI *v.* MAHABIR PRASAD . I. L. R. 8 All. 641

7. ——— Part payment of consideration—*Right to sue for possession* *Held*, that non-

[illegible]

money has been paid, unless the contrary be shown to be the intention of the parties, and the seller has a right to sue for the balance of price GOOR PERSHAD *v* NUNDA SINGH . 1 Agra 160

8. ——— Right to refund of earnest-money—*Agreement for sale of ship—Failure of consideration.* Plaintiff and defendants entered into an agreement for the sale by the defendants,

[illegible]

money, execute to the plaintiff and another a proper bill of sale of the ship The defendants were un-

[illegible]

refund of the money paid by him in part payment, and of sums disbursed by him under the agreement on account of the expenses of the ship. JASSIM BINSAFF *v.* ESAU AHMED 2 Ind. Jur. N. S. 13

9. ——— Valuable consideration, question of—*Assignment of chose in action* The question whether an assignment of any equity of redemption admitted by the assignor was made

VENDOR AND PURCHASER—*contd.*

7. CONSIDERATION—*contd.*

for a valuable consideration or not, is no material in determining the rights of the assignee against a party who holds adversely to the assignor. KACHU BAYAJI *v.* KACHOBA VITHOBA . 10 Bom. 491

10. ——— Sale of sir land with covenant to relinquish ex-proprietary rights—*Non-performance of illegal contract—Suit to recover consideration-money.* A deed of sale which purports to convey to vendees the ex-proprietary rights of the vendors in sir lands is an illegal contract and void as being in violation of ss 7 and 9 of Act XII of 1881 Where, therefore, along with some zamindari land, certain sir lands were sold, and the vendors purported by their sale-deed to relinquish their ex-proprietary rights in the sir lands, but failed to put the vendees into posses-

[illegible]

BHIKHAM *v.* HAR PRASAD . I. L. R. 1[illegible] All. [illegible]

11. ——— If a zamindar [illegible] the sale [illegible] land, [illegible] rights [illegible] event in respect of the sir land, [illegible] ex-pro[illegible] entitled [illegible] portion thereof. *Bhikham Singh v. Har* [illegible] *L. R.* *19 All 35*, approved. MURLIDHAR *v.* PEM RAJ. I. L. R. 22 All. 205

12. ——— Deed of sale set aside for want of consideration—*Contract Act (IX of 1872), s 25* On the 18th November 1892 *A* executed to *B* a deed of sale of certain land. The [illegible] and it recited, that the *B* [illegible] possession or want of [illegible] Act applied [illegible] *v.* [illegible] *Municipal Commissioner of Hubli,* [illegible] *R 2 Bom. 172*, distinguished. *Per* FARRAN, *C.J.*—The facts serve to show that there was no sale at all, and that the plaintiff was tricked into executing and registering the conveyance. Conveyances of lands in the mofussil perfected by possession or registration where the consideration expressed in the

VENDOR AND PURCHASER—*contd*

7. CONSIDERATION—*concld.*

conveyance to have been paid has not in fact been paid, should not, however, be put in the same category as contracts void for want of consideration. TATIA *v* BABAJI **I. L. R. 22 Bom. 176**

13 ———— **Want of consideration for deed of sale**—*Evidence that a deed is not intended to have the ordinary operation* The plaintiffs sued for certain land which they claimed in succession to *R*, deceased The defendant who was in possession had executed a sale-deed comprising the property now in question in favour of the deceased But it was pleaded by him and found by the Court of first appeal that the sale-deed was benami, and no consideration had passed, and a decree was passed dismissing the suit *Held*, on second appeal, that the decree should be reversed *Per curiam* — When a conveyance has been duly executed and [illegible]

should be a mere sham, and in order to establish this proof, it needs to be shown for what purpose other than the ostensible one the deed was executed RANGA AYYAR *v* SRINIVASA AYYANGAR.
I. L. R. 21 Mad. 56

8 FRAUD.

1. ———— **Evidence of fraud**—*Inadequacy of purchase-money* In considering a case of alleged fraud in the purchase of an estate, it is material to inquire what relation the purchase-money paid bore to the value of the estate SREEMUNCHUNDER DEY *v.* GOPAL CHUNDER CHUCKERBUTTY . **7 W. R. P. C. 10 . 11 Moo. I A. 28**

2. ———— *Notice of facts implying bad title—Malâ fides—Questions of bonâ fides* Notice of fact from which the infirmity of [illegible]

3. ———— **Effect of fraud**—*Goods obtained by fraud—Right of vendor* Where goods have been obtained by means of a fraudulent [illegible]

[illegible]

DER . . . 6 W. R. 51.

VENDOR AND PURCHASER—*contd.*

8. FRAUD—*concld.*

4. ———— *Contract Act ss 17, 19—Contract induced by fraud—Right to rescind.* If a vendor has been guilty of fraud [illegible]

[illegible]

the Contract Act. MORGAN *v.* GOVERNMENT OF HAIDRABAD . . **I. L. R. 11 Mad. 419**

5. ———— *Fraudulent misrepresentation—Sale of immoveable property—Misdescription of area sold—Suit for damages—Nature of proof required.* A purchaser of certain immoveable property sued his vendors to recover compensation or damages on account of a deficiency in the actual area of land purchased by him as compared with the area stated in his sale-deed. There was no covenant in the sale-deed to make compensation in case of misdescription *Held*, that [illegible]

ABDULLAH KHAN *v* ABDUL RAHMAN BEG.
I. L. R. 18 All. 322

9. INVALID SALES.

1. ———— **Fraudulent concealment**—*Knowledge of defect in title, or of incumbrance.* [illegible]

there was a fraudulent concealment vitiating the contract PEAREE MOHUN SOOR *v* ABDOOL SOBHAN CHOWDHRY . . . **7 W. R. 258**

2. ———— **Misrepresentation**—*Right* [illegible]

3. ———— *False representation alleged against vendor by purchaser—Inducement not proved—Shareholder buying shares from a Director of the Company* To maintain a suit for damages upon a false representation alleged by purchaser against vendor, it must be established that the plaintiff was induced by the misrepresentation to enter into the contract. Shares in a banking company which shortly afterwards went into

VENDOR AND PURCHASER—*contd.*

9. INVALID SALES—*contd.*

liquidation were sold by a Director to the plaintiff, a shareholder The latter now sued the vendor, alleging inducement to buy the shares by the vendor's false representations as to the state of the Bank's affairs Both the Courts below concurred in finding that oral representations as to the latter alleged to have been made by the defendant to the plaintiff were not proved Those Courts, however, had concurred in finding that the defendant, though he was not responsible for false balance-sheets issued before 1890, was well aware of the falseness of the one issued for the half-year ending on the 30th June 1890 The Judicial Committee saw no reason for interfering with these concurrent findings The plaintiff, in this appeal, relied on the issue of the false balance sheet of 1890, the issue of a false report by the Directors, and a wrongful payment of dividend for the period abovementioned, acts in which the defendant had taken part; these acts, as a series, constituting false representations, the bank having in fact been insolvent at the time But it was not shown by the evidence that the plaintiff had been induced to buy the shares, which he had contracted to buy in two sets, one in September, the other later on in 1890, by any of the representations so made; regard being had to the dates respectively and to his own knowledge. The dismissal of the suit was therefore maintained MACAULIFFE v WILSON

I. L. R 21 All. 209
L. R. 26 I. A. 6

4. ——— **Undue influence**—*Fiduciary relationship—Attorney and client—Onus probandi* A contract of sale or conveyance entered into by any one with a person who stands relatively to him in a position of confidence or trust is liable to be called in question by the vendor, and to be set aside at his instance, if it be found that the other

ence is presumed to have been exerted until the contrary is proved, and the purchaser is bound to show that all the terms and conditions of the contract are fair, adequate, and reasonable. PUSHONG v. MUNIA HALWANI.

1 B L. R A. C. 95 10 W. R. 128

5. ——— *Fiduciary relationship—Trustee and cestui que trust.* *J* and *M* were named executors of the will of *H*, who died in 1844 *M* alone proved the will, but *J* did not renounce probate until nine years after the death of *H* and the commencement of litigation The only act as an executor of *H* proved against *J* was that, in a deed executed by him for the conveyance of the share of *H* in a certain estate in which *J* was

VENDOR AND PURCHASER—*contd.*

9. INVALID SALES—*contd.*

unfair advantage in respect of certain property in litigation, precluded from purchasing the interest of *H's* sons under a decree. DHONENDRO CHUNDER MOOKERJEE v. MUTTY LOLL MOOKERJEE SREEMANCHUNDER MOOKERJEE v. MUTTYLOLL MOOKERJEE . . . Cor. 57

6. ——— **Purchase by agent or other person on fiduciary position**—*Fiduciary relationship—Onus probandi—Consideration.* An agent or person in a fiduciary position towards the owner of property purchased by him is bound to

tion alleged was in fact paid, ... for the property.

show that the sale was made by a person who had authority from the owner to sell; and, unless the seller can establish a fraudulent connivance between the agent employed to sell and the purchaser, the sale will be binding on the seller on proof of authority of the agent to sell. RUTTA BEBEE v. DUMPEE LAL . . . 2 N. W. 153

7. ——— **Deed of sale executed by man of weak intellect**—*Ground for setting aside sale by Court of equity* A Court of equity will not set aside the voluntary deed of a weak man ... unless the weak- ...saction ...uch as ...at the ...hat he ...s the Court ...the parties ...r NEWGEE ... 1864, 65

8. ——— **Sale by old and illiterate woman without professional advice**—*Fraud—Undue influence—Inadequate consideration—Terms on which deed will be set aside—Purchase-money declared a charge—Funeral expenses of Hindu widow declared a charge—No allowance for repairs and improvements.* *C* was the widow of one *R*, deceased, and from the death of *R* until her own death remained in occupation of a house and chawl which had belonged to him *D* was a sister of *C's*, and, shortly after *R's* death, *D* and her son *B*, the first and second defendants, went to live ... and lived with *C* and ... While ...rarious ...money, ...would ...of her ...same. have justified ... late husband to secure the repayment of ... *C* became very ill, and *D* and *B*, fearing she might be going to die, requested her to take some steps to secure to them the repayment of the sums they

VENDOR AND PURCHASER—*contd.*

9. INVALID SALES—*contd.*

had advanced to her C thereupon offered to give D and B an absolute deed of sale of the said house and chawl in consideration of the said sum of R3,500 already advanced to her and of an additional sum of R500 then to be paid to her to defray her funeral expenses and the costs of the said conveyance D and B consented and called in their solicitor to take C's instructions and draw up the deed in question which he accordingly did, and within three days of the said agreement the deed was executed At that time C was very ill, and twelve days after the execution of the deed C died. C was an illiterate woman over sixty years of age, and had in this matter no independent professional or other advice The additional sum of R500 agreed to be paid to see C was never so paid to her, but after her death D and her son expended moneys in and about her funeral ceremonies amounting, as they alleged, to upwards of R400 The property in question so pledged to them for R4,000 was worth at least R5,200 The plaintiff, one of the heirs of R, sued to set the deed aside and for possession of the said property *Held*, that the deed of sale must be set aside as obtained under circum-

should stand charged with the repayment of the sums so advanced *Held*, also, that the property must stand charged with the repayment to D and B of such a sum as, having regard to her position and station in life, should be found to be a reasonable sum for the funeral expenses of C. After C's death, D and B remained in possession of the said property under the deed of sale, and expended

BHASKAR JOSHI *v* DHAKUBAI
I. L. R. 5 Bom. 450

9. ——— **Inadequacy of consideration**—*Actual or constructive fraud—Cancelment of sale—Sales by expectant heirs of reversionary interests.* In the case of a sale by a person, young indeed and in distressed circumstances, but not without advice or means of information, of an estate actually vested in him, but not to be ob-

result of the litigation might ultimately show him to be entitled The difference between that value and the purchase-money, if not too disproportionate, may be legitimately taken to represent the difference between certainty and immediate enjoyment on the one hand, and risk, worry, expense, and delay on the other The exceptional equitable principles which, in a sale by an expectant heir of a reversionary interest, throw upon the purchaser the onus of showing that he gave a fair price, and which, on failure of such proof, entitles the expectant heir to have the sale set aside, have no application in the above case, or in that of every ignorant and improvident person AZIMUDIN KHAN *v* ZIA-UL-NISSA . I. L. R. 6 Bom. 309

10. ——— **Omission to register**—*Fraud—Registration Act (XVI of 1864) s 18.* Where the sale-deed was executed, and consideration paid, but the deed was not registered within four months owing to the seller's fraud:—*Held*, that such fraudulent vendor could not benefit himself by pleading the provision of law (s. 18, Act XVI of 1864) as bar to the purchaser's claim PURGAS RAI *v.* JUGOUN SINGH . . 2 Agra, Pt. II, 20

11. ——— **Alienation to defeat execution of decree**—*Rights of creditor without specific lien against purchaser—Fraud* On the 3rd October 1865 the plaintiff filed a suit against

a deed of sale to defendant R of all the immoveable property of which he (D) was then possessed, for the price of R4,000. On 30th April 1872 the plaintiff obtained a decree against D, and in execution thereof attached certain immoveable pro-

petent for D, at any time previously to an attachment of the property to alienate it, and the question for decision as to that property was whether D had alienated it or not. If the deed of

continue to be the beneficial owner of it,—there would not be any alienation, and the deed of sale would be void as against an attaching creditor of

VENDOR AND PURCHASER—*contd.*

9. INVALID SALES—*contd.*

D. If, on the other hand, the sale were a real transaction,—*i e.*, if it was the intention of the parties that the full ownership should pass from the vendor to the vendee,—then the sale would be valid, even though it might have been in the contemplation of the parties that future attempts to attach the property by a creditor of the vendor (not having any specific lien on the property) should be defeated by the sale Until attachment the creditor has no right to interfere with the power of his debtor to deal with his property RAJAN HARJI v ARDESHIR HORMUSJI . I. L. R. 4 Bom. 70

SAKHARAM MAHIPAT v. DAWUD VALAD JAWABHAI . . . I. L. R. 4 Bom. 76 note

BALVANTRAV v. JIVANJI HORMASJI
I. L. R. 4 Bom. 77

12. ——— Sale to two successive purchasers—*Non-payment of purchase-money—Right of first and second purchasers* The proprietor of certain immoveable property conveyed it first to one person and then to another The first purchaser sued the vendor and the second purchaser for the possession of the property, alleging that he had been put in possession of it, but had been ousted by the second purchaser *Held*, that the first sale was not void by reason of the non-pay-

purchase-money found to be still due to him from the first purchaser, and to retain possession of the property until the receipt of that purchase-money. RAM LAKHAN RAI v. BANDAN RAI.
I. L. R. 2 All. 711

13. ——— Sale of property not belonging to vendor—*Loss sustained by purchaser on being dispossessed.* Where a party sells property to

his act of selling AMANOOLAH v MAHOMED NASIR
22 W. R. 442

14. ——— Deed of sale set aside as being fraudulent and void—*Right of purchaser to compensation for improvements* A party in possession under a deed of sale conveying real estate, the property of a defendant in a pending suit, *held* not entitled to any allowance for sums expended by him for improvement upon the estate, when the deed was found to be fraudulent and void as against the creditors of the vendor, and to have been executed to defeat a sequestration MUSADEE MAHOMED CAZUM SHERAZEE v. ALLY MAHOMED SHOOSTRY . . . 6 Moo. I. A. 27

15. ——— Purchaser with notice of prior contract to sell—*Trusts Act (II of 1882), s 91—Specific Relief Act (I of 1877) s 27.* In a suit for land it appeared that the plaintiff had

VENDOR AND PURCHASER—*contd.*

9. INVALID SALES—*contd.*

had paid no consideration for the sale-deed, which in fact represented a collusive transaction entered into to defeat the prior contract. *Held*, that the plaintiff was not entitled to recover. NAMASIVAYAM PILLAI v. NELLAYAPPA PILLAI.
I. L. R. 18 Mad. 43

16. ——— Execution of sale-deed without consideration—*Subsequent transfer for value—Transfer of Property Act (IV of 1882), s. 54.* In a suit for land it appeared that in 1887 *A* had executed in favour of *B* a registered conveyance of the land in question, which purported to be a sale-deed, but that no consideration was in

the two transactions above referred to, the plaintiff had purchased the land from *B*, and he now alleged that the persons in possession had executed a rent agreement, in fact found to be a forgery, under the terms of which he claimed to eject them. *Held*, that the plaintiff's claim, founded on the transaction of 1887, did not prevail against *C* and *D*. SANGU AYYAR v CUMARASAMI MUDALIAR.
I. L. R. 18 Mad. 61

17. ——— Colourable sale—*Sale of property to defraud creditors—Indicia of fraud* Where in a suit to establish plaintiff's right to property purchased by him it was found that his vendor,

seeing it or valuing it, that the the sale consisted of time-barred debts or debts which were not payable at the time; that the property sold remained in the possession of the vendor, who paid its assessment; and that the consideration was grossly inadequate—*Held*, that there was no *bonâ fide* or valid sale, but a mere colourable transaction without consideration not intended to transfer of the property to the plaintiff. NANA MANSARAM SHET v. RAUTMAL TARACHAND SHET.
I. L. R. 22 Bom. 255

18. ——— Notice of prior agreement to sell to another—*Agreement to sell to A—Subsequent sale to B under registered conveyance—Trusts Act (II of* first defend certain land 9th December the second a registered defendant and on in execution of which a conveyance of the land was executed

the 8th March, 1891,

VENDOR AND PURCHASER—*contd*

9. INVALID SALES—*contd.*

to him by the Court under s. 261 of the Civil Procedure Code (Act XIV of 1882) The plaintiff then attempted to take possession, but was resisted by the second defendant. He thereupon filed this suit. It was found that the second defendant bought in December, 1895, with notice of the earlier agreement with the plaintiff of June, 1895. *Held*, that the plaintiff was entitled to possession. The second defendant having bought with notice of the plaintiff's contract, he held the property for the ben

to give

form of

should

holds the property for the benefit of the plaintiff to the extent necessary to give effect to the contract of the 25th June, 1895; there should be a decree that the second defendant do execute to the plaintiff a proper conveyance of the *thikam*, and a decree for possession GAFFUR VALAD IBRAHIM FAKI *v* BHIKAJI GOVIND (1901)

I. L. R. 26 Bom. 159

19. ———— Purchaser with knowledge of liability to partition—*Purchase by a co-sharer of part of joint property from his co-parcener—Subsequent partition of whole property—Part of property sold allotted to third person—Suit by purchaser—Covenant for title—Damages* The plaintiff and the defendant (with other persons) were co-sharers in certain land In 1890 the plaintiff purchased a part of this land from the defendant by a registered sale-deed, and took pos-

had been deprived, and also claiming damages. The first Court dismissed the suit On appeal, the District Judge reversed that decree and awarded the plaintiff the defendant's share of the land, together with R62 as damages *Held*, that the

DESAI *v*. BAL DAJI DESAI (1902)

I. L. R. 26 Bom. 519

20. ———— Auction sale under power of sale in a mortgage—*Condition of sale depreciatory of mortgagor's title—Solicitor of mortgagee acting for purchaser in preparation of deed of conveyance—Constructive notice—Conduct of*

VENDOR AND PURCHASER—*contd*

9. INVALID SALES—*concld.*

mortgagees at sale inducing bidders to leave—Knowledge of purchaser of such circumstances—Notice—Proviso in mortgage to protect purchaser—Transfer of Property Act (IV of 1882), s. 69 At an auction sale under a power of sale in a mortgage on conditions one of which both the lower Courts found

mortgagees were made parties: *Held*, that the purchaser was not affected with constructive notice of the true state of the title by reason of the fact that some days after the contract of sale was completed, he instructed the mortgagees' solicitor to act for him in the preparation of the deed of conveyance, and that the solicitor knew that the condition of sale was unjustifiable. The knowledge of the solicitor as to the title was not acquired in the matter for which he was the purchaser's agent and could not be used to upset a transaction of a date before that agency commenced The sale was therefore not invalid on that ground. The mortgage which was in the English form contained a proviso that upon the exercise of the power of sale "the purchaser, shall not be bound to see or inquire whether any default has been made, or otherwise as to the necessity or expediency of such sale, or that the

at the sale the mortgagee defendants by themselves or their agents so conducted themselves with reference to the sale that bidders were induced to leave, and that the purchaser was present and had notice of those circumstances *Held*, that the purchaser was affected with notice of the impropriety of the sale, and bought at his own risk, notwithstanding the proviso in the mortgage and the provisions of s 69 of the Transfer of Property Act (IV of 1882), and that these circumstances invalidated the sale CHABILDAS LALLUBHAI *v*. DAYAL MOWJI (1907). **I. L. R. 31 Bom. 566**

L. R 34 I. A. 179

10. LIEN.

1. ———— Creation of lien—*Title—Notice of charge—English law as to right of bona fide purchaser for value without notice.* By contract and deposit of title-deeds *B* charged certain land in favour of *A* as a security in respect of the non-

VENDOR AND PURCHASER—*contd.*

10. LIEN—*contd.*

the parties to it, and that *A* had no right of suit against *C*, to whom the land had been transferred —*Held*, by the Privy Council, reversing that decision, that the agreement created a lien on the land and that no positive law was shown to forbid the giving effect to such agreement. The owner of

to look only to the apparent title in the Collector's books, or the presumed title of the owner in possession, and it is beyond the province of a Court of justice to give effect to the title of such a purchaser to the extent of defeating a prior lien or charge Conceding that a purchaser for value *bonâ fide*, and without notice of the charge, would have an equity superior to *A's* right —*Held*, that a purchase in good faith by *C* had not been proved. If the

ROYJEE LALLAH.

Marsh. 461 9 Moo. I. A. 303

2. ——— **Purchaser, Right of**—*Produce of land, Sale of—N.-W. P Rent Act, (XVIII of 1873) s. 56—Hypothecation* The purchaser of the unstored produce of land in the occupation of a cultivator, with notice of the lien created on such produce by s. 56 of Act XVIII of 1873, takes such produce subject to such lien S A No. 1393 of 1870 decided on the 4th February 1871, and *Achul v Gunga Pershad, 2 Agra 73*, followed KINLOCK COLLECTOR OF ETAWAH KINLOCK *v* COURT OF WARDS . . . **I. L. R. 3 All. 433**

3. ——— *Lien by deposit of title-deeds—Subsequent purchase by another.* In 1865 *C* gave *H* a lien on his property by a deposit of title-deeds In 1867 *B* purchased the same property *bonâ fide* and without notice of *H's* lien. *Held*, that *B* took the property free of the lien BUNSEE DHUR *v.* HEERA LALL.

1 N. W. Pt. VI, 74. Ed 1873, 166

4. ——— *Priority—Inchoate agreement to purchase—Deposit of earnest-money* The claimant entered into an agreement for the purchase of certain property, and on the execution of the agreement deposited R15,000 as earnest-money of the contract and in part payment of the purchase-money. The claimant was not satisfied at that time with the title-deeds supplied by the vendor, but afterwards entered into fresh negotiations for the purchase upon different terms The vendor died, and the present claim was filed in a suit to administer his estate. *Held*, that the claimant was entitled to be paid in full the R15,000 in priority to all other creditors, and that his lien was not lost by the failure either of the original contract or the subsequent negotiations. KENNY *v.* ADMINISTRATOR-GENERAL OF BENGAL . . **3 B. L. R. O. C. 75**

VENDOR AND PURCHASER—*contd.*

10. LIEN—*concld.*

5. ——— *Lien, concealment of—Estoppel.* In execution of a money-decree, the

such lien. He afterwards obtained a decree upon the bond, and sold it to the defendants, who caused the same property to be attached The purchaser intervened under s. 246, but without success. In a suit by the purchaser to establish his absolute right :—*Held*, that as the defendants' vendor has suppressed the fact of the charge, and thereby induced the plaintiff to purchase as the absolute property of the judgment-debtor, they were now precluded from setting up his lien. DULLAB SIRKAR *v.* KRISHNA KUMAR BAKSHI.

3 B. L. R. A. C. 407 : 12 W. R. 303

6. ——— **Right to enforce lien**—*Sale subject to decree declaring lien on property.* If a decree declares a lien over *A's* property for a certain sum in favour of *B*, and subsequently *A* sells part of this property to B and part to *C*, *B* cannot sue to enforce his lien against *C's* purchase without bringing his own into contribution RAM LOCHUN SIRCAR *v.* RAM NARAIN.

1 C. L. R. 296

7. ——— **Lien on land created by agreement**—*Sale to stranger without notice—Purchaser, right of.* *D* mortgaged certain land to *S* to secure repayment of a loan, and covenanted that in a certain event *S* might realize the money from the house of *D*. *D* sold this house to *C*, who purchased without notice of the covenant. *Held*, that *C* could not resist the claim of *S* to have the house sold under the covenant. COOLING *v* SARAVANA.

I. L. R. 12 Mad. 69

11. NOTICE.

1. ——— **Necessity of notice of title**—*Equitable doctrine of secret ownership* It is a rule of universal equity, and not one peculiar to English Courts, that, in order to enable the real

or that there existed circumstances which ought to have put the purchaser on an inquiry which, if prosecuted, would have led to a discovery of the real title. RAMCOOMAR KOONDOO *v* MCQUEEN.

11 B. L. R. 46 : 18 W. R. 166
L. R. I A. Sup Vol. 40

2. ——— **Purchaser without notice**—*Secret ownership—Fraud* A vendee who purchases for valuable consideration, and without notice of benami, from the ostensible owner of the property held by him under an apparently good title will be protected from subsequent acts of the owner or his heir both of whom were parties to the fraud ; and his purchase will hold good against

VENDOR AND PURCHASER—*contd*

II. NOTICE—*contd.*

any subsequent sale made by them RENNIE *v* GUNGANARAIN CHOWDHRY . . 3 W. R 10

3. ——— *Equitable relief against forfeiture* Remarks on the doctrine of equity as to the applicability of the defence of purchase for valuable consideration without notice The defence does not apply where the Court of Chancery is exercising a jurisdiction concurrent with that of the Courts of the law Where *A* sold land to *B*, reserving a right to re purchase by payment of a certain sum at a specified time, and before such time, had arrived *B* re sold to *C* for valuable consideration without notice, and *A* failed to make the payment and forfeited his right to re-purchase —*Held*, that he had no title unless relieved against the forfeiture, and that such relief could not be given as against *C* SAMAKKAUNDAN *v* PERUMAL CHETTI . . 2 Mad. 14

4. ——— *Assignment of equitable estate—Notice to holder of legal estate—Hindu law* In order to complete assignment of an equitable estate in immoveable property, it is not necessary by English law that notice of the assignment should be given to the owner of the legal estate Nor is there any rule of Hindu law which requires notice to be given to the person in possession whose position may be considered annalogous to the holder of the legal estate in English law GOVINDRAV *v* RAVJI . I. L. R. 12 Bom. 33

5. ——— *Purchase from joint Hindu family—Presumption. Semble* That considering the state of Hindu families, a purchaser would be affected with notice by much slighter evidence than a purchaser in other countries. KOYILOTHPUTENPURAYIL MANOKI KORAN NAYAR *v* PUTHENPURAYIL MANOKI CHANDA NAYAR . . . 3 Mad. 294

6. ——— *Bonâ fide purchaser—Fraud in vendors* A *bonâ fide* purchaser should not be deprived of the benefit of an honest purchase, even though, the sale to his vendors was fraudulent if he had no notice of the fraud GOLAM AHEA *v.* DIGUMBUR SINGH.
W. R. 1864, 225.

7. ——— *Sale of whole interest—Subsequent purchase without notice by another* The plaintiff purchased from the first [illegible]

[illegible]

See (*contra*) CHIDAMBARA NAYINAN *v* ANNAPPA NAYAKKAN . . . . 1 Mad. 62

8. ——— *Bonâ fide purchaser—Omission to make proper inquiries into title.* In order that a purchaser of immoveable property from a Hindu in the Island of Bombay may be entitled, as against the beneficial owner of such property, to set up the defence of being a [illegible]

chase SAVAKLAL KARSANDAS *v* ORA NIZMUDDIN 8 Bom. O. C 77

9. ——— *Notice of possession of rent—Notice of tenancy—Purchaser how far affected with notice of lessor's title.* Notice of possession of the rents of property is notice of the tenancy, but does not of itself affect a purchaser with notice of the lessor's title *Barnhat v. Greenshields, 9 Moo P C. 18*, referred to GUNAMONI NATH *v* BUSSUNT KUMARI DASI
I. L R 16 Calc 414

10. ——— **Purchaser, obligation of—** *Joint Hindu family, Purchase from* When a person has notice that another has or claims an [illegible]

amount of inquiry can discharge the purchaser from liability? A purchaser, therefore, from one member of a joint Hindu family is affected with notice of the claims of the other members. On the facts —*Held* (reversing the decision of the Court below), that no sufficient inquiry had been made in this case GOBIND CHUNDER MOOKERJEE *v.* DOORGAPERSAD BABOO
14 B. L R. 337 : 22 W. R. 248

11. ——— **Incumbrance**—*Fraud—Equitable mortgage—Purchaser for valuable consideration without notice* The reason for the rule of equity that a purchaser of property, though for valuable consideration, yet with notice of a prior incumbrancer, purchases subject to such incumbrance, is that such purchaser is acting *malâ fide* [illegible]

of the prior right of a third person, is not guilty [illegible]

subsequently to his purchase he may become aware of the prior incumbrance, yet he has the right to convey to a subsequent purchaser, who, at the [illegible]

VENDOR AND PURCHASER—*contd.*

11. NOTICE—*contd.*

fraud in accepting what his vendor had a right to convey, nor would the *bonâ fide* purchaser without notice be able otherwise freely and completely to dispose of the property which he innocently acquired. On the same principles, any subsequent purchaser, however remote, though having notice must be protected. Where, therefore, the second defendant, having notice of the plaintiff's equitable mortgage, purchased from one who, also with such notice, had purchased from a *bonâ fide* purchaser for value without notice —*Held*, that the second defendant held the property free from the equitable mortgage *Carter* v. *Carter, 3 K & J. 617*, distinguished. DAYAL JIVRAJ *v* JAIRAJ RATANSI

I L. R. 1 Bom. 273

12. ———— *Bonâ fide transferee for value of mortgaged property—Ignorance of existing incumbrance* *Held*, that a statement in answer to interrogatories, which was made by the purchaser of mortgaged property, to the effect that at the time of the purchase he was aware of the mortgage and believed that it had been satisfied, was no proof of the purchase having been made after notice of a prior mortgage, inasmuch as it was inconsistent with the knowledge of an existing incumbrance. SHEO DAYAL MAL *v* HARI RAM

I. L. R. 7 All. 590

13. ———— *Purchaser for value—Notice of prior mortgage.* The plaintiff in [illegible]

situated in Gujarat on which the debt had been secured under a sankhat. On the attachment of the immoveable property in execution of that decree, the defendant objected under s 246 of the Civil Procedure Code, and alleged that he had purchased the property in 1865 The attachment having accordingly been raised, the plaintiff sued for a declaration of his right to sell the mortgaged property. Both the lower Courts threw out the plaintiff's claim On special appeal the decrees of the lower Courts were reversed, and the case remanded for the trial of the issue whether the defendant was a *bonâ fide* purchaser for valuable consideration, without notice of the plaintiff's sankhat or lien on the property in dispute at or before the time of his purchase. GRIDHAR RANCHODDAS *v.* HAKAMCHAND REVACHAND

8 Bom. A. C. 75

14. ———— *Priority—Registration—Possession—Subsequent purchaser with notice obtaining possession and paying off mortgage —Right to recover sum applied in paying off mortgage* The plaintiff sued to recover land purchased by him in 1886 from the first defendant, and which was in possession of defendants 2, 3, and 4 The conveyance to the plaintiff was duly registered. The third defendant claimed part of the land under a previous sale to him in 1885 by the first defendant. The conveyance to him being also duly registered. The fourth defendant claimed the rest of the land under a sale to him by the first defendant subsequent to the sale to the plaintiff, of which he had no notice. He relied upon the fact of his having got possession, and he alleged that the purchase-money which he had paid for the land had been applied by the first defendant in paying off a mortgagee who at the date of his purchase was in possession. He claimed, at all events, the repayment of this sum. *Held*, (i) that the plaintiff [illegible]

sion of the fourth defendant, who must be taken to have purchased with notice of the plaintiff's prior purchase, inasmuch as the deed of conveyance to the latter was registered (iii) That, if the fourth defendant's purchase-money was applied to pay off a mortgage which plaintiff would otherwise have had to pay, the plaintiff could not equitably recover the land without paying the fourth defendant so much of the purchase-money as was so applied. NARAYAN LAKSHMAN *v.* BAPU VALAD HAIBATRAV . . **I. L R. 17 Bom. 741**

15. ———— **Transfer of property subject to trust**—*Purchaser for value—Constructive notice—Tenant in possession as object of charitable trust* If the purchaser of an estate for value takes with notice, actual or constructive, of a trust, he is bound by such trust to the same interest and in the same manner as the person from whom he pur- [illegible]

and under the trust MANCHARJI SORABJI [illegible] *v.* KONGSEOO . . **6 Bom. O. C. 59**

16. ———— *Sale by landlord subject to rights of tenants—Notice to purchaser of rights—Suit by tenants to enforce rights against purchaser—Limitation* In 1806 the East India Company granted a village to *A*, subject to the raiyats' customary rights and privileges which were embodied in Regulation I of 1808, but the [illegible] 1819, and [illegible] *A*, who [illegible] made no [illegible] raiyats. [illegible] e village from its legal owners. In 1889 plaintiffs sued [illegible] for themselves and on behalf of the other [illegible] rights The [illegible] conveyance [illegible] rights, he was not bound by them. *Held*, that, as at the time of the conveyance of the village to the defendant the lands were in the occupation of the raiyats, the defendants ought to have made inquiry as to their rights. Having failed to do this he was bound

VENDOR AND PURCHASER—*contd*

11 NOTICE—*contd.*

by the rights of the tenants as much as if they had been specially mentioned in the conveyance to him *Mancharji Sorabji* v. *Kongscoo, 6 Bom. H C. Rep. 59* fo[illegible] been no den[illegible] before the s[illegible] AHMEDBHOY [illegible]

17 ———— *Notice—Right of purchaser* *B*, having been sentenced to transportation *for life, presented a petition in the Revenue* Court, in which stating that he owned a certain zamindari estate, and that he had been so sentenced, and that it was necessary to make arrangements for the payment of the Government revenue and the management of the estate, he prayed that his name might be removed from the revenue register and that of *P* recorded in its stead. *P* sold the property for consideration, his vendee purchasing *without notice of any trust, and it was subsequent*ly put up for sale in execution of a decree against *P's* vendee, and was purchased without notice of any trust. *Held*, that the property could not be followed into the hands of the purchaser at the execution-sale *Durga Prasad* v *Asa Ram, I L R 2 All 361*, observed on HAITRAM v DURGA PRASAD . . **I. L. R. 5 All. 603**

18. ———— Constructive notice—*Person in possession of subject of sale.* Where there is a person in possession of an estate other than the nominal owner,—*i e.*, the person in whose name the title-deed is,—a purchaser, although he may be a [illegible]

[illegible] **22 W. R. 0**

MASSIM MEAH v SHAM DOSS . **22 W. R. 189**

19. ———— *Sale in execution of decree—Sale of property on which there is a lien,* [illegible]

20. ———— *Doctrine of constructive notice—Secrecy in transaction.* The Court will not apply the doctrine of constructive notice [illegible]

21. ———— *Notice to agent* [illegible]

VENDOR AND PURCHASER—*contd.*

11. NOTICE—*contd*

ALI KHAN v. OJOODHYA RAM KHAN MUNSOOR ALI KHAN v OJOODHYA RAM KHAN

8 W. R. 399

22. ———— *Liability of land purchased from Hindu devisee for debts of his testator—Onus probandi. Per* PONTIFEX, J. The question how far lands purchased from a Hindu devisee are liable in the hands of the purchaser for the testator's debts stands on the same footing as a similar question would under the present English law The creditors of the ancestor or testator may follow his lands into the possession of a purchaser from the heir or devisee, if it can be proved that such purchaser knew (i) that there were debts of the ancestor or testator left unsatisfied, and (ii) also that the heir or devisee to whom he paid his purchase-money intended to apply it otherwise than in the payment of such debts But a purchaser ignorant on either of these points has a safe title, for no duty is cast upon the purchaser from the heir or devisee to inquire whether there are any debts of the ancestor or testator, or to see to the application of his purchase-money, even when there is an express charge of debts by the testator on the devised estate—at least when the devisee in also executor; and in such a case the burden of proof is entirely on the creditor to show that the purchaser from the devisee had notice [illegible] purchase-[illegible] with con-[illegible] the latter GREENDER CHUNDER GHOSE v MACKINTOSH.

I. L. R. 4 Calc. 897 : 4 C. L. R. 193

23. ———— *Specific Relief Act (I of 1877), s 27—Specific performance of a contract, suit for—Whether registration of an ekrarnamah was sufficient notice of the contract.* Mere registration of an ekrarnamah is not sufficient notice of a contract within the meaning of s 27 of the Specific Relief Act PREONATH CHATTOPADHYA v. ASHUTOSH GHOSE

I. L R. 27 Calc. 358
4 C. W. N. 490

24. ———— The question whether registration is notice or not is a question of fact, and as each case arises, it should be determined whether the omission to search the register together with other facts amounts to such gross negligence as to attract the consequence which results from notice *Tomb* v. *Rand, 2 Bro C. C. 652 ; Evans* v. *Bicknell, 6 Ves. 174 ; Martinez* v. *Cooper, 2 Russ. 198 ; Farrow* v. *Rees, 4 Beav. 18 ; Hunt* v *Elmes, 2 DeG. F. & J. 578 ;* and *Agra Bank* v. *Barry, L. R. 7 H. L. 148*, referred to. MONINDRA CHANDRA NANDY v. TROYLOKHONATH BURAT

2 C. W. N. 750

25. ———— *Fraud—Registration Acts, effect of* When a person is proved to have had a knowledge of certain facts, or to have been in a position the reasonable consequence of

VENDOR AND PURCHASER—*contd.*

11. NOTICE—*contd.*

which knowledge or position would be that he would have been led to make further inquiry, which would *have disclosed a particular fact, the law fixes him* with having himself had notice of that particular fact There may be such wilful negligence in ab-

from a neglect to call for deeds and documents of title, but not to the same extent where a Registration Act is in operation, as it would where no Registration Act prevails *Agra Bank v Barry, L R 7 H L 135*, followed If an agent autho-

I. L. R. 7 Calc 199

26. ——————— *Registration—Possession—Registration Acts, effect of—English Registry Acts, Stat. 7 Anne, c 20, s. 1, 2 & 3 Anne, c 4, s 1; 6 Anne, c 35, s. 1, 8 Geo 2, c 6, s 1—Irish Registry Act, 6 Anne, c 2, s 4 (Ireland)* Neither in England nor in Ireland has *mere registration been held to amount to notice to* subsequent mortgagees or purchasers In Bombay the Courts have adopted the rule which prevails in America, and have held that registration does amount to notice to all subsequent purchasers of the same property Possession has been deemed by Hindu and Mahomedan law, as interpreted in the Presidency of Bombay, to amount to notice of such title as the person in possession may have; and any other person who takes a mortgage or other charge upon immoveable property without

of registration. The later Indian

been required or made, and not from the time of

accorded by the earlier Registration Acts to priority of registration. In the reported case under the

VENDOR AND PURCHASER—*contd.*

11. NOTICE—*contd.*

Indian Registration Acts passed in, and subsequently to, 1864, which have not (like the previous *enactments) given priority of rank to priority of* registration, the Courts have also regarded registration as an equivalent for possession where the instrument earlier in date has been registered, but unaccompanied by possession. The Courts have gone a step further, and have held registration under Act XVI of 1864 and the subsequent Acts to amount to notice, and therefore to atone for the absence of, and to be a sufficient substitute for, possession in the validation of title. The rule, however, that registration is equivalent to possession, cannot be applied to cases where the registration of the instrument earlier in date has been effected subsequently to the execution of the instrument set up against it. LAKSHMAN DAS SARUPCHAND *v* DASRAT . I. L. R. 6 Bom. 168

27. ——————— *Priority—Possession—Vendor and purchaser—Purchaser without possession—Subsequent purchaser with possession and without notice of prior purchase.* The plaintiff purchased the land in dispute on the 28th February 1878, and on the same day lodged his deed of purchase with the Registrar together with the registration fee. It was registered on the 29th

that the registration of the plaintiff's deed of p

ant, and therefore could not be equivalent to possession *Held*, also, that, as the defendant was ... either actual or con... and had ...sion, both ...sers, the ... benefit of

defendant could not be depri... his possession HASHA *v* RAGHO I. L. R. 6 Bom 165

28. ——————— Priority— *Notice of prior contract—Specific Relief Act, 1877, s. 27—Oral agreement—Sale to third person in contravention of agreement—Civil Procedure Code, 1882, ss 261, 262.* Where a *bonâ fide* contract whether oral or written, is made for the sale of property, and a third party afterwards buys the property with notice of the prior contract, the title of the party claiming under the prior contract prevails against the subsequent purchaser, although the latter's purchase may have been registered, and although he has obtained possession under *his purchase.* CHUNDER KANT ROY *v.* KRISHNA SUNDER ROY I. L. R. 10 Calc. 710

VENDOR AND PURCHASER—*contd*

11. NOTICE—*contd.*

See NEMAI CHARAN DHABAL *v.* KOKIL BAG
I. L. R. 6 Calc. 534 : 7 C. L. R. 487

29. ——— *San mortgage in Guzerat—Priority—Priority as between a purchaser at execution sale and prior mortgagee by unregistered san mortgage—Plea of purchase without notice.* The general rule in the Presidency of Bombay is that amongst Hindus possession is necessary in order to perfect a transfer of immoveable

the title of the party in possession It is, however, the established and judicially recognised custom of

follow that a san mortgage, in other respects good, is valid as against a subsequent mortgagee or purchaser, whether or not such mortgagee or purchaser has notice of the san-mortgage To hold that a subsequent mortgagee or purchaser for valuable

MELVILL, *J* —Such perfect security is now afforded by registration that there appears to be hardly room for the plea of purchase without notice.

12. POSSESSION.

1. ——— **Vendor remaining in possession**—*Presumption* Where a deed was exe-

2. ——— *Condition of sale—Acceptance of security by vendor—Suit to realize security.* The defendant purchased certain

VENDOR AND PURCHASER—*contd*

12. POSSESSION—*contd.*

though he retained the jewels in his possession under the lien so created ALLEN, HAYES & CO. *v.* ANUNDO CHUNDER MUNDLE
Bourke O. C. 156

3. ——— **Absence of change of possession**—*Hindu law—Incomplete sale.* According to Hindu law, a change of possession is necessary to complete a sale of corporeal property, in order to prevent successive purchasers from being cheated by successive sales of the same property, and to obviate disputes as to what was really sold A purchaser from a Hindu vendor, who buys, corporeal property without possession, does not thus obtain a title which in a suit for specific

4. ——— **Necessity of change of possession**—*Hindu and Mahomedan laws—Priority*

rule pointed out. LAKSHMANDAS SARUPCHAND DASRAT . . **I. L. R. 6 Bom. 168**

SOBHAGCHAND GOLABCHAND *v* BHAICHAND
I. L. R. 6 Bom. 193

5. ——— *Hindu law—Delivery of possession—Notice.* Delivery of possession of property sold is, under the Hindu law,

ances both of which have been registered. Authorities and Hindu law texts on the subject reviewed. LALUBHAI SURCHAND *v.* BAI AMRIT
I. L. R. 2 Bom. 299

6. ——— **Sale when vendor is not in possession**—*Hindu law—Necessity of possession—Ejectment* A Hindu whose estate is in the possession of a trespasser or a mortgagee, may sell

is not in possession, cannot operate as a present conveyance, nor enable the purchaser to sue in ejectment *Prahlad Sen* v. *Budhu Singh, 2 B L. R P. C. 111,* and *Bhobosoonduree Dasseah* v. *Issur Chunder Dutt, 11 B L. R. 36,* followed. *Bikan Singh* v *Parbutty Koer, 22 W. R 99; Gungahurry Nundee* v. *Raghubram Nundee, 14 B L. R. 307 ;* and *Lokenath Ghose* v. *Juggobundhoo Roy I. L. R. 1 Calc 297,* referred to. BAI SURAJ *v.* DALPATRAM DAYASHANKAR.
I. L. R. 6 Bom. 380

VENDOR AND PURCHASER—*contd.*

12. POSSESSION—*contd.*

7. ——— **Possession, delivery of**—*Hindu law—Sale* Possession is not essentially necessary by Hindu law to give validity to a transfer by sale of immoveable property. BHUKAN BHAIBAVA v BHAIJI PRAG . 1 Bom. 19

8. ——— *Title—Hindu*

GAHURRY NUNDEE v RAGHUBRAM NUNDEE.
14 B. L. R. 307 ; 23 W. R. 131

9. ——— *Hindu law—Per curiam* Delivery of possession is not, under the Hindu law, essential to complete the title of a purchaser for value NARAIN CHUNDER CHUCKERBUTTY v. DATARAM ROY
I L. R. 8 Calc. 597 ; 10 C. L. R 241

NAGUBAI v. MOTIGIR GURU . . **1 Bom. 5**

10. ——— *Hindu law* Under the Hindu law current in the Madras Presidency, possession is not necessary to complete a sale VASUDEVA BHALLU v. NARASAMMA
I. L. R. 5 Mad. 6

11. ——— **Want of possession**—*Hindu law—Sale before Transfer of Property Act—Possession* Under the law administered in the Madras Presidency in the case of sales of land between Hindus made before the date of the Transfer of Property Act, 1882, where all has been done that the parties contemplated to complete a sale, the title of the purchaser cannot be defeated in favour of a second purchaser merely by reason that the latter obtained and the former did not obtain possession RAMASAMI AYYANGAR v. MARIMUTTU BHATTAN . . **I. L. R. 6 Mad. 404**

12. ——— *Sale of land by a Hindu—Vendor without possession—Conveyance of right of action.* Where a Hindu vendor sold his share in certain land, but expressly stated in the deed of sale that he was out of possession ; that the land was in the hands of a third party, to whom it had been mortgaged without the vendor's authority ; and that he (vendor) empowered the pur-

vendor professed, in terms, to convey the property itself. *Held*, further, that the purchaser acquired

VENDOR AND PURCHASER—*contd.*

12. POSSESSION—*concld.*

13. ——— *Transfer of property by a person not in possession—Validity of such transfer—Hindu law* The plaintiffs sought to recover possession from the defendants of certain land, claiming under a kararnama executed to them by one *M.* The defendants contended that *M* had never been in possession of the land. The lower Appellate Court held that, as *M* was not in possession at the time, when the kararnama was executed, the plaintiff's claim was not maintainable. On appeal to the High Court :—*Held*, reversing the decree of the lower Appellate Court, that the circumstance of *M's* not having been in possession at the time the kararnama was executed did not prevent the plaintiffs from recovering possession from the defendants. *Kaludas v. Kanhaya Lall, I. L. R. 11 Calc. 121 : L. R. 11 I. A. 219*, referred to and followed. UGARCHAND MANACKCHAND v. MADAPA SOMANA . . **I. L. R. 9 Bom. 324**

14. ——— *Hindu law—Sale of land.* Though by Hindu law, on a sale of land it is not absolutely necessary that the purchaser

DULABHRAM . . **7 Bom. A. C.**

15. ——— *Mahomedan law—Sale when vendor is out of possession.* A sale among Mahomedans, unlike a sale between Hindus is valid as against a third party, even though the vendor was not at the time of the sale in possession of the property sold. ADAMKHAN v. ALARAKHI
I. L. R. 6 Bom. 645

See also MOHINUDIN v. MANCHERSHAH
I. L R. 6 Bom. 650

13. PURCHASE OF MORTGAGED PROPERTY

1. ——— **Bonâ fide purchase without notice of prior charge.** *Per* PEACOCK, C.J., NORMAN and PUNDIT, JJ. (BAYLEY and

1 Ind. Jur. N. S. 122 ; 5 W. R.

2. ——— **Obligation of purchaser**—*Inquiry by intending purchaser* An intending purchaser of property which has been previously mortgaged, who has no reason to suppose it to be

ed of and
s no frauds
KYLASH
lose
W. R. 100

3. ——— **Priority**—*Mortgage—Possession—Registration* A registered mortgagee, though without possession, is entitled to priority over

VENDOR AND PURCHASER—*contd*

13. PURCHASE OF MORTGAGED PROPERTY—*contd*

a subsequent purchaser SUNDAR JAGJIVAN *v.* GOPAL ESHVANT . . . 4 Bom. A. C 68

But an unregistered mortgage without possession is not valid against a purchaser with possession. GANPAT BAJASHET *v.* KHANDU CHATOSHET 4 Bom. A. C. 69

4. —— **Mortgage by member of joint Hindu family**—*Surrender of equity of redemption—Purchaser for valuable consideration—Pleading* A member of a joint Hindu family granted a usufructuary mortgage, he subsequently without the knowledge of the co partners, released the equity of redemption. On hearing of this, the co-partners contested the validity of the release *Held*, that the parties claiming from the person to whom the release was made, took, so far as the co-partners were concerned, a title only as mortgagees. RADHANATH DAS *v.* ELLIOT 6 B. L. R. 530

S. C. RADHANATH DAS *v.* GISBORNE & Co 15 W. R. P. C. 24 14 Moo. I. A. 1

5. —— **Purchase by mortgagee**—*Possession—Priority—Registration* A registered mortgage without possession has priority over a subsequent registered sale and conveyance with possession. By a duly registered deed, *D* mortgaged land to the plaintiff with power of sale On default made by *D*, the plaintiff brought a suit for a sale of the mortgaged land, but pending the suit, *D* sold the land to the defendant, who registered his conveyance and entered into possession. The plaintiff subsequently obtained a decree, and at the execution-sale became himself the purchaser In the present suit he sought to recover possession from the defendant *Held*, that the plaintiff was entitled to recover. His rights as mortgagee included the right of bringing to sale the property as it subsisted at the date of the mortgage The

6. —— **Rights of mortgagee**—*Mortgage sale without disclosing—Estoppel* The three

VENDOR AND PURCHASER—*contd.*

13 PURCHASE OF MORTGAGED PROPERTY—*contd*

the plaintiff to establish his right as against all the land included in his mortgage.—*Held*, that the mortgage being, under the circumstances, a valid one, the sale of the absent son's share was subject to the lien created thereby, which lien was not

son of his father's mortgage was not enough to create an estoppel against his father seeking to establish his claim under the mortgage JOSHI *v.* JOSHI . . . I. L. R. 2 Bom. 650

7. —— *Sale of equity of redemption—right of purchaser—Parties.* By two deeds dated respectively the 22nd February 1868 and 7th September 1872, and duly registered, *A* mortgaged the lands in dispute to *B* for a term of years which expired in 1880 On 10th October 1873, *A* executed a razinama in favour of *B* relinquishing all his right in the said lands, and *B* next day executed a kabuliat to Government for the lands, which thenceforward were entered in *B's* name. Previously to the second mortgage and razinama to *B*,—*viz*, on 21st March 1870—*A* had, by a duly registered deed, mortgaged the same lands to the plaintiff, who in 1874 brought a suit against *A* upon his mortgage and obtained a decree

land to *C* by a duly registered deed. In a suit

decree —*Held*, that *B's* possession at the date of the plaintiff's suit upon his mortgage was suffi-

and not having done so, the plaintiff could not

8. —— **Purchase subject to mortgage**—*Right to redeem—Good title at time of*

VENDOR AND PURCHASER—*contd.*

13. PURCHASE OF MORTGAGED PROPERTY—*contd.*

against the son and heirs of the mortgagor. In execution of that decree, the property was sold subject to the mortgage, and purchased by *B* on the 12th August 1864. Before confirmation of the sale, *B*, on the 1st September 1864, sold it to *C*, who, on the 30th March 1877, conveyed it by deed to the plaintiff On the 27th September 1877 the plaintiff brought a suit for redeeming the property, and at the hearing produced a certificate of sale, dated the 27th October 1877 The certificate was applied for in May 1877, and issued to *C*, reciting the sale to *B*, and the sale by *B* to *C*. The Court of first instance allowed the plaintiff to redeem on payment of a certain sum of money to the defendant. The Assistant Judge, on appeal, reversed the decree of the first Court on the ground that the certificate of sale was not in existence at the date of institution of the suit, and that therefore the plaintiff had then no complete title On appeal to the High Court —*Held*, that the plaintiff, having purchased and paid for the equity of redemption, was entitled to redeem, although the certificate of sale was not issued until after the suit had commenced. If a party, whose title is to

155, and *Lalbhai Lakhmidas* v. *Naval Mir Kamaludin Husen Khan, 12 Bom 247*, explained and distinguished KRISHNAJI RAVJI *v.* GANESH BAPUJI . . . . . **I. L. R. 6 Calc. 139**

9. ——— Purchaser of mortgagor's interest—*Priority—Purchaser of value without notice of a prior san-mortgage—Suit by mortgagee against purchaser to establish right to attach property—Right to purchaser to redeem—Parties—Form of decree* On the 23rd March 1869 a house was mortgaged by its owner, *P*, to *J*, by a san-mortgage After the death of *P*, his heirs, *D* and *T*, on the 9th July 1869 executed to the plaintiff a san-mortgage of the same house for R62. That mortgage was neither registered nor accompanied with possession On the 27th July 1869 *D* and *T* sold the house to the defendant The deed of sale was not registered A part of the purchase-money was applied to the payment of the first san-mortgage, which was then delivered up to the defendant, with a receipt on it by *J*, who acknowledged to have received from the defendant the amount due on his mortgage The defendant, however, omitted to take an assignment of that mortgage to himself The plaintiff sued *D* and *T* on his san-mortgage of the 9th July 1869, and in 1872 obtained a decree for the recovery of the mortgage-debt out of the mortgaged property. The defendant was not made a party to that suit. The plaintiff attached the house in execution of his decree, but the attachment was raised on the application of the defendant under s. 246 of the Civil Procedure Code, Act VIII of 1859. The

plaintiff then sued the defendant to establish his (*plaintiff's*) *right to attach and sell the house under* his san-mortgage The defendant answered that he was a purchaser for value, within notice of the plaintiff's mortgage. The plaintiff's claim was dismissed by the first Court, but allowed by the Appellate Court. On special appeal:—*Held*, that *the defendant's plea that he was a purchaser for* valuable consideration, and without notice of the plaintiff's san-mortgage, would not avail to defeat that mortgage under the established usage of Gujarat in favour of san-mortgages *Held*, further,

from the plaintiff's mortgage. *Sobhagchand Gulab-chand v Bhaichand, I. L. R 6 Bom 193*, followed. NARAN PURSHOTAM *v.* DOLATRAM VIRCHAND **I. L. R. 6 Bom. 538**

10. ——————— *Assignment of the equity of redemption by the mortgagor—No notice to mortgagees of such assignment—No change of name in Collector's books—Further advances by*

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mortgagor's name to remain in Collector's book
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notice
there any rule of Hindu law which requ... whose position may be considered analogous to the holder of the legal estate in English law. By a registered mortgage-deed *P in 1869 mortgaged certain property* with possession to the defendants. In 1871 *P* sold his equity of redemption *to the plaintiffs*, who allowed it to remain in *P's* name on the Collector's register. Subsequently in 1873 the defendants ... on the security of the
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VENDOR AND PURCHASER—*contd.*

13. PURCHASE OF MORTGAGED PROPERTY—*concld.*

although such notice was not necessary to complete the plaintiffs' title, it was plain, upon general principles of equity, that if the plaintiffs' conduct was such as to amount to a standing by and allowing the defendants to make further advances to *P* under the supposition that he was still the owner of the equity of redemption, such conduct would give the defendants a better equity. If the property was standing in *P's* name in the Collector's books, the allowing it so to remain after the assignment would be sufficient for the purpose. GOVINDRAV *v.* RAVJI I. L. R. 12 Bom. 33

11. ——— *Unregistered agreement by mortgagor to sell to mortgagee—Subsequent assignment of equity of redemption to third person for value, but with notice of agreement.* In a suit for redemption filed by an assignee for value of the equity of redemption against a mortgagee in possession, it was found that the mortgagor had agreed with the defendant to sell the mortgaged premises to him, that part of the purchase-money had been acknowledged as paid, and that the balance had been tendered in pursuance of the agreement. It was further found that the plaintiff had taken his assignment with notice of the above agreement and tender. The agreement was in writing, but not registered. *Held*, that, though the agreement was not admissible in evidence as creating an interest in land, still it might be used for the purpose of obtaining specific performance, and the plaintiff having purchased

14. PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER

1. ——— Non-payment of purchase-money—*Tender—Payment into Court—Suit for specific performance.* Plaintiff had entered into a

VENDOR AND PURCHASER—*contd.*

14. PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER—*contd.*

2. ——— Advance of purchase-money—*Lien on purchase—Repayment—Suit for possession.* *B* advanced money to *A* for the purchase of an estate. The estate was purchased by *A*, but it was conveyed to *B*. *Held*, that, before *A* could maintain a suit to obtain possession of the land, he was bound to pay or tender the money advanced by *B*. BHOYRUB CHUNDER SEIN *v.* ANUNDMOYE CHOWDHRAIN . . Marsh. 494

3. ——— Right to refund of purchase-money—*Failure to give possession—Suit for purchase-money.* A purchaser of property of which possession was contracted to be given, but the vendor is unable to fulfil the contract, is at liberty to sue for repayment of the purchase-money, and is not obliged to sue for possession of the property. MOHUN LAL *v.* BEHAREE LAL 3 N. W. 336

4. ——— *Bonâ fide purchaser*

referred to arbitration; and it was *held* that the vendor had no authority to sell. The principle of *caveat emptor* does not apply to such a case. KISHEN MOHUN SHAHA *v.* RAM CHUNDER DEY 3 W. R. 28

5. ——— *Refusal to perform contract—Omission to repudiate sale—Suit for recovery of purchase-money.* The defendants had sold certain property to the plaintiff. They afterwards refused to effect mutation of names in favour of the plaintiff, on the ground that he had not

5 N. W. 194

6. ——— *Suit to recover*

auctioneer, the vendor having refused to convey to the purchaser, save by a deed which should describe the premises by reference to another deed,

7. ——— *Illegal sale—Sale by co-parceners without assent of others.* Where a sale by two co-parceners in favour of another

VENDOR AND PURCHASER—*contd.*

14. PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER—*contd*

was set aside, on the ground that the sale by a co-parcener without the consent of the others was illegal.—*Held*, on the suit of the vendee to recover the purchase-money from the descendants of the vendors, that the purchase-money was like a debt, and payable by the heirs, in proportion to the shares inherited by each. OOMEDEE *v.* CHEDA LALL

2 Agra 264

8. ———— *Refund of purchase-money by heir taking after widow* *Held*, that a party succeeding as heir to an estate, the sale of which, by the widow of the person from whom he inherits, has been set aside, is bound to refund the purchase-money paid to the widow for the purpose of discharging liabilities on the estate ROOSTUM SINGH *v* ALUM SINGH . **1 Agra 291**

9 ———— *Failure to register—Suit for refund of purchase-money—Set-off.*

plaintiff entered into possession, but the vendor failing to register the conveyance, he sued to recover back his purchase-money *Held*, that he was entitled to a refund of the purchase-money. The purchaser who had obtained possession might or

such amount by a separate action COURT OF WARDS *v* NITTA KALI DEBI

3 B. L. R. A. C. 353 . 12 W. R. 287

See GURU PRASAD ROY *v* DHANPAT SINGH

5 B. L. R. Ap. 46 . 14 W. R. 20

PRABHURAM HAZRA *v* ROBINSON

3 B. L. R. Ap. 49 . 11 W. R. 398

10. ———— *Purchaser at revenue sale afterwards set aside—Suit to recover purchase-money—Voluntary payment* A person ... ect to a con... the interest ... it entitled to recover the purchase-money merely because the contingency contemplated actually happens, and the property either does not become, or ceases to be, available for his benefit RAMTUHUL SINGH *v.* BISSESSUR LAL SAHOO . **15 B L R. 208 . 23 W. R. 305**

L. R. 2, I. A. 131

Reversing the decision of the High Court in BISSESSUR LAL SAHOO *v* RAMTUHUL SINGH.

11 B. L. R. 121 . 19 W. R. 351

11. ———— *Right of vendor to interest claimed in part of purchase-money left unpaid by arrangement—Tender.* By an agreement between vendor and vendee part of the purchase-money was retained by the latter, but not as a mere deposit by the vendor. The money was to be retained as security, that the property sold should be cleared of incumbrances and good title made. The vendee was not liable for interest unless he should refuse, or omit, to pay the money so retained when the vendor should have shown readiness to clear off the incumbrancer. Till then the vendee was not bound to pay or to tender to the vendor the money retained MUHAMMAD SIDDIQ KHAN *v.* MUHAMMAD NASIRULLAH KHAN.

I. L. R. 21 All. 223
L. R. 26 I. A. 45
3 C. W. N. 201

12. ———— *Deposit by purchaser under contract—Contract going off through default of purchaser—Vendor's right to retain deposit* *Held*, that where a contract for sale goes off by default of the purchaser, the purchaser cannot recover any deposit which may have been paid by him to the vendor in pursuance of the contract *Ex parte Barrell: In re Parnell*, *L R 10 Ch. Ap 512*, and *Howe* v. *Smith*, *L R 27 Ch. D 89*, referred to. BISHAN CHAND *v* RADHA KISHAN DAS . . . **I. L. R. 19 All. 489**

13. ———— *Right of purchaser to return of deposit—Lien of purchaser for the part of the purchase-money paid by him.* A purchaser of land who has paid part of the purchase-money, by way of deposit but who afterwards unjustifiably repudiates the contract of purchase, or is guilty of any default by reason of which the sale is not carried out, is not entitled to recover the deposit from the vendor. The vendor is not necessarily entitled to retain the deposit merely because under the circumstances the Court refuses to grant specific performance against him From the moment part of the purchase-money is paid, the purchaser has a lien upon the property to that extent, which lien can only be lost to him by reason of his failing to carry out his part of the contract. BALVANTA APPAJI *v.* WHATEKAR BIRA

I. L. R. 23 Bom. 56

14. ———— *Unsuccessful denial of contract by defendant—Dismissal of suit by purchaser for specific performance for non payment of the balance of the consideration-money within the stipulated period—Right of plaintiff to return of deposit of the part of the consideration money paid where specific performance is refused—Equity and good conscience—Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887), s 37* In a suit for specific performance of a contract, the defendant denied the contract in toto The lower Appellate Court, while finding that there was a contract between the parties, refused to grant specific performance on the ground that the plaintiff failed to pay the balance of the consideration money on the stipulated day, but made a decree for the refund of the deposit. On appeal by the defendant to the High Court:—*Held*, that, inasmuch as the defendant unsuccessfully denied the contract in *toto* and as there was no repudiation of the contract

VENDOR AND PURCHASER—*contd*

14. PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER—*contd.*

by the plaintiff, he (the plaintiff) was entitled to a refund of the deposit made by him. ALOKESHI DASSI *v* HARA CHAND DASS

I. L. R. 24 Calc. 897
1 C. W. N. 705

15. ———— *Contract to purchase property in cantonment—Rights of Government in such property—Contract making no mention of Government rights—Knowledge of purchaser—Suit by purchaser for specific performance or return of earnest-money—Earnest-money when repayable—Amendment of plaint so as to claim refund of earnest-money* On October 12th, 1887, the first defendant executed the following agreement in favour of plaintiff with respect to certain property situated in the Poona Cantonment: "I have agreed to sell to you both my bungalows described above, including the sites and buildings together with the compounds, rooms for servants, stables, outhouses . . . and I have this day received from you R5,000 as earnest-money After the sale-deed in regard to the said bungalows is executed, I will get them transferred to your name in the Brigade-Major's office" On the same day the first defendant received from the plaintiff R5 000 as earnest-money A notice of the proposed sale was published in the newspapers, upon which the Poona Cantonment wrote to the plaintiff stating that Government possessed certain rights over the property. Plaintiff then demanded that the first defendant should obtain from Government and transfer to him a full and complete title in the property The defendant refused, and prepared a draft deed transferring the ordinary cantonment tenure, which was a ... Plaintiff ... suit to ... a deed ... title for ...ent and ...ng upon ...e parties as to whether by his conduct the plaintiff had forfeited his right to have the earnest-money returned to him This issue was, however, struck out at the trial by the Subordinate Judge, who also refused to allow the plaint to be amended by inserting a claim for the payment of the earnest-money, on the ground that it would change the character of the suit from being one based on the contract of the 12th October 1887 into a suit based on the fact that there had never been a contract at all between the parties. He dismissed the suit. The plaintiff appealed, and contended that the contract was that the defendant should give an absolute title to the property, and that, as he was unable to carry out this contract, he ...

VENDOR AND PURCHASER—*contd.*

14. PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER—*contd.*

was not brought home to the plaintiff, and that the Courrt could not impute such knowledge to him; that the terms of the contract itself were calculated to induce the plaintiff to believe that the defendant was selling not a mere revocable license to occupy the land, but the land itself. The defendant agreed to sell the land, and, having done so, the onus lay upon him to show not only that he intended to sell only cantonment occupancy rights, *but also that* the plaintiff understood that he was purchasing the same. (ii) That the defendant, being in default and being unable to give the title contracted for, should return the earnest-money to the plaintiff. *Held*, by the Full Bench, that the amendment of the plaint so ...

in the alternative, to a return of the earnest-money should be determined in one and the same suit, and the plaintiff failing to obtain a decree for specific performance should not be driven to a separate suit to recover back his deposit if he is entitled to relief in that form. The circumstance that a purchaser is not entitled to specific performance is by no means conclusive against his right to a return of the deposit. If, having regard to the terms of the contract, he is justified in refusing to accept the title, which the vendor is able to give, he is entitled to a refund of the deposit IBRAHIMBHAI *v.* FLETCHER

I. L. R. 21 Bom. 827

16. ———— Voluntary payment—*Payment to prevent sale* A payment of money to prevent a sale about to be effected in execution of a decree cannot be called a voluntary payment, whether it is made by the judgment-debtor or by a third party claiming the property. OMRITO LALL SIRCAR *v* RAMDHUN CHAKEE

18 W. R. 503

17. ———— *Payment by purchaser at execution-sale—Purchaser looking to application of money to pay debts on estate.* A purchaser was *held* entitled to recover the amount paid by him on account of previous mortgages, when, in making these payments, he merely ...

unsafe, and of the existence of which he was at that time cognizant. WAJED HOSSEIN *v* AHMED REZA . . . 17 W. R. 480

18. ———— *Sale whilst under attachment—Caveat emptor—Fraud* *T* sold a mouzah, of which he was owner, to *Z* At the time of sale the mouzah was under attachment in execution of a decree obtained against *T* by *R*. *Z* paid the amount of that decree to prevent the property which she had purchased being sold in execution.

VENDOR AND PURCHASER—contd

14. PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER—concld.

Z was under no obligation otherwise to pay the amount of the decree *Held*, that *Z* was entitled to recover against *T* the amount so paid. ZAHURAN *v.* TAYLER . . . . 2 B. L. R. A. C. 86 : 10 W. R. 380

19. ——— *Purchase from Hindu widow—Alienation set aside by heir—Suit by purchaser to recover money paid on mortgage* The plaintiff purchased an estate from a Hindu widow in possession, and after his purchase he paid a debt for which the property sold had been mortgaged by the late husband of his vendor. Subsequently the daughter of the vendor claimed the property as heir of her father, and recovered possession of it from the purchaser by suit The purchaser then sued the heir for a refund of the amount of the mortgage-debt paid by him. *Held*, that the purchaser was entitled to recover PORAN MISRA *v* HARSARAN MISRA . 8 B. L. R. Ap. 55

15. PURCHASERS, RIGHTS OF.

1. ——— Right to good title—*Immoveable property.* A purchaser of immoveable property is entitled to receive, and the vendor is bound to give, a title free from reasonable doubt. PITAMBAR SUNDARJI *v* CASSIBAI

I. L. R. 11 Bom. 272

2. ——— Purchaser from Hindu executor—*Inquiry by purchaser Semble:* A purchaser from a Hindu executor is not bound to see to the exact amount of the debts which the testator has directed the executor to pay or even to inquire if any such debts actually existed; he need not look further than the will itself ROOPLALL KHETTRY *v* MOHIMA CHURN ROY

10 B. L. R. 271 note

3. ——— Specific performance, right to—*Sale bond fide, but not of final character—Priority over attaching creditor* A deed of sale, though not strictly of a complete and final character yet, if genuine and duly attested, may be sufficient to bind the property and to give the purchaser the right to demand a specific performance of the contract and the execution of such further assurances as might be deemed necessary to invest him with a complete title to the property Such a deed would necessarily prevail over any intermediate attachment of the property for debts due from the original proprietor LALLA CHOONEELAL NAGINDAS *v* SAWAECHUND NAMEDAS 5 W. R. P. C. 111

4. ——— Validity of sale—*Sale for valuable consideration—Intention to transfer. Held*, that the mere fact that the sale to the plaintiff was instigated by some discharged mortgagee does not of necessity make void the plaintiff's right as purchaser, if it be found that the vendor to the plaintiff had some right or interest in the property by inheritance, and transferred it for valuable consideration, with the intention that

VENDOR AND PURCHASER—contd

15 PURCHASERS, RIGHTS OF—contd.

it should take effect as a transfer of his rights as heir. MAHOMED FAIZALI KHAN *v.* GUNGA RAM

1 Agra 112

5. ——— *Conveyance by mortgagee with power of sale. Absence of confirmation by mortgagor. B & Co* mortgagees with power to sell sold the mortgaged property to the defendants. No deed was executed until some years afterwards, when the mortgagor was dead. The deed was in the form followed when a mortgagee is the vendor and the mortgagors join in the conveyance; but the words of conveyance were by the mortgagees alone, and without any confirmation by the mortgager. *Held*, that the purchaser did not by the deed acquire an indefeasible estate DOUCETT *v.* WISE . . 3 W. R. 157

6. ——— Effect of sale—*Purchase of rights of Mahomedan widow—Failure to take actual possession.* By an order passed under Act XIX of 1841, *A* was declared entitled to take possession of a fourth share of her deceased husband *B's* estate which devolved upon her according to Mahomedan law. *B's* nephew *C* sued to recover [illegible] it [illegible] s. [illegible] on [illegible] n possession of the whole estate:—*Held*, that *A's* vendees could not be placed in a higher position than their vendor was when *C's* suit was brought against her, and all that they were entitled to was the right to present her in the pending suit MAHOMED GOWHUR ALI KHAN *v* AZEEMOODDEEN. MAHOMED GOHUR ALI KHAN *v* SHURUFUNISSA BEGUM . . W. R. 1864, 93

7. ——— Purchaser of fractional share of estate—*Right to cultivate land—Rate of rent.* In the absence of any reservation or restriction, the purchaser of a fraction of a share [illegible] to cultivate a [illegible] ltivated by [illegible] , favourable [illegible] proprietors, [illegible] f the rents of these lands just as he would from any raiyat of the estate, but without any other sum as mesne profits CHYTUN SINGH *v* KAYESSUR KOONWUR

5 W. R. 117

8. ——— Specification of land sold—*Purchase of specified land with description of amount* A party who buys a specified talukh with the additional description that that talukh contains so much land, gets the whole land which the specification of his vendor covers and which was intended to be sold, although it may be more than was contained in the description. AMEEROONISSA KHATOON *v* KUMOLA KANT ROY

14 W. R. 117

9. ——— *Omission to specify area sold—Misdescription—Compensation for smaller*

VENDOR AND PURCHASER—*contd*

15 PURCHASERS, RIGHTS OF—*contd*

area. The specification in a deed of sale of land of the area of the land sold *primâ facie* implies that the area was regarded as material by the parties, and, unless it is clear that the precise area was not regarded as material, proportional compensation will be awarded to the purchaser of land the real area of which is found to fail short of the area specified in the deed of sale SULEMAN VADU v TRIKAMJI VELJI 12 Bom. 10

10. ———— *Specification in sale certificate—Sale by purchaser at execution sale who has obtained possession under a certificate of sale more extensive than the decree* Where a decree-holder obtains an order for the sale of his judgment-debtor's interest in certain property, and becoming purchaser at the sale which follows, receives a sale-certificate going beyond the order, he cannot avail himself of anything in the certificate beyond the order If, however, he obtains possession according to the certificate, and sells to a *bona fide* purchaser without notice of the difference between the certificate and the order of sale, the latter has a good title GOWREE KUMUL BHUTTACHARJEE v SURUTH CHUNDER DOSS BISWAS . . . 22 W. R 408

11. ———— Non-registration, effect of —*Proof of actual contract of sale and possession on payment of purchase-money* *Held*, that it does not follow from the non-registration within the time fixed or registration of a deed which was executed before the Registration Act came into operation that the purchaser has acquired nothing by his purchase, or that the vendor is to resume possession of the property, if it be shown that there was a contract of sale, and that in pursuance of that contract the purchaser paid the money and obtained possession. RAM SURUN DASS v RAM CHUND . . . 1 Agra 283

12. ———— Non-registration—*Sale of*

The deed of sale was not registered Afterwards,

s. c HUB LAL CHOWDHRY v. NITTYANUND SINGH . . . . . 12 C. L. R. 393

purchase, could not form part of the stores and

VENDOR AND PURCHASER—*contd*

15. PURCHASERS, RIGHTS OF—*contd.*

assets sold to the plaintiff, unless the sale of the assets, etc, had been as from some date prior to the date of purchase CHUNDER COOMAR ROY v. WILKINS . 10 W. R 311

14. ———— *Assignee, liability of, to creditor of the factory—Creditor, rights of*

jointly to recover rent in respect of lands which

held, that if a trader or other person in this country assigns his stock in trade and effects to another, and such other person enters into a contract with the first to pay the debts of the concern, or a certain portion of such debts, the contract and assignment create a liability to the creditors in whose favour such contract is made, which they

lower Court to try what was the agreement between *A* and *B* as to *B* taking over the *dena pouna* account of the factory, whether the schedule was an essential part of the contract or not. KEARNES v BHAWANI CHARAN MITTER

B. L. R Sup. Vol. 54 : W. R. F. B. 167

PHOOL KOONWAR v CHARDON

6 W. R., Act X, 89

15. ———— *Liability of assignee to creditor—Bond given by former proprietor.* When the holder of a bond from the former proprietor of an indigo factory had made no demand on it for twelve years, nor apprised the assignee of its existence as a debt due by the factory, it was *held* that he could not come down on the present proprietors, but must look to the obligor of the bond personally for satisfaction. HUBEEBUNISSA v. COX W. R. 1864, 286

16. ———— Right of purchaser to trees standing on land—*Sale of land—Transfer of Property Act (IV of 1882), s 8.* Trees being attached to the earth are included in the legal incidents of the land and pass to the transferee under a deed of sale of the land in which they stand, unless a different intention is expressed or necessarily implied No such intention is necessarily implied because the trees are mortgaged prior to the sale and no mention of the mortgage is

VENDOR AND PURCHASER—*contd.*

15 PURCHASERS, RIGHTS OF—*concld.*

made in the sale-deed. PANDURANG SHESHAGIR *v.* BHIMRAV KESHAV HIRALIKAR

I. L. R. 22 Bom. 610

17. ——— Right to rescind sale—*Concealment of defect in title—Transfer of Property Act* (*IV of 1882*), *s. 55—Meaning of words "material defect in property"* The expression "material defect in property" in s 55 of the Transfer of property Act (IV of 1882) includes a defect in the title to an estate. Such a defect, if concealed by the vendor, gives the purchaser the right to rescind the sale. ESSA SULLEMAN *v.* DAYABHAI PARMANANDAS . . . I. L. R. 20 Bom. 522

16. SETTING ASIDE SALES.

1. ——— Ground for setting aside sale—*Stipulation to have mutation of names—Refusal of revenue authorities to register name of purchaser.* Where a person purchased certain lands under a deed of sale, in which the vendor undertook to apply to the revenue authorities for the transfer of the lands to the name of the vendee, and did so, and both persons clearly understood what they were doing.—*Held*, that the refusal of the revenue authorities to enter the purchaser's name in the mutation register did not constitute a ground for cancelling the sale and recovering the purchase-money. GEDEERA KOLITA *v.* DEBENDRO NARAIN KONWAR . 25 W. R. 352

2. ——— *Bonâ fide purchase from guardians of Hindu widow acting collusively.* The plaintiff was entitled, in right of her deceased husband, to the equity of redemption in a mortgaged estate. Her guardian, in collusion with the mortgagee, instituted a foreclosure suit, in which she was represented by the guardian, who submitted to a decree; and under that decree the property was sold, and the defendant became the purchaser. *Held*, that, the defendant being a *bonâ fide* purchaser, the sale was not liable to be set aside KHETERMONEE DASSEE *v.* KISHENMOHUN MITTER . . . . . Marsh. 313

s. c. KISHEN MOHUN MITTER *v.* KHETERMONEE DASSEE . . . . . 2 Hay 196

17. TITLE.

1. ——— Implied contract for good title—*Suit by vendor for specific performance—Specific Relief Act (I of 1877), s 25—Title derived through will of former owner—Necessity for probate—Succession Act (X of 1865), s. 187—Notice to complete contract—Rescission of contract—Clause in contract requiring vendor to hand over deeds* ... By an agree... ne 1888, the ... in Bombay ... this agree... time of the ... d hand over

VENDOR AND PURCHASER—*contd.*

17. TITLE—*contd.*

to the defendant "the title-deeds, vouchers and bills, whatever there may be relating to the said property." The agreement further provided: "The time in respect of this bargain is fixed at two months; within this time we are duly to have everything cleared" In September 1890 the plaintiff filed this suit for specific performance of the agreement. The defendant pleaded: *1st, that the* plaintiff had failed to show a good title to the property; 2nd, that the plaintiff had not handed over to him all the deeds and documents relating to the property; 3rd, that he (the defendant) had lawfully rescinded the contract on the 30th August 1890. It appeared that in 1880 the then owner of the property, one *N*, had mortgaged it to one *V*, and that on the 26th October 1882 both mortgagor and mortgagee had joined in conveying it to one *C*. This deed, however, had not been registered and was consequently inadmissible in evidence, and was rejected at the hearing. *C* ... after his purchase taken possession ... On the ... his sale, ... pointing ... *N*. On the 29th September 1887 *H* sold ... property to the plaintiff, who, as already mentioned, sold it to the defendant on the 20th June 1888 *Held*, that the plaintiff was bound to give the defendant a good title, or, in other words, a title free from reasonable doubt (s. 25 of the Specific Relief Act I of 1877). In the absence of a contract providing that the plaintiff should show only such title as he could give, or of some other special contract as to title, the general law laid down in s 25 of the Specific Relief Act I of 1877 must prevail *Held*, further, dismissing the suit, that the title shown by the plaintiff was not a good title. *The conveyance of the 26th October 1882* by the mortgagor and mortgagee to *C* not being registered was not admissible, and could not be referred to, so that it was necessary to regard *N* as still the mortgagor and *V* as still the mortgagee of the property, while *C* had, in some capacity or other, the actual possession. That being the state of things, *N* died in 1883, and it was alleged that he had left a will appointing *V* his executor, but no probate of that will had been obtained The equity of redemption remaining in *N* as mortgagor passed on his death to his executor *V*. On the 6th May 1885 *C* sold the property to *H* (the plaintiff's predecessor), and *V* joined in the deed *of conveyance* as executor of *N*. But it was necessary for the plaintiff to show not merely that he joined as executor, but that he had right, as executor, to convey to *H* the equity of redemption which had come to him from *N*. By s. 187 of the Succession Act (X of 1865) the only mode of doing this was by the probate

VENDOR AND PURCHASER—*contd*

17. TITLE—*contd.*

of N's will, and this had not been obtained. If an heir of N sued for redemption, the defendant would have no defence, unless he could prove that he had acquired the equity of redemption. For this purpose, by s. 187 of the Succession Act (X of 1865) probate would be necessary, and he would consequently be obliged to prove the will and pay duty upon all the property included in it. That would be a liability which the Court could not impose upon a defendant resisting specific performance of a contract like the one made by the plaintiff Where a vendee ascertained

him (the vendee) to the vendor to produce the will and give satisfactory proof, its being the last will of the said owner within four days, was a reasonable notice so as to entitle the vendee afterwards to rescind the contract A contract of sale provided as follows for the handing of the title-deeds of the property to the purchasers: "And at the time of the execution of the deed of sale you" (*i e.*, the vendor) "are duly to give us, the purchasers, the title-deeds, vouchers, and bills whatever there may be relating to the said property" *Held*, that this clause meant that whatever documents of title were necessary under the terms of the contract, or under the general law, should be handed over by the vendor to the vendee at the execution of the deed of sale MAHOMED MITHA *v* MUSAJI ESAJI   I. L. R. 15 Bom 657

18. VENDOR, RIGHTS AND LIABILITIES OF.

1. ———— **Unpaid vendor**—*Refusal to deliver under payment—Right after delivery* A party selling land may refuse to give delivery until the consideration is paid; but having given delivery he has no right to retake possession and pay himself the purchase-money out of the usufruct. PREM SOONDAREE DOSSIA *v.* GRISH CHUNDER BHUTTACHARJEE . . . 10 W. R 194

2. ———— *Failure to pay whole of consideration-money* When a vendor of land is not paid a portion of the consideration-money, he cannot wholly disaffirm the contract but he can establish his lien on the land as an unpaid vendor. MOHSUM ALLY *v.* BALASOO KOER . . . . . . 2 Hay 578

3. ———— *Vendor's lien*

purchase-money. *Held*, that the equitable doctrine of the vendor's lien for unpaid purchase-money applied to the case, but as the District Judge had not decided whether the defendant had succeeded in proving that the purchase-money had not been paid, the suit should be remanded for a finding by him on that issue YELLAPPA BIN BISAPPA *v* MANTAPPA BIN BASAPPA

3 Bom. A. C. 102

4. ———— *Contract to sell land—Rescission—Re-sale by registered deed* A sued to recover certian land which he claimed under a registered deed of sale executed by the owner. Prior to the date of this sale to *A*, *M* had been put in possession of the land under an agreement to purchase the land for R300 The sale-deed to *M* had not been executed because only R200 of the purchase-money had been paid to the owner *Held*, that *A* could not recover, as it was not open to his vendor to rescind the contract with *M*. MOIDIN *v* AVARAN

I. L R 11 Mad. 263

5. ———— *Failure to pay*

standing the whole of the purchase-money might not have been paid, to a decree as claimed, and the vendors, if they had any claim in respect of the purchase-money, should be left to seek their remedy. KESRI *v* GANGA PRASAD

I. L. R. 4 All 168

6. ———— *Stoppage in transitu—Lien of unpaid vendors—Agents for purchase of goods—Insolvency—Right of carriers* A firm at Cawnpore sent an agent to Sarun, plaintiff's residence, to effect purchases in cotton, and the plaintiff, at the instance of the person so deputed, made purchases and supplied funds, both for purchase and for their carriage and insurance, the agent doing nothing but consenting to the arrangements and giving hundies on his employer's correspondents in payment. The goods were despatched and insured, but before reaching their destination the firm became insolvent, and the plaintiff proceeded to take possession of them, but was prevented on account of the goods being previously attached by the defendant,

Agents for the purchase of goods have a lien on the goods when purchased for the moneys paid and liabilities incurred by them in respect to such purchase, and are not bound to deliver the goods

VENDOR AND PURCHASER—*contd.*

18. VENDOR, RIGHTS AND LIABILITIES OF—*contd.*

until they are reimbursed or secured for such advances and liabilities, and an agent in this character is in the position of an unpaid vendor. Where the vendor is not otherwise paid than by having received the insolvent's acceptance, he may, in the event of the purchaser's insolvency, stop the goods, though he may have negotiated the bills, and they are still outstanding and not yet at maturity. Whilst the goods sold remain in the hands of the carrier employed to convey them to their original destination, as between buyer and seller, no case of constructive possession arises, unless when the carrier enters expressly into some new agreement, distinct from the original contract for carriage. So also the mere acts of making or sampling the goods, or giving notice to the carrier to hold the goods for the buyer, though done with intention to take possession, do not establish a constructive possession, or affect the right to stop *in transitu*. Where the right of stoppage *in transitu* vests in the consignor, it cannot be defeated by the claims of other creditors of the consignee, the unpaid vendor having an elder and preferential lien BHOLANATH *v.* BAIJ NATH . . . . 2 Agra 11

7. ——————— *Stoppage in transitu—Railway receipts—Effect of endorsing railway receipts — Title of endorsee of such receipts —Contract Act (IX of 1872), s 103.* The firm of *C D* carried on business in Bombay. *A*, the agent of the firm, bought from the first defendant *H* at Bijapur a quantity of wheat which at *A's* request was on the 28th and 29th May 1889 consigned by *H* to the firm of *C D* at Bombay, on the understanding that the consignees were not to have the wheat until they had paid the hundis drawn in respect of it The wheat was sent to Bombay on the 28th and 29th May 1889, in three consignments, *viz*, of 56, 104, and 181 bags respectively, and two hundis for R1,000 and R1,500 respectively payable at sight were drawn by *A* in Bijapur on the firm of *C D* in Bombay, and were *given by him to H, who thereupon handed to A* the three railway receipts for the three consignments which had been despatched by the first defendant's agent at Bijapur railway station. The hundis were sent by *H* to his agent in Bombay for collection. The hundi for R1,000 arrived

he must endorse a request for delivery to the person to whom he wishes it made If the consignment, or this railway receipt, is sold one or more times, the endorsement must be a distinct order to deliver

VENDOR AND PURCHASER—*contd.*

18. VENDOR, RIGHTS AND LIABILITIES OF—*contd*

to a certain person or firm, and this order must be on a one-anna stamp. If more than one order appear on the face thereof, each order must bear a stamp. I (we) hereby certify that I (we) am (are) aware that the Southern Mahratta Railway has received the abovementioned goods subject to the conditions noted on the back, and that I (we) agree that it should receive them subject to these conditions. (Sendor's signature)" On obtaining these railway receipts, *A* sent them at once to the firm of *C D* in Bombay, and on the 31st May 1889 they were endorsed by *C*, a member of the firm, to the second defendant *V* to secure an advance of R2,000. The endorsement was as follows: "Signature of *C D*. I have sold the delivery, as *per* this receipt, to *V*. The handwriting of *C*." Two consignments (*viz*, 56 bags and 104 bags) and part of the third (*viz*, 73 bags out of 181) had arrived in Bombay by the 2nd June in bags bearing *C D's* marks. On that day *V* applied to the Railway Company for delivery, and paid full freight on all three consignments

and the 73 bags were consequently unloaded, and together with the balance of the consignment of 181 bags, which subsequently arrived, were retained by the Railway Company. The reason given by the Company's servants for the detertion was the receipt of a telegram sent by *H* from Bijapur, on hearing of the dishonour of the hundi for R1,500, directing that the 181 bags should not be delivered At the trial the Judge found that this telegram had probably been ... had been loaded

... is no such

... at Bijapur

... *in transitu*.

... the 73 bags

... ermine *H's*

right of stoppage *in transitu*. It was to be assumed that *H's* telegram did not arrive in time ... with the consent of

... r it was not

... Company's

... leaving the

... freight for

the 73 bags had been paid by *V* and the railway receipt had been given up to the Company duly signed by *V's* servant. Everything had been done on the part of the Company to divest themselves of their lien as carriers; for the mere fact that the carts were still standing in the goods compound of the railway station after the bags had been placed on them could not affect the question, there being no suggestion that the matter as between the Company and *V* had not been completely settled. (iii) That the railway receipts were not instruments of title within the meaning

VENDOR AND PURCHASER—*contd*

18. VENDOR, RIGHTS AND LIABILITIES OF—*contd*

of s. 103 of the Indian Contract Act (IX of 1872), and that by endorsing and handing them over, the firm of *C D* did not assign them to *F* within the meaning of the said section. GREAT INDIAN PENINSULA RAILWAY CO *v.* HANSMANDAS RAMKISON . . I. L. R. 14 Bom. 57

8. — — — *Sale of immoveable property—Non-payment of purchase-money—Vendor's remedy* A vendor of immoveable property who has given possession to the purchaser is not entitled to rescind the contract of sale and recover possession because the purchase-money is not paid. His remedy is to sue for the sum due, and he has a lien on the property for the amount. TRIMALRAV RAGHAVENDRA *v.* MUNICIPAL COMMISSIONERS OF HUBLI

I. L. R. 3 Bom 172

9. — — *Non-payment of purchase-money—Suit for possession by vendee who has not paid the purchase-money—Remedy of vendor* The plaintiffs owned land on which the defendant, with the plaintiffs' leave, built a house. Disputes arose between plaintiffs and defendant, and in February 1893 the defendant obtained an order

of which the defendant executed a rent-note to the plaintiffs promising to give up the property to the plaintiffs at the end of four months on payment by the plaintiffs of R100 On the 25th November

of the property by the defendant to the plaintiff for R100, possession being given to the plaintiff under the lease for four months; that the sale was a completed transaction, although the R100 had not been paid, and that the only remedy of the defendant was to sue for the amount SAGAJI *v.* NAMDEV . . I. L. R. 23 Bom. 525

10 — *Purchase-money, Suit by vendor to recover — Non-registration of bonds given for purchase-money of land* The defendants purchased land from the plaintiff, and gave bonds for the purchase-money. These bonds were not registered, and were therefore not admissible in evidence *Held*, that the plaintiff, as vendor, was under no necessity to rely on the bonds in order to establish a charge on the property sold in respect of the unpaid purchase-money

VENDOR AND PURCHASER—*contd.*

18. VENDOR, RIGHTS AND LIABILITIES OF—*contd.*

11 — *Transfer of Property Act (IV of 1882), s. 55—Implied covenant for title—Acts amounting to waiver of covenant—Possession taken under contract — Right to recover unpaid purchase money—Lien* On 16th August 1885 the defendant, having agreed to purchase a house belonging to the plaintiff, executed an agreement, in which it was stated "that he had

the rate of R1 per cent. per mensem within fifteen days, and obtain a sale-deed from the said Begum." The plaintiff at the time of the agreement had not obtained a conveyance of the house to her, and was not able to tender a conveyance to the defendant until January 1887, when she did so Meanwhile the defendant took possession under the agreement, paying only a portion of the balance of the purchase-money; he also executed certain repairs to the house, and let it to a tenant and enjoyed the rent. It further appeared that shortly after the above agreement he sought to obtain a sale-deed from the plaintiff and attempted

following month, the interest on the balance of the purchase-money should cease; but no evidence was given as to any appropriation of the purchase-money by the defendant In 1887 the plaintiff filed the present suit to recover the unpaid purchase-money with interest at 12 per cent. *Held*, that the acts of the defendant amounted to a waiver of the implied covenant for title, and that the plaintiff was entitled to recover the unpaid purchase-money with interest at the agreed rate up to the date of payment, and that he was further entitled to a lien on the property for that amount. GHOUSIAH BEGUM *v.* RUSTUMJAH

I. L. R. 13 Mad. 158

12. — *Lien—Creditor of vendor, right of, to lien—Mortgage.* Although an unpaid vendor holds a lien upon property

13. — Conditions of sale—*Sale by Government—Auction-sale of confiscated property—Ground for setting aside sale.* Where it was made a distinct condition of sale that the property should be sold to the highest bidder without any restriction of the purchaser being a rebel or not:—*Held*, that the Government may, like any other seller, impose any condition it pleases in reference to the property which it offers for sale, prior to sale, but is not at liberty subsequently to the sale to disaffirm or annul it on a ground not only novel but directly at

VENDOR AND PURCHASER—*contd.*

18. VENDOR, RIGHTS AND LIABILITIES OF—*contd.*

variance with the terms on which it offered the property for sale. SEVA LALL *v.* MAHOMED

2 Agra 160

14. ———— **Vendor keeping vendee out of possession**—*Suit for partition—Trustee—Mesne profits.* Where, in a suit for partition, it appeared that the vendor of the portion sued for had kept the vendee out of possession, the vendor, though liable for mesne profits, was not in the position of trustee of the rents for the party kept out of possession. NILKAMAL LAHURI *v.* GUNOMANI DEBI . .

7 B. L. R. P. C. 113 : 15 W. R. P. C. 38

15 ———— **Unpaid purchase-money**—*Lien for unpaid purchase-money.* Where the consideration for a sale was the immediate payment of a portion of the purchase-money and an undertaking by the purchaser as to the residue, and a part payment was made and an undertaking given in the form agreed upon:—*Held*, that the property passed, at law and in equity, to the purchaser when the conveyance and agreement were executed, and that there was no lien for the unpaid purchase-money as against the property sold *Held*, also that, when the vendor actually receives the consideration for which he stipulates, there is no lien. *In re Brentwood Brick and Coal Co*, *L R. 4 Ch. D. 562*, *Jersey* v. *Briton Ferry Floating Dock Co*, *L R 7 Eq 409, 413 ; Winter* v. *Lord Anson, 3 Russ., 488 ; 1 S. & S 434 ; In re Albert Life Assurance Company, L R 11 Eq 164*, *Dixon* v *Gayfere 1 De G & J 655 ; Parrot* v. *Sweetland, 3 My. & K. 655 ;* and *Clarke* v *Royle, 3 Sim 499,* referred to WEBB *v* MACPHERSON (1901) . . . . . **6 C. W. N. 150**

16. ———— *Transfer of Property Act, s. 55, sub-s (4)—Vendor's statutory charge in respect of unpaid purchase-money—Effect of contract to defer payment—Certificate of appeal—Act XIV of 1882, ss. 595 (c) and 600.* Under s 55, sub-s (4), of the Transfer of Property Act, a vendor has a statutory charge upon the whole of property sold, in the hands both of the purchaser and of those claiming under him, for the whole of the unpaid balance of purchase-money, unless there be a clear contract to the contrary between the parties This charge is different in its origin and nature from the vendor's lien as created by Courts of Equity It is not excluded by a mere personal contract to defer payment of a portion of the purchase-money, or to take the purchase-money by instalments, or by any contract, covenant or agreement, with respect to the purchase-money, which is not inconsistent with the continuance of the charge. So *held*, in regard to immoveable property at Darjeeling. A certificate of appeal given pursuant to ss 595 (c) and 600 of the Civil

VENDOR AND PURCHASER—*contd.*

18. VENDOR, RIGHTS AND LIABILITIES OF—*contd.*

17. ———— *Vendor's lien for unpaid purchase-money—Transfer of Property Act (IV of 1882), s. 55, sub-s. 4, cl. (b)—" Contract to* [illegible]

is different in its origin and nature from the vendor's lien given by the English Courts of equity to an unpaid vendor. The Indian Act gives a statutory charge upon the estate to an unpaid vendor, unless it be excluded by contract, and such a charge stands in quite a different position from a vendor's lien under the English law. Such a charge is not excluded by a mere personal contract to defer payment of a portion of the purchase-money, or to take the purchase-money by instalments, nor by any contract, covenant or agreement with respect to the purchase-money, which is not inconsistent with the continuance of the charge. *Semble :* The English cases as to a vendor's lien for unpaid purchase-money, though useful for the purpose of illustration, are not authoritative in the interpretation of the law on the subject, as laid down in s 55 of the Transfer of Property Act. A conveyance or sale in consideration of a covenant to pay a sum of money [illegible]

consequently no charge on the property [illegible] but, *held*, by the Judicial Committee, that the conveyance was made in consideration of a sum of money part of which was paid down and the payment of the balance of which was deferred, [illegible] contract excluding [illegible] also, on the [illegible] or abandon- [illegible] he certificate [illegible] as a fit one [illegible] was held to [illegible] objection [illegible] question [illegible] *luq Rasul* [illegible] *L. R. 30* [illegible] CPHERSON [illegible] Calc. 57

(1904) . . . . 1 L. [illegible] sc. 8 C. W. N. 41

18. ———— *Contract Act (IX* [illegible] *ble property* [illegible] The rule [illegible] is not law [illegible] ct imposes [illegible] damages, [illegible] contract. [illegible] of immove-

VENDOR AND PURCHASER—*contd.*

18. VENDOR, RIGHTS AND LIABILITIES OF—*contd.*

able property through inability on the vendor's part to make a good title, the damages must be assessed in the usual way, unless it can be shown that the parties to the contract expressly or impliedly contracted that this should not render the vendor liable to damages *Pitamber Sundarji v. Cassibai, I L R. 11 Bom 272*, distinguished. RANCHHOD *v* MANMOHANDAS (1907)
I L R. 32 Bom. 165

19. ———————— *Sale—Purchase-money partly paid — Right of vendor's decree-holders to bring the property to sale in execution as his judgment debtor's property* Where on a sale part of the sale consideration remains unpaid, the vendor has a lien on the property sold for the unpaid purchase-money But this does not entitle any decree holder of the vendor to bring the property to sale in execution of his decree as property of his judgment-debtor He may attach the unpaid portion of the purchase-money which is due to his judgment-debtor and enforce his lien on the property but he cannot cause the property purchased by a third party to be sold for the recovery of the unpaid purchase-money to which he, as decree-holder, is not entitled MOTI LAL *v* BHAGWAN DAS (1909)
I. L. R. 31 All. 443

19. MISCELLANEOUS CASES

1. ——— — **Deed of sale, proof of**—*Suit*

delivered as a complete instrument OMED ALI *v* NIDHEERAM . . . . . 22 W R 367

2. ———— **Fictitious sale**—*Mortgage—Suit by purchaser for confirmation of possession—Issues* Where a sale by *A* to the plaintiff had taken place shortly before a mortgage of the same property by *A* to the defendant, the defendant is entitled to have raised, in a suit brought for

GARBHU BHAGAT *v.* RUNGLAL SING
7 B L. R. Ap 33

3. ———— **Owner standing by and seeing property sold**—*Right to have sale set aside.* The rule that one who, knowing his own title, stands by and encourages a purchase of

v. RANU . . . . . I. L. R. 9 Bom. 88

VENDOR AND PURCHASER—*contd.*

19. MISCELLANEOUS CASES—*contd.*

4. ——— — **Purchaser from husband**—*Acquiescence of wife—Suit to set aside purchase as being wife's property.* Where a husband was alleged to have given a share in some property to his wife, and the husband subsequently sold the whole property to another party, and put the said party in possession, without any objection from the wife, who for years behaved as though she had no interest in the property other than that arising from her husband's possession of

for a person in the position of the wife in this case, who chooses to stand by for years not asserting her rights, but allowing another to deal with her property as his own, has no equity to come into Court and eject any one who has purchased in ignorance of her title. SOOJAT MAHOMED *v.* MAHOMED TORAB 25 W. R. 281

5. ——— **Grant of estate when having bad title**—*Vendor afterwards obtaining good title — Specific Relief Act (I of 1877), s. 18* *A*,

possession of the mehal. Some years afterwards, the zamindar granted to *A* a perpetual mokurari lease of the same mehal. *Held*, in a suit against *A* instituted by the assignee of *B's* rights in the zur-i-peshgi, that under s 18, Act I of 1877, *A* must, out of his present estate in the mehal, make good the zuri-peshgi. LOOT NARAIN SINGH *v* SHOWKEE LALL . . 2 C. L. R. 382

6. ———— **Separate agreement by purchaser**—*Subsequent exercise of pre-emption—Co-sharers* Where a vendor in selling his property got the vendee to execute another deed in his

standing ... v. HEERA DASS
1 Agra 75

7. ———— **Decree in favour of vendor**—*Sale set side—Possession—Purchaser in possession after decree and pending appeal — Accident — Loss by fire — Liability for damage.* The plaintiff and the second defendant *A* were brothers, and worked a cotton press in partnership In August 1884 *A* sold the press for R35,000 to *V* (the first defendant), who paid *A* R5,000 earnest-

VENDOR AND PURCHASER—*contd.*

18. VENDOR, RIGHTS AND LIABILITIES OF—*contd.*

variance with the terms on which it offered the property for sale. SEVA LALL *v.* MAHOMED
2 Agra 160

14. ——— **Vendor keeping vendee out of possession**—*Suit for partition—Trustee —Mesne profits.* Where, in a suit for partition, it appeared that the vendor of the portion sued for had kept the vendee out of possession, the vendor, though liable for mesne profits, was not in the position of trustee of the rents for the party kept out of possession NILKAMAL LAHURI *v.* GUNOMANI DEBI . .
7 B. L. R. P. C. 113 . 15 W. R. P. C. 33

15 ——— **Unpaid purchase-money**—*—Lien for unpaid purchase-money.* Where the consideration for a sale was the immediate payment of a portion of the purchase-money and an undertaking by the purchaser as to the residue, and a part payment was made and an undertaking given in the form agreed upon :—*Held*, that the property passed, at law and in equity, to the purchaser when the conveyance and agreement were executed, and that there was no lien for the unpaid purchase-money as against the property sold. *Held, also* that, when the vendor actually receives the consideration for which he stipulates, there is no lien. *In re Brentwood Brick and Coal Co., L R 4 Ch. D. 562, Jersey* v. *Briton Ferry Floating Dock Co., L R 7 Eq 409, 413; Winter* v *Lord Anson, 3 Russ., 488, 1 S. & S 434, In re Albert Life Assurance Company, L R 11 Eq 164, Dixon* v. *Gayfere 1 De G & J 655; Parrot* v *Sweetland, 3 My & K. 655;* and *Clarke* v *Royle, 3 Sim. 499*, referred to WEBB *v* MACPHERSON (1901) . . . . . **6 C. W. N. 150**

16. ——— *Transfer of Property Act, s 55, sub-s (4)—Vendor's statutory charge in respect of unpaid purchase-money—Effect of contract to defer payment—Certificate of appeal—Act XIV of 1882, ss 595 (c) and 600.* Under s. 55, sub-s (4), of the Transfer of Property Act, a vendor has a statutory charge upon the whole of property sold, in the hands both of the purchaser and of those claiming under him, for the whole of the unpaid balance of purchase-money, unless there be a clear contract to the contrary between the parties This charge is different in its origin and nature from the vendor's lien as created by Courts of Equity. It is not excluded by a mere personal contract to defer payment of a portion of the purchase-money, or to take the purchase-money by instalments, or by any contract, covenant or agreement, with respect to the purchase-money, which is not inconsistent with the continuance of the charge. So *held*, in regard to immoveable property at Darjeeling. A certificate of appeal [illegible]

17. ——— *Vendor's lien for unpaid purchase-money—Transfer of Property Act (IV of 1882), s 55, sub s. 4, cl. (b)—"Contract to* [illegible]

[illegible] *—Civil Procedure Code (Act XIV of 1882), ss 595, 600* The charge, which a vendor obtains under s. 55 of the Transfer of Property Act (IV of 1882) [illegible] and nature from the vendor's [illegible]

unless it be excluded by contract, and such a charge stands in quite a different position from a vendor's lien under the English law Such a charge is not excluded by a mere personal contract to defer payment of a portion of the purchase-money, or to take the purchase-money by in- [illegible]

charge. *Semble:* The English cases [illegible] a vendor's lien for unpaid purchase-money, though useful for the purpose of illustration, are not authoritative in the interpretation of the law on the subject, as laid down in s 55 of the Transfer of Property Act A conveyance or sale in consideration of a covenant to pay a sum of money [illegible] consideration [illegible] pay- [illegible] hori- [illegible] ne in [illegible] that [illegible] arose consequently no charge on the property but, *held*, by the Judicial Committee, that the conveyance was made in consideration of a sum of money part of which was paid down and the payment of the balance of which was deferred, and that there was therefore no contract excluding the operation of the charge *Held*, also, on the [illegible] no waiver or abandon- [illegible] The certificate was a fit one [illegible] " was held to be correct in form, and not subject to the objection that it did not state that a substantial question of law was involved in the case. *Tassaduq Rasul Khan v Kashi Ram, I. L. R 25 All 109: L. R. 30 I. A. 35*, distinguished. WEBB *v.* MACPHERSON (1904) . . . . **I L R. 31 Calc. 57**
s.c. 8 C. W. N. 41

18. ——— *Contract Act (IX of 1872), s 73—Contract to sell immoveable property —Damages for breach of such contract.* The rule in *Flureau* v. *Thornhill, 2 W. Bl. 1078*, is not law [illegible] Contract Act imposes [illegible] damages, [illegible] contract, [illegible] immove- [illegible]

VENDOR AND PURCHASER—*contd.*

18 VENDOR, RIGHTS AND LIABILITIES OF—*concld.*

able property through inability on the vendor's part to make a good title, the damages must be assessed in the usual way, unless it can be shown that the parties to the contract expressly or impliedly contracted that this should not render the vendor liable to damages. *Pitamber Sundarji v. Cassibai, I L R. 11 Bom 272,* distinguished. RANCHHOD v. MANMOHANDAS (1907)

I. L. R. 32 Bom. 165

19. ——— *Sale—Purchase-money partly paid — Right of vendor's decree-holders to bring the property to sale in execution as his judgment-debtor's property* Where on a sale part of the sale consideration remains unpaid, the vendor has a lien on the property sold for the unpaid purchase-money. But this does not entitle any decree-holder of the vendor to bring the property to sale in execution of his decree as property of his judgment-debtor He may attach the unpaid portion of the purchase-money which is due to his judgment-debtor and enforce his lien on the property but he cannot cause the property purchased by a third party to be sold for the recovery of the unpaid purchase-money to which he, as decree-holder, is not entitled MOTI LAL v BHAGWAN DAS (1909)

I. L. R. 31 All. 443

19. MISCELLANEOUS CASES.

1. ——— — Deed of sale, proof of—*Suit*

delivered as a complete instrument OMED ALI v. NIDHEERAM . . . 22 W R 367

2. ——— Fictitious sale—*Mortgage—Suit by purchaser for confirmation of possession—Issues* Where a sale by *A* to the plaintiff had taken place shortly before a mortgage of the same property by *A* to the defendant, the defendant is entitled to have raised, in a suit brought for

whether the deed of sale was genuine or not. GARBHU BHAGAT v. RUNGLAL SING

7 B. L. R. Ap 33

3. ——— Owner standing by and seeing property sold—*Right to have sale set aside.* The rule that one who, knowing his own title, stands by and encourages a purchase of

v. RANU . . . . I. L. R. 9 Bom. 86

VENDOR AND PURCHASER—*contd.*

19. MISCELLANEOUS CASES—*contd.*

4. ——— Purchaser from husband——*Acquiescence of wife—Suit to set aside purchase as being wife's property.* Where a husband was alleged to have given a share in some property to his wife, and the husband subsequently sold the whole property to another party, and put the said party in possession, without any objection from the wife, who for years behaved as though she had no interest in the property other than that arising from her husband's possession of

for a person in the position of the wife in this case, who chooses to stand by for years not asserting her rights, but allowing another to deal with her property as his own, has no equity to come into Court and eject any one who has purchased in ignorance of her title. SOOJAT MAHOMED v. MAHOMED TORAB 25 W. R. 281

5. ——— Grant of estate when having bad title—*Vendor afterwards obtaining good title — Specific Relief Act (1 of 1877), s. 18* *A*,

possession of the mehal Some years afterwards, the zamindar granted to *A* a perpetual mokurari lease of the same mehal *Held*, in a suit against *A* instituted by the assignee of *B's* rights in the zur i-peshgi, that under *s.* 18, Act I of 1877, *A* must, out of his present estate in the mehal, make good the zuri-peshgi. LOOT NARAIN SINGH v SHOWKEE LALL . . 2 C. L. R. 382

6. ——— Separate agreement by pur-

standing. KHAN SINGH v. HEERA DASS

1 Agra 75

7. ——— Decree in favour of vendor —*Sale set aside—Possession—Purchaser in possession after decree and pending appeal — Accident — Loss by fire — Liability for damage.* The plaintiff and the second defendant *A* were brothers, and worked a cotton press in partnership In August 1884 *A* sold the press for R35,000 to *V* (the first defendant), who paid *A* R5,000 earnest-

VENDOR AND PURCHASER—*contd*

19. MISCELLANEOUS CASES—*contd.*

money and was put into possession. The plaintiff then brought a suit (No. 327 of 1884) against *A* praying for a dissolution of the partnership. *V* was also a party defendant to that suit. The plaintiff alleged that R35,000 was much too low a price for the press, and he objected to the sale. He prayed that *V* might be restrained from continuing in possession of the press and working it, and that a receiver might be appointed to take possession of it until further orders. On the 21st April 1885, on a motion, the Court refused to grant an injunction and receiver, but ordered *V* to pay R30,000 (*i.e.*, the balance of the purchase-money) to the solicitors of the parties of investment until the hearing of the suit, and directed that, if that sum was not paid by the 21st May 1885, a receiver should be appointed to take possession of the press. The suit (*i.e.*, No. 327 of 1884) was heard on the 15th February 1887, when it was held by the Court that the sale by *A* to *V* was without authority; that the defendant *V* took nothing under it, and that the plaintiff was entitled to have it set aside. Certain matters still remained to be decided, but on the 28th February 1887 the decree in the suit was made, giving effect to the findings already arrived at on the 15th February. The decree by consent directed various accounts to be taken, and, among others, an account of the profits realised by the working of the press by the defendant *V* since his possession thereof, credit being given to him for all sums expended by him in the repairs, maintenance, and working of the said press and for the management thereof by him The decree further ordered that the defendant *V* should be repaid the R30,000 which he had paid under the order of the 21st April 1885, and directed "that on such payment the said defendant *V* do forthwith give over possession of the press to the plaintiff and the defendant *A*" The defendant *V* at once gave notice of his intention to appeal. There was some delay in drawing up the decree. The minutes were spoken to on the 31st March 1887; the decree was sealed on the 13th April 1887. Meantime, on the 6th April 1887, and while the defendant *V* was still in possession, a fire broke out in the

from prosecuting his appeal, the injury to the press having made it contrary to his interest to appeal. In May 1887 the plaintiff filed the present suit, claiming to recover R50,000 from the defendant *V* as the value of the press, or such further sum as might be necessary to rebuild and restore it.

the loss occasioned by the fire. *Held*, that, independently of negligence, the defendant *V*

but subsequently to that decree he remained in possession and worked the press with the consent of the plaintiff. The maxim *volenti non fit injuria* applied to the circumstances of the case. *Held*, also, that no negligence having been proved against the

JAMSETJI

VYDINA . . . I. L. R. 15 Bom.

8. ———— Right of pre-emption—*Option of getting estate re-transferred — Mortgage.* In July 1870 *R*, the owner of a share of a village, executed in favour of *M* an instrument whereby he transferred by sale the share to *M* absolutely. In November 1870 *M* agreed to re-transfer the share to *R*, if *R* desired, at any time within thirteen years, to re-purchase it, on payment of the sum which *M* had paid for it. During the term mentioned in the agreement of November

of the agree-

share, to

t of the

that *M*

ly 1870,

the out-and-out proprietor of the share, until *R* availed himself of option given him by the agreement of November 1870, the full estate of an owner carrying with it the right of pre-emption, vested in *M*, and it was competent for him to enforce such right by suit. *Ramsaran Lal v. Amrita Kuar, I. L. R. 3 All. 369*, distinguished. BHAJAN *v.* MUSHTAK AHMED . . I. L. R. 5 All. 324

9. ———— *Condition against alienation.* The co-sharers of a certain estate sold it to *R*. On the same day as the vendors executed the conveyance of such estate to *R* the latter executed an instrument whereby he agreed that the vendors might redeem such estate or any portion thereof, within a certain term, on repayment of the purchase-money or a proportionate share thereof, and in such case the sale would be considered cancelled: provided that the vendors paid the money out of their own pockets and did not raise it by a transfer of the property, and not otherwise The heir of one of the vendors sold his share of such estate to *A*, and *A* sued *R* to redeem such share. *Held*, by the Full Bench (STUART, C.J., doubting), that the nature of the transaction between *R* and his vendors must be determined by looking at both the conveyance and the agreement, and both those documents being regarded, the transaction between them was one of mortgage, and the vendors had a right of redemption, and the proviso in the agreement was inequitable and incapable of enforcement against them or their representatives in title. *Held*, also, by PEARSON, J., that the

VENDOR AND PURCHASER—*contd.*

19. MISCELLANEOUS CASES—*contd.*

agreement was not of the nature of a personal contract enforceable only by the original vendors, and not by their representatives, that, assuming that a transfer of the property was prohibited by the agreement, *R* could not, as implied by the Full Bench ruling in *Doolhchore Rai* v. *Hidayutoollah, Agra, F B, Ed 1874, 5*, treat as a nullity the sale which had been made to *A*, and *A's* right to redeem could not be reasonably denied and resisted; and that a transfer was not positively, but only impliedly, prohibited by the agreement *R* merely declaring that he would not recognize the transferees as having acquired the equity of redemption or cancel his own sale-deed, and such a declaration was beyond his competence and had no legal effect. RAM SARAN LAL v. AMRITA KUAR

I. L. R. 3 All. 369

10. ———— *Specific Relief Act (I of 1877), s. 16 (a)—Transfer of property Act (IV of 1882), s 43* A member of an undivided Hindu family consisting of himself, his adoptive son, and his uncle, sold certain land belonging to the family to the plaintiff. In a suit by the plaintiff for a declaration of his title to, and for possession of, the land, it appeared that the sale was not justified by any circumstances of family necessity; and an objection that was taken to the adoption was overruled and the adoption held to be valid. During the pendency of the suit the undivided uncle died, having made a gift of his property to his daughter-in-law, which gift was held to be invalid. *Held*, that, under s. 16 (*a*) of the Specific Relief Act, together with s. 43 of the Transfer of Property Act, the plaintiff was entitled to a moiety of the land sold to him. VIRAYYA *v.* HANUMANTA

I. L. R. 14 Mad. 459

11. ———— **Sale of zamindari share and appurtenances**—*Indigo factory not appurtenant*

Ali, I L R. 4 All 381 ; Bankey Lal v *Damodar Das, All Weekly Notes (1900) 31* ; and *Salig Ram* v. *Debi Parshad, 7 N.-W. P. 38*, referred to. DURGA SINGH *v.* BISHESHAR DAYAL (1898)

I. L. R. 24 All. 218

12. ———— **Stipulation as to payment of interest**—*Sale or mortgage—Agreement to re-convey the property sold, on payment of purchase-money with interest* Where property is sold, and on the same date the purchaser executes an agreement promising to re-convey the land to the vendor if the latter repays the amount of the purchase-money with interest at a certain rate within the period of three year:—*Held*, that the stipulation as to the payment of interest is not conclusive to show that the transaction is not an absolute sale but a mortgage *Bhagwan Sahai* v.

VENDOR AND PURCHASER—*concld.*

19 MISCELLANEOUS CASES—*concld.*

Bhagwan Din, I L. R 12 All. 387; Ali Ahmad v. *Rahamtullah, I L R. 14 All 195;* and *Bai Motivahu* v *Mannu Bai, I. L R. 21. Bom 709*, distinguished. MODHU SUDAN DAS *v* RHIDOY MONI BAISTABI (1901) . . 6 C. W. N. 192

13. ———— **Champerty and maintenance**—*Suit by person out of possession, but entitled to possession—Hindu Law—Deed of sale of share*

respondent, of a moiety of the taluk was in 1888

who was the nearest heir when the succession opened out in 1879 on the death of the daughter of the original talukdar, whose husband, the appellant, then obtained possession. The taluk was one in lists 1 and 2 under Act I of 1869 and devolved on a single heir, though not descending by the rules of lineal primogeniture The respondent as co-plaintiff with his vendor brought a suit against the appellant to recover possession of the taluk.

of a moiety of his interest, in the taluk giving a good title to the respondent, on which it was competent to him to sue The vendor could not have prosecuted his claim to the estate without assistance; there was nothing extortionate or unreasonable in the terms of the bargain, no gambling in litigation, and nothing contrary to public policy. *Held*, also, with regard to the

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preponderated: a body of strong and persistent tradition preserved in the *wajib-ul-arz* of the Mankapur Raj and recorded in the Oudh Gazetteer and Gonda Settlement Report was in favour of it; it had been supported by the appellant in former litigation, and no claim to the Birwa Mehnon taluk had ever been set up by any member of the Mankapur family, with which the adoption had been made. The decision of the Judicial Commissioner's Court upholding the adoption was therefore affirmed. ACHAL RAM *v.* KAZIM HUSAIN KHAN (1905) . I. L. R 27 All. 271

s c 9 C. W. N. 477

VERBAL CONTRACT.

See LIMITATION ACT, 1877, SCH. II, ART. 75 — I. L. R. 3 Calc. 619

VERDICT OF JURY.

See ACQUITTAL. I. L. R. 22 Calc. 377

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE
I. L. R. 21 Calc. 955

See CRIMINAL PROCEEDINGS
I. L. R 20 Mad. 445

See EVIDENCE—CRIMINAL CASES — CONSIDERATION OF, AND MODE OF DEALING WITH, EVIDENCE
I. L. R. 13 Mad. 426

See JOINDER OF CHARGES
5 C. W. N. 866
11 C. W. N 715

See MAGISTRATE, JURISDICTION OF — POWERS OF MAGISTRATES.
I. L. R. 9 All. 420

See REFERENCE TO HIGH COURT—CRIMINAL CASES . 7 C. W. N. 345

See REVISION—CRIMINAL CASES—VERDICT OF JURY, AND MISDIRECTION.

——— **not unreasonable on the face of the charge—**

See REFERENCE TO HIGH COURT
I. L. R. 36 Calc. 629

——— **of acquittal—**

See REFERENCE TO HIGH COURT — CRIMINAL CASES . 7 C. W. N. 135

1 GENERAL CASES

1 ——— **Verdict of majority**—*Want of independent opinion.* The law requires a juryman to exercise his own understanding on the case submitted to him, and to decide on evidence and not to follow blindly the opinion of his fellows Where one out of three (in a jury of five) depends on the inspection and inquiries of the other two the verdict of the three is not that of a legal majority. PETAMBUR JUGI *v* NASARUDDY
25 W. R. Cr. 4

2. ——— **Ground for refusing to accept verdict**—*Verdict based on voluntary confessions* Wherever trial by jury exists, the verdict [illegible]

witnesses. QUEEN *v.* WUZIR MUNDUL
25 W. R. Cr. 25

VERDICT OF JURY—*contd*

I. GENERAL CASES—*contd.*

3. ——— **Unanimous verdict**—*Further consideration of case by jury—Dissent by Judge from unanimous verdict—Procedure.* It is only in a case where the jury are not unanimous that a Court may require them to retire for further consideration. Where a verdict is unanimous, it must be received by the Judge, unless contrary to law. Where a Judge dissents from the unanimous finding of a jury given in accordance with the law, the only procedure open to him to follow is that laid down in the fifth clause of s 263 of the Code of Criminal Procedure GOVERNMENT OF BENGAL *v.* MAHADDI . I. L. R. 5 Calc. 871

s c. EMPRESS *v* MAHUDDI 6 C. L. R. 349

4. — **Dissent from verdict**—*Criminal Procedure Code, 1872, s. 263, cl. 4* The "dissent" referred to in the fourth clause of s 263 of the Criminal Procedure Code (Act X of 1872) must be such a complete dissent as to lead the Judge to consider it necessary for the ends of justice to submit the case to the High Court. EMPRESS *v.* BHAWANI . I. L. R. 2 Bom 525

5. ——— *Reference to High Court — Statement by Judge of offence committed —Criminal Procedure Code, 1872, ss 263, 464.* It is the duty of a Judge in sending up a case to the High Court under ss. 263 and 464 of the Criminal Procedure Code, 1872, when he disagrees with a verdict of acquittal, to state the offence which, in his opinion, has been committed EMPRESS *v* SAHAE RAE
I. L. R 3 Calc. 623: 2 C L. R. 304

6. ——— **Questioning jury as to their verdict**—*Questions to member of jury as to reasons for verdict.* A Judge ought not to put questions to any of the jury as to his reason for the verdict he has given. QUEEN *v.* MEAJAN SHEIKH . . . 20 W. R. Cr. 50

7. ——— *Questions as to grounds for verdict — Power of Sessions Judge. Per* GARTH, C.J, and PRINSEP, J. (MARKBY, J. *contra*) The rule laid down in *Queen v Wuzir Mandal, 25 W. R Cr. 25,* goes too far. PRINSEP J. (MARKBY, J., *contra*).—The law does not prevent a Sessions Judge from asking a jury regarding the grounds for their verdict, and such a course is desirable in the ends of justice See *Queen v. Sustiram Mandal, 21 W. R. Cr 1.* EMPRESS *v* MUKHUN KUMAR . . . 1 C. L. R. 275

8. ——— *Ambiguity in verdict—Criminal Procedure Code, 1872, s. 263* Under s. 263 of the Code of Criminal Procedure, 1872, a Court was authorized to ask the jury such questions as were necessary to ascertain what their verdict really is; but where the verdict, although perhaps erroneous, is not ambiguous, it is the duty of the Judge to record it without further question. *In the matter of* DHUNUM KAZEE. EMPRESS *v.* DHUNUM KAZEE
I. L. R. 9 Calc. 53: 11 C. L. R. 169

VERDICT OF JURY—*contd.*

I. GENERAL CASES—*contd.*

9. — *Criminal Procedure Code, 1882, s. 303.* Although s. 303 of the Criminal Procedure Code empowers a Judge to ask the jury such questions as are necessary to ascertain what their verdict is, it was never contemplated that on ascertaining that the jury are not unanimous, the Judge should make minute inquiries to learn the nature of the majority and its opinion, so that he should have the opportunity of accepting or refusing that opinion as a verdict according as it coincides with his own opinion or not. Whatever may be the opinion of the Judge, if he goes so far as to ask the jury what is the exact majority, and what is the opinion of the majority, he ought to receive that verdict without hesitation, and if he differs from it he should proceed as directed by s. 307. HURRY CHURN CHUCKERBUTTY *v.* EMPRESS
I. L. R. 10 Calc. 140 : 13 C. L. R. 358

10. ———— *Criminal Procedure Code, 1872, s. 263.* In a case in which the accused was tried on charges of murder, culpable homicide, and causing grievous hurt, the jury acquitted him of murder, but convicted him on the other counts. This verdict was recorded by the Sessions Judge, who then, in accordance with s. 263, Criminal Procedure Code, 1872, questioned the jury as to the grounds for their verdict, and the jury eventually intimated their willingness to convict of murder. The Sessions Judge differed from the first verdict of the jury, but as he had recorded that verdict, he doubted whether he ... eld, that ... There ... ict final- ... ons put ... d ; and as it appeared from the answers of the jury that their findings of facts disclosed that the verdict ought to have been one of guilty on the charge of murder, the Judge should have entered the verdict of the jury as one of guilty of murder. The case was accordingly returned to the Judge to enable him to do that, and to pass such sentence as the law directed. It is only when it is necessary in order to ascertain what the verdict of a jury really is, that a Judge is justified under s. 263 in putting questions to the jury. QUEEN *v.* SUSTIRAM MANDAL . . **21 W. R. Cr. 1**

... lieved that some slaps had been given. The Judge then asked the jury whether they convicted on either, and, if so, which head of charge. They answered that they believed the prisoners had beaten the girl, and they convicted them under s. 330. *Held*, that the question put by the Judge to the jury was a proper one, and not one of law. The conviction upheld. Such a case is not governed by the rules of English law as to special verdicts. QUEEN *v.* HARI PROSAD GANGOOLY
8 B. L. R. 557 : 14 W. R. Cr. 59

12. ———— Special verdict—*Criminal Procedure Code, 1882, ss. 298 and 302—Duty of Sessions Judge.* The accused was tried for rape. ...

... or not guilty. The jury again retired and brought in a verdict of guilty, upon which the Sessions Judge sentenced the prisoner to three years' rigorous imprisonment. *Held*, reversing the conviction and sentence, that the first verdict of the jury being a special verdict, and there being no real ambiguity about it, the Sessions Judge was ...

... a finding that the woman had consented was tantamount to an acquittal. QUEEN EMPRESS *v.* MADHABRAO . . **I. L. R. 19 Bom. 735**

13. ———— *Murder—Culpable homicide—Grave and sudden provocation—Loss of self-control—Criminal Procedure Code, 1882, s. 238.* The accused was tried for murder. The first verdict of the jury was "guilty of murder under grave and sudden provocation." The Sessions Judge told the jury that it was their ...

... to the High Court under s. 307 of the Code of Criminal Procedure (Act X of 1882). *Held*, that the direction given to the jury after the first verdict was wrong, as the case fell under s. 238 of the Criminal Procedure Code (Act X of 1882). ...

... law. *Held*, also, that the first verdict was a verdict

VERDICT OF JURY—*contd.*

2. POWER TO INTERFERE WITH VERDICTS—*contd.*

on the case coming before them under s. 263 of the Criminal Procedure Code, find the prisoners guilty of such offence. EMPRESS *v.* HARAI MIRDHA **I. L. R. 3 Calc. 189**

13. ———— *Criminal Procedure Code, 1872, s. 263—Acquittal by jury* The High Court, acting under s. 263 of the Criminal Procedure Code, 1872, convicted the accused in this case on the facts, notwithstanding the verdict of acquittal come to by the jury. QUEEN *v.* SIDHAM SIRCAR . . **20 W. R. Cr. 16**

14. ———— *Criminal Procedure Code, 1872, s. 263—Acquittal by jury—Confession—Evidence Act, s 29* The Court on a consideration of the evidence set aside the verdict of acquittal come to by a majority of the jury, holding that a confession made by the accused before the Assistant Magistrate was good, such confession, even if obtained by deception, being admissible under s 29 of the Evidence Act, 1872 QUEEN *v.* RAM CHURN GHOSE **20 W R. Cr. 33**

15. ———— *Criminal Procedure Code, 1872, s 263—Acquittal by jury* The prisoner, who was charged with having committed murder, was found by the jury who tried him to have been of unsound mind at the time he committed the offence. The Sessions Judge, differing on that point from the jury, referred the case to the High Court under s. 263 of the Code of Criminal Procedure *Held*, that in a case of this kind the High Court will not interfere without the very clearest proof that the jury were mistaken, and that the interests of justice imperatively required the Court to take action under the extraordinary powers conferred upon it by s 263, Code of Criminal Procedure. On a consideration of the medical evidence, the Court declined to interfere with the verdict of acquittal which the jury came to. QUEEN *v* DOORJODHUN SHAMONTO *alias* DEEJOBOR . . . **19 W. R. Cr. 45**

16. ———— *Verdict of acquittal by jury—Criminal Procedure Code, 1872, s. 263—Judge disagreeing from verdict of Majority.* A majority of the jurors (four out of five) acquitted [illegible]

[illegible]

opinion the offence charged was proved. The High Court found that the evidence for the prosecution was fully worthy of belief and consistent with probabilities, and sentenced the prisoner. *In the matter of* TILUCKDHAREE . **2 C. L. R. 1**

17. ———— *Criminal Procedure Code, 1872, s. 263—Interference with verdict of Majority of jury where Sessions Judge differed.* The Sessions Judge differing from a majority of the jury, who acquitted the accused, referred the case to the High Court under s. 263 of the Criminal Procedure Code, 1872, to be dealt with as an appeal. Before proceeding with the case the High Court considered it fair to the accused to give him notice to bring forward any objections he might have to the Sessions Judge's recommendation. On a consideration of the evidence, the High Court convicted the accused of the offence with which he had been charged in the Court below. QUEEN *v.* OOTTUM DHOBA **19 W. R. Cr. 38**

18. ———— *Criminal Procedure Code, 1872, s. 263—Differing from verdict of acquittal by jury.* Where the Sessions Judge did not consider a confession to have been induced by illegal pressure, the High Court, upon a reference under s. 263 of the Code of Criminal Procedure, *held* it to have been properly admitted, and finding it to be full and clear, and supported by reliable evidence, acted upon it by convicting the person who made it, notwithstanding his retraction of it in the Court of Sessions, and his being found not guilty by the jury. REG. *v.* BALVANT V. PENDHARKAR . . . . **11 Bom. 137**

19 ———— *Criminal Proce-* [illegible]

In a case in which the accused [illegible]

[illegible]

them also of the last charge. The Sessions Judge agreed with the verdict of the jury as regarded the three original charges, and recorded a formal order acquitting and discharging the prisoners on these three charges. He differed from the majority as to the fourth charge, and referred the case to the High Court under s 263 of the Criminal Procedure Code. *Held*, that where (as in this case) the Sessions Judge had approved of a verdict on certain charges and finally acquitted and discharged the accused as to these charges, the High Court could not under s 263 convict on the facts on these very charges. That section seems to contemplate only a case in which, without recording any order of acquittal or conviction, the Sessions Judge refers the whole case. As there was nothing in this case to show on what grounds the majority of the jury acquitted the prisoners on the additional charge, and as the Sessions Judge agreed with the unanimous verdict as to the three original charges, the High Court presumed that the reason which weighed with the majority of the jury in finding the prisoners not guilty on the additional charge must have weighed with the whole jury in finding them not guilty on all the

VERDICT OF JURY—*contd*

2. POWER TO INTERFERE WITH VERDICTS—*contd*

three other charges, and accordingly the Court could not set aside the verdict of the majority on the last count, without practically finding directly in the teeth of the verdict of the unanimous jury on the first three counts QUEEN v UDYA CHANGA . . . 20 W. R. Cr. 73

20. ——— *Verdict in accordance with charge—Verdict disagreed with by Judge—Penal Code, ss 302, 304, 325—Reference under s 307, Act X of 1882* A prisoner was charged under ss 302 and 304 of the Penal Code, and the Judge at the trial added a further charge under s. 325 The Judge in his charge to the jury directed them that, in the event of their finding the charges under ss 302 and 304 unsustainable, they might find the prisoner guilty under s 325 The jury unanimously acquitted the prisoner on the charge framed under s 302, and a majority of them acquitted him on the charge framed under s 304, but a majority of them found him guilty on the charge framed under s. 325 The

erroneous, the Judge having heard the evidence and having expressed his opinion to the jury that they might find the prisoner guilty under s 325. QUEEN-EMPRESS v JACQUIET

I. L R. 11 Calc. 85

21 ——— *Criminal Procedure Code, 1882, s. 269—Jury wrongly treated as assessors by Judge—Unanimous opinion of jury treated as assessors accepted as formal verdict* L and N were tried by a Sessions Court on charges of dacoity and murder The jury returned a verdict of guilty on both charges. The Judge, contrary to the provisions of s 269 of the Code

proper legal effect QUEEN-EMPRESS v LAKSHMANA . . . . . I. L. R. 9 Mad. 42

22. ——— *Criminal Procedure Code, s. 307—Powers of High Court on reference under s 307—Criminal Procedure Code, ss 418, 423 (d)* No trial can be, legally speaking, concluded until judgment and sentence are passed, and the trial of a case referred by a Sessions Judge to the High Court under s. 307 of the Criminal Procedure Code remains open for the High Court to conclude and complete, either by maintaining the verdict of the jury and causing judgment of acquittal to be recorded or by setting aside the verdict of acquittal and causing conviction and sentence to be entered against the accused The provisions of s 307 of the Criminal Procedure Code are not in any way cut down by ss 418 and 423; and the High Court has power under s 307 to interfere with the verdict of the jury where the verdict is perverse or obtuse, and the ends of justice require that such perverse finding should be set right. The power of the High Court is not limited to interference on questions of law, i e, misdirection by the Judge, or misapprehension by the jury of the judge's directions on points of law. QUEEN-EMPRESS v MCCARTHY . I. L. R. 9 All. 420

23. ——— *Sessions Judge, opinion of—Criminal Procedure Code, s. 307—High Court, power of.* In the exercise of its powers under s 307 of the Code of Criminal Procedure, the

own view

proves;

Judge, n

entitled to its proper weight *Reg.* v. *Khanderav Bajirav I. L. R. 1 Bom 10; Queen* v. *Makhan Kumar, I C. L R 275, The Empress* v. *Dhunum Kazee, I. L. R 9 Calc. 53; Queen-Empress* v. *Mania Dayal, I L R 10 Bom 497; The Queen* v. *Ram Churn Ghose, 20 W. R. Cr. 33; The Queen* v *Sham Bagdi, 13 B L R Ap. 19: 20 W. R. Cr. 78, The Queen* v. *Hurro Manjhee, 14 B L. R. Ap 2; 21 W R. Cr. 4; The Queen* v. *Wazir Mundul, 25 W R Cr 25, The Queen* v. *Nabin Chunder Banerjee, 10 B L R Ap 20. 20 W. R. Cr. 70,* referred to QUEEN-EMPRESS v ITWARI SAHO . . . . I. L. R. 15 Calc. 269

24. ——— *Criminal Procedure Code, ss 307, 418—Perversity of verdict—Procedure when Sessions Judge disagrees with verdict—Misdirection* A jury returned a verdict

to the jury to believe The accused appealed to

High Court had no power to interfere however absurd the verdict might be considered. QUEEN EMPRESS v CHINNA TEVAN

I. L. R. 14 Mad. 36

25. ——— *Criminal misappropriation—Charge of misappropriation of specific sums of money—Form of charge—Evidence of general deficiency—Criminal breach of trust—Penal Code, s. 409—Practice—New trial.* The accused was charged with abetting the offence of criminal breach of trust committed by the nazir of

VERDICT OF JURY—*contd.*

2. POWER TO INTERFERE WITH VERDICTS—*contd.*

the Small Cause Court at Poona. The accused was a karkun in the Nazir's office, and it was his duty to keep the accounts of moneys received in the office from judgment-debtors, and of moneys paid out to decree-holders. He was charged with abetting the misappropriation of three sums, viz., R20 on the 19th November 1885, R45 on the 23rd November 1885, and R10 on the 29th June 1886. As to the first sum, it was alleged that an instalment of R25 due under a decree had been paid into the Nazir's office by a judgment-debtor on the 19th November 1885, but the accused had entered in the office day-book only R5, thereby enabling the balance of R20 to be misappropriated. It appeared, however, that a sum of R25, being the instalment due to the decree-holder under the above decree, had been in due course paid out to him on the 4th December 1885. As to the second sum of R45, it was alleged that a sum of R50 had been paid in, but only R5 had been entered by the accused, the balance being misappropriated. It appeared, however, in this case also that the full amount of the instalment, viz., R50, had been duly paid out to the decree-holder a few days after its receipt. As to the third sum, it was alleged that the total receipts entered in the book on the 29th June 1886 were R55, but the figure entered as the total was only R45, and that the balance of R10 had been misappropriated. The jury found the accused guilty on all three charges. On appeal by him, it was contended that there was no evidence of the misappropriation of the specific sums in respect of which he was charged. There was evidence of a general deficiency, but there was no evidence that these specific sums formed part of that deficiency. On the contrary, the evidence showed that the instalments paid into the office had been duly paid out to the persons to whom they were payable. *Held*, that, the jury having had the facts brought to their notice, their verdict was final, and the High Court would not interfere with the verdict. The provisions of s. 167 of the Evidence Act (I of 1872) apply to criminal trials by jury. When part of the evidence which has been allowed to go to the jury is found to be irrelevant and inadmissible, it is open to the High Court in appeal either to uphold the verdict upon the remaining evidence on the record under s. 167 of the Indian Evidence Act (I of 1872) or to quash the verdict and order a retrial. The law, as settled in England by the *Queen* v. *Gibson*, L. R. 18 Q. B. D. 537, and as stated by the Privy Council in *Makin* v. *Attorney General of New South Wales* [1894] A. C. 57, 68, 70, with reference to the granting of new trials where evidence has been improperly admitted, does not apply to India. *Muhammad Khan* v. *Queen-Empress*, I. L. R. 27 Calc. 655, not followed. QUEEN-EMPRESS *v.* RAMCHANDRA GOVIND HARSHE

I. L. R. 19 Bom. 749

VERDICT OF JURY—*contd.*

2. POWER TO INTERFERE WITH VERDICTS—*contd.*

26. ——————— *Special verdict—Murder—Culpable homicide—Grave and sudden provocation—Loss of self-control—Criminal Procedure Code, 1882, s. 307—High Court's power of interfering with the verdict of a jury.* The accused was tried for murder. The first verdict of the jury was "guilty of murder under grave and sudden provocation." The Sessions Judge told the jury that it was their duty, after considering the question of provocation, to return a simple verdict of guilty or not guilty. The jury, therefore, brought in a second verdict of "not guilty." The Judge, considering this verdict to be perverse, referred the case to the High Court under s. 307 of the Code of Criminal Procedure (Act X of 1882). *Held*, that the High Court will not interfere with the verdict of a jury unless it is shown to be clearly and manifestly wrong. A verdict ought to be considered a proper and not a perverse verdict if it is one which reasonable men might find on the facts in evidence. *Queen-Empress* v. *Bedu Jan*, I. L. R. 15 Bom. 452, and *Queen-Empress* v. *Vajiram*, I. L. R. 14 Bom. 112, followed. QUEEN-EMPRESS *v.* DIVAN GOVINDJI . I. L. R. 20 Bom. [illegible]

27. ——————— *Criminal Procedure Code, 1882, ss. 297 and 423, cl. (1)—Misdirection to jury—Allowing verdict before accused is called on for defence.* To allow the jury to pronounce their verdict before the accused is called upon to enter on his defence is a misdirection, though the Judge omits to charge the jury at all. In such a case, cl. (1) of s. 423 of the Criminal Procedure Code, does not stand in the way of the appellate Court's interference with the verdict of the jury. QUEEN-EMPRESS *v.* IMAM ALI KHAN *alias* NANHEY KHAN . I. L. R. 23 Calc. [illegible]

28. ——————— *Criminal Procedure Code, 1882, ss. 272, 297, 423—Power of Judge to put questions to jury under s. 303, after verdict [illegible]—Reference to High Court under s. 307—Power of High Court to interfere with verdict—Judges of High Court differing in opinion—Reference to third Judge—Letters Patent, 1865, cl. 36—Murder—Provocation.* A prisoner was tried for murder and acquitted by a majority of the jury. The Sessions Judge disagreed with the verdict and submitted the case to the High Court under s. 307 of the Criminal Procedure Code (Act X of 1882). The Judges of the High Court [illegible] the case was [illegible] differed in opinion. The case was laid before a third Judge [illegible] under cl. 36, who held that the verdict of the jury should be set aside, and that the prisoner was guilty of murder. [illegible] practice of the High Court, in cases referred under s. 307 of the Criminal Procedure Code, Act X of 1882, not to interfere with the verdict of a jury except when it is clearly and manifestly wrong. There is no such analogy between the [illegible] High Court discretionary power conferred on the High Court

VERDICT OF JURY—*contd*

2. POWER TO INTERFERE WITH VERDICTS—*contd*

under this section and that which the Courts of law in England have exercised in interfering with the finding of a jury in civil actions by directing a new trial on the ground of the verdict being against the weight of evidence The practice, therefore, of the latter Courts, although very properly regarded as a guide, cannot be resorted to as affording a fixed rule in the exercise of the powers conferred on the High Court by s 307 Where a prisoner was charged with murder by administering dhatura poison to the deceased, the majority of the jury found him not guilty After the delivery of the verdict, the Sessions Judge questioned the jury, who, in reply to specific questions on the points, stated through their foreman that the majority had doubts (i) whether the accused had fetched dhatura from a certain field, (ii) whether there was dhatura poison in the stomach of the deceased, (iii) whether the death of the deceased was caused by dhatura poison The Sessions Judge differed so completely with the jury on the evidence that he submitted the case to the High Court under s 307 of the Criminal Procedure Code *Per* JARDINE, *J*—The verdict of acquittal should be upheld It was not manifestly wrong nor absolutely unreasonable It

Criminal Procedure Code There was no incompleteness nor ambiguity in the verdict and no misconception of any question of law *Per* CANDY, *J*—Admitting in the present case that the Sessions Judge was wrong in putting any questions to the jury after the verdict was delivered,

nal Procedure Code, is bound to act upon its own view of the evidence. On a reference by a Sessions Judge, the whole case is opened up When the verdict of the jury is erroneous, the High Court must put it aside and exercise the functions of both Judge and jury, giving due weight to the opinion of the Judge as well as to the verdict of the jury. When a case like the present depends upon the inferences to be drawn from two or three facts, neither principle nor statute forbids the Sessions Judge from asking

VEDRICT OF JURY—*contd.*

2 POWER TO INTERFERE WITH VERDICTS—*contd*

that the Criminal Procedure Code overrules the provisions of cl 36 of the Letters Patent, 1865. QUEEN-EMPRESS *v* DADA ANA

I. L. R. 15 Bom. 452

29. ———— *Criminal Procedure Code (Act X of 1882), s 423—Setting aside verdict of the jury—Power of Appellate Court to deal with the case* If the verdict of the jury is set aside on any of the grounds mentioned in cl. (*d*) of s 423 of the Criminal Procedure Code (Act X of 1882), then there is no restriction on the powers of the Appellate Court to deal with a case of which it has complete seizin in any of the manners provided in that section The law nowhere lays down that when the verdict of the jury is set aside the Court must necessarily direct a new trial *Wafadar Khan* v. *Queen-Empress, I. L. R. 21 Calc 955*, dissented from The course adopted in *Queen-Empress* v. *O'Hara, I. L. R. 17 Calc. 642*; *Regina* v. *Naoroji Dadabhai, 9 Bom. H. C. 358*; and *Queen-Empress* v *Haribole Chunder Ghose, I. L. R 1 Calc. 207*, followed TAJU PRAMANICK *v* QUEEN-EMPRESS

I. L. R. 25 Calc. 711

30. ———— Appeal on facts—*Criminal Procedure Code (Act V of 1898), ss 418, 536—Trial by jury for offence triable by jury—Verdict of acquittal—Opinion of jury of guilt in respect of offence not triable by jury—Conviction* Two persons were charged, as first and second accused,

having voluntarily caused grievous hurt, under s 325 Against that conviction first accused preferred this appeal, when it was objected that,

grievous hurt was not one by a jury, but by the Judge, who treated the finding of the jury in

Chunder Rai, I L. R 3 Calc. 765 *Per* BHASHYAM AYYANGAR, J.—That the effect of s. 238 of the Criminal Procedure Code is to invest a jury trying an offence triable by a jury with authority to

VERDICT OF JURY—*concld.*

2. POWER TO INTERFERE WITH VERDICTS—*concld.*

find, as an incident to such trial, that certain facts only are proved in the trial, which facts constitute a minor offence, and return a verdict of guilty of such offence, though such minor offence be not triable by a jury And that a Sessions Judge may thereupon record judgment, convicting the accused of such minor offence, although he is not

convicted in a trial by jury PATTIKADAN UMMARU *v.* EMPEROR (1902) . I. L. R. 26 Mad. 243

31. ———— Duty of High Court—*—Verdict of jury, disagreement with, by Judge—Reference to High Court—Procedure by High Court—Evidence, consideration of—Criminal Procedure Code (Act V of 1898), ss. 307, 451—Penal Code (Act XLV of 1860), ss 147, 149, 325, 343—Assam Labour and Emigration Act (VI of 1901), s 210* S 307 of the Code of Criminal Procedure requires that a High Court, in dealing with a case referred under it, shall consider the entire evidence on the case, and, next, after giving due weight to the opinions of the Sessions Judge and the jury, shall deliver judgment The High Court in such a case is not bound to accept the opinion of the

32. ———————— *Criminal Procedure Code (Act V of 1898), s. 423 (2).* Before the

secondly, that the erroneousness was caused either by the Judge's misdirection to the jury as to that evidence, or by a misunderstanding on their part of the law as to it as laid down by the Judge. EMPEROR *v.* WAMAN SHIVRAM DAMLE (1903) . . . I. L. R. 27 Bom. 626

VERIFICATION.

See PLAINT.

See WRITTEN STATEMENT.

———— of plaint—

See PLAINT—VERIFICATION AND SIGNATURE.

VESTED INTERESTS.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—VESTED AND CONTINGENT INTERESTS.

See SUCCESSION ACT, s. 98. I. L. R. 4 Calc. 304

See WILL—CONSTRUCTION.

VESTING ORDER.

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

See INSOLVENCY —PROPERTY ACQUIRED AFTER VESTING ORDER
I. L. R. 17 Mad. 21
I. L. R. 18 Mad. 24
I. L. R. 19 Bom. 232
2 C. W. N. 372

See INSOLVENCY ACT, s. 7.

See INSOLVENCY ACT (11 & 12 VICT, c. 21 . . I. L. R. 28 Calc. 419

See OFFICIAL ASSIGNEE. I. L. R 32 Bom 321

VICE-ADMIRALTY REGULATIONS OF 1832

See JURISDICTION — ADMIRALTY AND VICE-ADMIRALTY JURISDICTION. I. L. R. 17 Calc 337

See LETTERS PATENT, HIGH COURT, 1865 CL. 15 . I. L. R. 17 Calc. 66

VICINAGE

See MAHOMEDAN LAW—PRE EMPTION—RIGHT OF PRE-EMPTION — CO-SHARERS

VILLAGE ACCOUNTANT.

See CRIMINAL PROCEDURE CODE, s. 45 (1872, s 90) . I. L. R. 1 Mad. 266

VILLAGE CATTLE.

See PASTURAGE, RIGHT TO. I. L. R. 2 Bom. 110

VILLAGE CHAUKIDAR.

See BENGAL REGULATION XX OF 1817, s 21 . . . 18 W. R. 298

See VILLAGE CHAUKIDARI ACT.

See VILLAGE CHAUKIDARS' ACT

VILLAGE CHAUKIDARI ACT (BENGAL ACT VI OF 1870).

See CESS . I. L R. 22 Calc 680

See CHAUKIDARI ACT (BENGAL ACT VI OF 1870)

VILLAGE CHAUKIDARI ACT (BENGAL ACT VI OF 1870)—*contd*

——— s. 8—*Order imposing fine by Sub-divisional Officer—Judicial order—Revision by the High Court—Magistrate, jurisdiction of* Where the collecting member of a punchayat, constituted under the provisions of the Village Chowkidars' Act (Bengal Act VI of 1870), was fined by the Sub-divisional Officer of Serampore under s 8 of the Act for having disobeyed his orders and realized assessment from the villagers under the Act from the month of Baisakh, though the Act was not introduced into the sub-division till the month of Kartick following.—*Held*, that, the fine having been imposed by a Magistrate under the provisions of an Act of the Bengal Council, it was imposed in respect of an "offence" as defined by s 4

Officer was in its nature a judicial order, and was therefore subject to revision by the High Court. The order was bad because (i) there was no trial; (ii) no act punishable with fine under s 8 of the Act (Bengal Act VI of 1870) had been committed, and (iii) because the District Magistrate only had the power to impose the fine QUEEN-EMPRESS *v.* ASHWINI KUMAR GHOSE
I. L. R 23 Calc. 421

——— ss. 26, 27 and 34.

See PENAL CODE, s 183.
I. L R. 25 Calc. 274

——— ss. 48, 50, 51—

See CHAUKIDARI CHAKRAN LAND
I. L. R. 33 Calc 596

——— ss 48, 51—

See CHAUKIDARI CHAKRAN LANDS
I. L. R. 34 Calc. 564

——— ss. 48 and 64—*Chowkidari chakran land, settlement of — Power of Collector — Power of*

DASI . . . I L. R. 21 Calc. 626

——— s. 51—

See NUISANCE — UNDER CRIMINAL PROCEDURE CODE 7 C. W. N. 142

———*Chowkidari chakran lands, Suit for recovery of, by patnidar against zamindar with whom the same had been settled under Bengal Act VI of 1870 — Landlord and tenant.* Where

VILLAGE CHAUKIDARI ACT (BENGAL ACT VI OF 1870)—*concld*

——— s. 51—*concld.*

a patnidar sought to have transferred to him certain chowkidari chakran lands, which the Government had settled with the zamindar under Bengal Act VI of 1870, and where it was found that the lands were part of plaintiff's patni, and

possession of the lands That the patnidar was bound to pay to the zamindar such rents for ... roportion ... tni rent ... MAZUM- ... N. 814

——— ss. 58, 61—*Decision of Commission —Village chowkidars—Chowkidari chakran lands—Civil suit* The words "final and conclusive" used in s 61 of Bengal Act VI of 1870 must be taken to be used in their ordinary and literal sense Where, therefore, a commission has been appointed under s 58 for the purpose therein mentioned, and such commission has ascertained and determined that certain lands are chowkidari chakran lands, in the absence of fraud or non-compliance by the commissioners with the provisions of the Act, their decision is conclusive evidence in any civil suit of the fact that the lands are what they have found them to be. NOBOKRISTO MUKERJEE *v* SECRETARY OF STATE FOR INDIA . I L R. 11 Calc 632

VILLAGE CHAUKIDARS' AMENDMENT ACT (BENG ACT I OF 1892).

See CONFESSION — CONFESSIONS TO POLICE OFFICERS. 2 C. W. N. 637

VILLAGE COURTS

See SMALL CAUSE COURT, MOFUSSIL — JURISDICTION — GENERAL CASES
I. L. R. 13 Mad. 145

See SUCCESSION CERTIFICATE ACT (VII of 1889), s. 4 I L. R. 21 Mad. 115

VILLAGE MAGISTRATE.

See COMPENSATION — CRIMINAL CASES— TO ACCUSED ON DISMISSAL OF COMPLAINT . . I. L. R. 25 Mad. 667

See CONFESSION — CONFESSIONS TO MAGISTRATE . I. L. R. 26 Mad. 38

See TRANSFER OF CRIMINAL CASE — GENERAL CASES.
I. L. R. 26 Mad. 394

VILLAGE MUNSIF.

See MUNSIF . I. L. R. 7 Mad 220
I. L. R. 8 Mad. 500
I. L. R. 5 Bom. 180
I. L. R. 15 Mad. 131
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I. L. R. 21 Mad. 115

See SMALL CAUSE COURT, MOFUSSIL — JURISDICTION — GENERAL CASES
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VILLAGE MUNSIF'S PEON.

See CRIMINAL PROCEDURE CODE, s. 45 (1872, s. 90) . I. L. R. 1 Mad 266

VILLAGE OFFICERS.

See MADRAS HEREDITARY VILLAGE OFFICES ACT.

VILLAGE SUTAR (CARPENTER).

See HEREDITARY OFFICES ACT, s 4.
I. L. R 21 Bom. 733

VIS MAJOR.

See CIVIL PROCEDURE CODE, 1882, s 13 . . 10 C. W. N. 115

VIZAGAPATAM.

See GANJAM AND VIZAGAPATAM AGENCY COURTS ACT (XXIV OF 1839).

VIZAGAPATAM AGENCY RULES.

———— rule XXXI—

———————— *Right to petition Government —Rule of a substantive character—Revision in execution proceedings* Rule XXXI of the Agency Rules for the District of Vizagapatam is of a substantive character and provides for revision in execution and other petitions in regard to which no right of appeal has been given Rule XXXI is not *ultra vires* MAHARAJA OF JEYPORE *v* SRI NILADEVI PATTAMAHADEVI (1902)
I. L. R. 27 Mad. 109

VOID BEQUEST.

See JURISDICTION OF HIGH COURT
I. L. R 33 Calc. 180

VOLUNTARY ASSIGNMENT.

See INSOLVENCY — VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR.

VOLUNTARY CONVEYANCE.

See CONTRACT ACT, s. 25
I. L. R. 2 All. 891

See DEBTOR AND CREDITOR.

See INSOLVENCY — VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR.

See INSOLVENCY ACT, s. 26
I. L. R. 3 Calc. 434

VOLUNTARY CONVEYANCE—*concld*

———— Subsequent sale for value—*Avoidance of gift or settlement voluntarily made—Stat 27 Eliz., c. 4.* Where a person who has made a voluntary gift or settlement of an estate sells the same to another for value, the conveyance operates as a conveyance of the estate which the settlor had before the voluntary settlement, the Stat. 27 Eliz, c. 4, putting the settlement out of the way, so that it shall not affect the conveyance which is made to the purchaser: words showing an intention on the part of the person who made the voluntary gift to convey to the purchaser all the interest or estate that he had are sufficient to avoid such gift. JUDAH *v.* ABDOOL KURREEM . . . 22 W. R. 80

VOLUNTARY PAYMENT.

See CONTRACT ACT, ss 69 AND 70.

See CONTRACT ACT, s. 72.
I. L. R. 7 Calc 573

See CONTRIBUTION, SUIT FOR — VOLUNTARY PAYMENT.

See MONEY HAD AND RECEIVED
8 B. L. R. 418
W. R. 1864, 205
3 N. W. 162
5 N. W. 1

See MONEY PAID. 7 N. W. 154
10 W. R 400

See MONEY PAID FOR BENEFIT OF ANOTHER. I. L. R. 21 Calc. 142
L. R. 20 I. A. 160

See MONEY PAID UNDER PROCESS OF DECREE . . I. L. R. 7 Mad. 586

See PAYMENT INTO COURT.

See RES JUDICATA — ADJUDICATIONS.
13 B. L. R. 146

See SALE FOR ARREARS OF RENT—DEPOSIT TO STAY SALE.

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.

See SALE IN EXECUTION OF DECREE —SETTING ASIDE SALE — RIGHTS OF PURCHASERS — RECOVERY OF PURCHASE-MONEY . 11 B. L. R. 121
15 B L. R. 208

See VENDOR AND PURCHASER—PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER . 2 B. L. R. A. C 86
11 B. L. R. 121
15 B. L. R. 208
18 W. R. 503
17 W. R 480
8 B. L. R. Ap. 65

———— what amounts to—

See WATER, RIGHT TO.
I. L. R. 33 Mad. 438

VOLUNTARY PAYMENT—*contd.*

1. ———— **Money paid, but not due, and paid under compulsion**—*Contract Act (IX 1872), ss 15, 72* In execution of a decree, the plaintiff purchased certain property Subsequently the defendant, in execution of another decree against the former owner of the property, proceeded to execute his decree against the same property The plaintiff thereupon preferred a claim which was disallowed, as he had not then obtained, and consequently could not produce, the sale-certificate. In order to prevent the sale, he then paid the amount of the defendant's decree into Court, and subsequently instituted a suit against the defendant to recover the amount so paid into Court, to prevent the sale The defendant contended that the amount was paid voluntarily and could not be recovered back *Held*, following *Dooli Chand* v *Ram Kishen Singh, L R 8 I. A 93 : I. L. R 7 Calc 648*, that it was not a voluntary payment; and that the plaintiff was entitled to a decree. *Fatima Khatoon Chowdrain* v *Mahomed Jan Chowdhry, 12 Moo. I A 65 10 W. R P C, 29*, referred to. *Asiban* v. *Ram Proshad Dass, 1 Shome, 25*, doubted. JUGDEO NARAIN SINGH v RAJA SINGH . I. L. R. 15 Calc. 656

2 ———— **Money paid under protest**—*Right of suit—Contract of indemnity—Contract Act ss 124, 141, 142* The Thakor of Limdi possesses several talukhdari villages in the Ahmedabad District, for which he pays a lump jumma to Government One of these villages was Akru. Disputes arose between the Thakor and the grassias of Akru as to the ownership of the village The Thakor filed a suit against the grassias, which was ultimately compromised, and a consent decree was passed in 1883, providing, *inter alia*, that the Thakor should assign to the grassias a moiety of the village, that the grassias should hold the same free from all liability to pay the jumma, and that the Thakor should alone be responsible for all Government demands In accordance with this decree, a moiety of the village was made over to the grassias The Collector demanded jummabandi for this moiety. The Thakor intervened, and objected to the demand, on the ground that he paid a lump jumma for the whole of his talukh including the moiety of the village assigned to the grassias Government, however, passed a resolution declaring that half of the village belonged to the grassias; that from them the Government had a right to levy the jumma; that the Thakor might, if he chose, pay the same on behalf of the grassias, and that, if it was not paid, it would be recovered by attachment and sale of the grassias, half share. The Thakor thereupon paid the jumma on behalf of the grassias for two years, and then filed a suit against Government to recover back the payments he had made, and for a declaration that Government had no right to levy any assessment on any portion of the village beyond the lump jumma fixed for his talukh. This suit was dismissed on the preliminary ground that the Thakor had no cause of action against Government in respect of any of the reliefs sought, the Court being of opinion that the payments he had made to Government on account of the grassias were voluntary, and that he had no interest whatever in the grassias' half share of the village *Held*, reversing the decision of the lower Court, that the suit would lie Under the consent-decree, the Thakor stood in the relation of an insurer to the grassias from all exactions of Government dues The payments of jumma he made on account of the grassias were therefore not voluntary, but made under protest, and as such were recoverable by suit. JASVATSINGJI FATESINGJI v. SECRETARY OF STATE FOR INDIA . . . . I. L. R. 14 Bom. 299

3. ———— **Money paid for benefit of another**—*Contract Act (IX of 1872), ss 69 and 70—Money paid to protect property from sale in execution of decree for arrears of rent.* Certain immoveable property was inherited by *S*, the mother, of the plaintiff, from her husband, and during her tenure of it she alienated it by deed of sale to the defendants *S* died in April 1890, and the estate then devolved upon the plaintiff, an only daughter (there being no male issue). In 1890 the property in possession of the defendants was, at the suit of a person who was the landlord, ordered to be sold together with other properties of the defendants for arrears of rent, due in the lifetime of *S*, and to prevent the sale the plaintiff paid the amount of the decree In a suit for possession of the property and for a refund of the sum paid by the plaintiff to stop the sale, the defendants claimed an absolute interest in the property, but the Courts below found that the alienations by *S* to the defendants were not made for legal necessity and were therefore invalid *Held*, that the payment made by the plaintiff was not a voluntary payment, but was one which she was entitled to recover from the defendants It being a question at the time whether the property belonged to the plaintiff or to the defendants, the payment to stop the sale was one in which the plaintiff was interested sufficiently to bring the case within s 69 of the Contract Act. S 70 was also applicable, as the payment relieved the defendants from liability to their landlord, and was made for the defendants, and not gratuitously, and the defendants enjoyed the benefit of such payment The principles laid down in the cases of *Duli Chand* v *Ramkishen Singh, I. L. R 7 Calc 648 : L R 8 I. A. 93*, *Smith* v. *Dinonath Mookerjee, I. L. R. 12 Calc 213;* and *Jugdeo Narain Singh* v. *Raja Singh, I. L R 5 Calc 656*, were held to govern this case. BAMA SUNDARI DASI v ADHAR CHUNDER SIRKAR I. L. R. 22 Calc. 28

4 ———— **Payment made to save the patni talukh from sale**—*Contract Act (IX of* [illegible]

VOLUNTARY PAYMENT—*contd.*

stipulated that, if the decretal amount were not paid within a certain date, it was to be increased to R52,000. On the 14th March 1891 the plaintiff applied for execution of that decree, and claimed the larger amount, as admittedly the smaller amount was not paid within the stipulated period. The Subordinate Judge allowed the plaintiff's claim. The defendant appealed to the High Court, and on the 31st September 1891 the order of the Subordinate Judge was reversed, and an inquiry was directed as to the conduct of the plaintiff in the matter. On the 31st August 1892 the Subordinate Judge held that the plaintiff had been guilty of misconduct, and that the decree had been fully satisfied. The plaintiff appealed from this order to the High Court, and on the 4th January 1894 the appeal was dismissed, and he preferred an appeal to Her Majesty in Council. In the meantime on the 13th May 1892 the plaintiff had paid a certain sum of money to protect the patni talukh from sale for arrears of rent due to the landlord. In a suit brought to recover from the defendant the amount so paid :—*Held*, that the *payment was not a voluntary payment, and that the* plaintiff was interested in the payment of the money, and therefore he was entitled to recover it. BINDUBASHINI DASSI *v* HARENDRA LAL ROY I L. R. 25 Calc. 305 2 C. W. N. 150

5. ———— Payment by a purchaser of a patni talukh during the pendency of an appeal for setting aside the patni sale——*Person interested in the payment of the patni rent —Patni Regulation (VIII of 1819), s. 14.*—A payment of rent made by the purchaser of a patni talukh after the decision of the first Court in a suit brought by the defaulting patnidars for the setting *aside of the patni sale, by which it was held* that the sale was invalid, and during the pendency of an appeal preferred, not by the plaintiff, the auction-purchaser, but by the zamindar at whose instance the said sale had been brought about, is not a voluntary payment, inasmuch as he (the plaintiff) is a person interested in the payment of the money, within the meaning of s. 69 of the contract Act. *Bindubashini Dassi v. Harendra Lal Roy, I L R. 25 Calc. 305,* followed The remedy which the plaintiff in this case had, after the reversal of the sale, to be re-imbursed by the defendant under s 69 of the Contract Act was *held* not to be curtailed by the provisions of s 14 of Regulation VIII of 1819 RADHA MADHUB SAMONTA *v.* SASTI RAM SEN . I. L. R. 26 Calc. 826

6. ———— Payment of decree for rent by purchaser at sale for arrears of rent——*Contract Act (IX of 1872), ss. 69, 70—Suit to recover money so due.* Rent is by operation of law the first charge on a tenure, and a person who purchases the same at any execution-sale must, in the absence of anything to denote the contrary, be taken to purchase it, charged with the rent which is due in respect of it at the time of its purchase and there being no privity between him and the judgment-debtor, he cannot recover from the latter the money which he is obliged to pay for the rent so due at the time of the purchase So where a plaintiff, in execution of a mortgage-decree, purchased the tenure mortgaged, and then paid the money due under a decree obtained by the landlord against the tenure-holder for arrears of rent for the period anterior to the confirmation of sale :—*Held*, that the plaintiff was not entitled to recover the money paid by him for satisfying the rent decree. MOHARANEE DASYA *v.* HARENDRA LAL ROY . . . . 1 C. W. N. 458

VOLUNTARY SETTLEMENT.

See ONUS OF PROOF—DECREES AND DEEDS, SUITS TO ENFORCE OR SET ASIDE . . I L. R. 15 Bom. 549

———— breach of covenants in—

See DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT I. L. R. 2 Bom. 273

VOLUNTEERS.

See ARMY ACT, s 19 I. L. R. 22 All. 323

VOTERS, LIST OF.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s 31 I. L. R. 22 Calc. 717

VOTING.

See COMPANY—MEETINGS AND VOTING I. L. R. 27 Bom. 113

VRITTI.

See STRIDHAN I. L. R. 33 Calc. 229

VYAVAHARA MAYUKHA.

See HINDU LAW—MITAKSHARA.

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WAGERING.

———— and gaming transaction—

See EVIDENCE ACT, s 92 9 C W. N. 355

WAGERING CONTRACT.

See CIVIL PROCEDURE CODE, 1882, s. 111. 9 C. W. N. 178

See CONTRACT—WAGERING CONTRACTS.

See CONTRACT ACT, 1872, ss. 20, 30 and 65 . . I. L. R. 25 Mad. 561

See CONTRACT ACT, 1872, s. 30 I. L. R. 30 Bom. 63

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS I. L. R. 9 Calc. 791 I. L. R. 12 Bom. 585 I. L. R. 17 Mad. 450

WAGERING CONTRACT—*contd*

See EVIDENCE ACT, s. 92, pro. (1).
I L. R. 32 Calc. 437

1. ———————— *Wagering contract—Contract Act* (*IX of 1872*), *s 30.* In order that a transaction may fall within s 30 of the Indian Contract Act, there must be at least two parties, the agreement between whom must be by way of wager and both side must be parties to the wager It is of the essence of a wager that each side should stand to win or lose, according to the uncertain or unascertained event, in reference to which the chance or risk is taken in other words, to make an agreement a wager there must be a common intention to bet SASSOON *v* TOKERSEY (1904) **I. L. R. 28 Bom. 616**

2. ———————— *Principal and agent—Sale and purchase by the agent on his own account—Usage of trade—Commission agents—Pakki adat system—Tender of evidence as to delivery at other vaidas—Relevancy of such evidence* The defendant, a resident of the North-West Provinces, from time to time sent orders to the plaintiffs in

[illegible]

bales more than they had sold It appeared that by reason of other contracts entered into with the merchants, from whom they had purchased on behalf of the defendant, the plaintiffs had 'cancelled' all these purchases, before the due date.

[illegible]

unable to show that they had paid any damages on account of the defendant, for failure to take delivery, to any of the merchants from

[illegible]

on the *pakki adat* system, under which no privity was established between the defendant and the

[illegible]

commission agents, and as such, under instructions and on account of the defendant, entered into these purchases, they had no cause of action *Held*, further, that the usage termed the *pakki adat* system involved a material departure from the ordinary relations between a principal and his agent of which there was no suggestion, in the pleadings or issues, nor was there any evidence to prove it. The plaintiffs must therefore be held to the case they had made.

WAGERING CONTRACT—*concld.*

During the course of the hearing in the lower Court it appeared that at the *vaida* for which the contracts in question had been made the plaintiffs had

[illegible]

were wagering contracts *Held*, on appeal, that the evidence tendered was relevant and should have been admitted CHANDULAL SUKLAL *v* SIDHRUTHRAI (1905) **I. L R. 29 Calc. 291**

3. ———————— *Agreement to pay differences—Surrounding circumstances—Form*

[illegible]

must not only consider the terms, in which the parties have chosen to embody their agreement, but must look to the whole nature of the transaction or institution, whatever it may be, and must prove among all the surrounding circumstances, including the conduct of the parties, with a view to ascertain what in truth was the real intention or understanding between the parties to the bargain The actual form of the contract is of little moment,

[illegible]

was the common intention of both parties and should do all that is possible to see through the ostensible and apparent transaction into the underlying reality of the bargain MOTILAL *v* GOBINDRAM (1905) **I. L R. 30 Bom. 83**

WAGES.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—WAGES . **1 B. L. R. [illegible]**
I. L. R. 6 Bom. [illegible]

See MASTER AND SERVANT.

———— **of labourers—**

See BENGAL ACT VI OF [illegible]
3 B. L. R. [illegible]

———— **suit for—**

See SMALL CAUSE [illegible] JURISDICTION—[illegible]
[illegible]

See SMALL CAUSE [illegible]
[illegible]

WAGING WAR.

See [illegible] OFFENCE [illegible] IN ONE [illegible] OF WAGING WAR [illegible]

See SENTENCE—[illegible]
[illegible]

WAGING WAR AGAINST THE QUEEN.

——— **Conspiracy to wage war**—*Treason—Misprison of treason—Limitation of period for prosecution—Penal Code, s 121—7 Will. III, c. 3, s. 5*—The offence of engaging in a conspiracy to wage war, and that of abetting the waging of war, against the Queen, under s 121 of the Penal Code, are offences under the Penal Code only, and are not treason or misprison of treason, and therefore the provisions of the Stat 7 Will III, c. 3, s 5, as to placing a limitation on the period for prosecution are not applicable. QUEEN v AMIRUDDIN
7 B L. R. 63; 15 W. R. Cr. 25

WAHABIS.

See MAHOMEDAN LAW—WORSHIP.
I. L. R 35 Calc. 294

WAIVER.

See ACQUIESCENCE.

See ARBITRATION—AWARDS— VALIDITY OF AWARDS AND GROUNDS FOR SETTING THEM ASIDE **I. L. R. 21 Calc. 590**

See BENGAL MUNICIPAL ACT (III OF 1884), ss. 238 AND 273.
5 C. W. N. 42

See BOND . . **11 C. W. N. 903**

See ESTOPPEL—ESTOPPEL BY CONDUCT
7 Mad. 263
8 Mad. 14
I. L R. 18 Calc 341
I. L. R. 15 Mad 82
I. L. R. 14 Bom. 558

See EVIDENCE—PAROL EVIDENCE—EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES
6 C W N. 242

See FOREIGN COURT—JUDGMENT OF
I. L R. 2 Mad. 400; 407
I. L R 15 Mad. 82

See GUARDIAN —DUTIES AND POWERS OF GUARDIANS **I. L R 18 Calc 99**
L. R. 17 I. A. 90

See INSURANCE—LIFE INSURANCE.
I. L. R. 23 Calc. 320

See LANDLORD AND TENANT.
12 C. W. N. 1059
13 C. W. N. 635

See LIMITATION . **I. L. R. 31 Calc. 297**

See LIMITATION, MORTGAGE, VENDOR AND PURCHASER
I. L. R. 31 Calc. 57; 83; 297

See LIMITATION ACT, 1877, SCH II, ART. 75.

See LIMITATION ACT, 1877, SCH. II, ART 179—ORDER FOR PAYMENT AT SPECIFIED DATES

See MAHOMEDAN LAW—PRE-EMPTION
I. L. R. 35 Calc. 402

WAIVER—*contd*

See MALABAR LAW—MORTGAGE
I. L. R. 13 Mad. 490
I. L R. 15 Mad. 480

See MARINE INSURANCE.
I. L. R. 36 Calc. 516
13 C. W. N. 425

See MUNICIPALITY.
I. L. R. 29 Bom. 35

See PRIVY COUNCIL, PRACTICE OF
I. L. R. 34 Calc. 709

——— **by accused**—

See CRIMINAL PROCEEDINGS.
I. L R. 2 Calc. 23
I. L. R. 6 Calc. 83

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS.
I. L. R. 12 Bom 561
I. L. R 25 All. 511

——— **of condition in lease**—

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS
I. L. R. 20 Bom. 439

——— **of covenant for title**—

See VENDOR AND PURCHASER—BREACH OF COVENANT **I. L. R. 15 Mad. 50**

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILTIES OF.
I. L. R. 13 Mad. 158

——— **of fresh proclamation of sale**—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.
I. L. R. 24 Mad. 311
6 C. W. N. 42; 48

——— **of irregularity**—

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167)—*JOINT DECREES—Joint Decree-holders* **I. L. R. 4 Calc. 605**

——— **of objection**—

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL.

See JURISDICTION—QUESTION OF JURISDICTION—CONSENT OF PARTIES AND WAIVER OF OBJECTION TO JURISDICTION.

See JURISDICTION—QUESTION OF JURISDICTION—WHEN IT MAY BE RAISED
I. L. R. 13 Mad. 273

See JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS.
I. L. R. 21 Bom. 351

See LAND ACQUISITION ACT, s. 19
I. L. R. 17 Bom. 299

See LIMITATION—QUESTION OF LIMITATION **I. L. R. 19 Mad. 416**

WAIVER—*contd*

—— of objection—*contd*

See Review—Ground for Review. I. L. R 12 Bom 228

See Written Statement I. L. R 22 Calc. 268

—— to sue—

See Limitation Act, 1877, Sch II, Art 75 . . . . 13 C. W. N 1004

See Limitation Act (IX of 1908), Sch I, Arts. 75, 116 . 13 C W. N. 1010

1. **Waiver by conduct**—*Appeal—Irregularity—Substitution of parties—Consent.* Where the purchaser of a plaintiff's rights was substituted for the plaintiff, the irregularity was *held* to be cured by the consent of the defendant,

2. —— *Appeal—Right of objection to proceedings taken in accordance with appeal to High Court* Where a party, dissatisfied with the decision of the lower Court

3 —— *Withdrawal of objection—Raising same objection subsequently* Where parties have, before the Deputy Collector, withdrawn their objections to an Ameen's report, the lower Appellate Court should not allow the same objections to be revived before it. Bhugobutty Burmonee *v* Gour Chunder Mundul. 9 W. R. 267

Kantee Chunder Dutt *v* Gopee Madhub Neogee . . . . . 11 W. R. 3

4 —— *Objection to non-service of notice of execution—Appearance.* Where

Dhrain. [illegible]

5. —— *Waiver by judgment-debtor of objection—Right to deduct mesne*

6 —— *Omission to take objection—Remand.* *Held,* that the defendant, not having taken an objection to the suit on the ground of the minority of the plaintiffs, whilst it was pending in appeal to the High Court, were precluded from raising it on remand Beni Ram Bhutt *v.* Ram Lall Dhukri . I. L. R. 13 Calc. 189

7 —— *Suit by infant without a next friend—Objection not taken until case came on appeal when plaintiff had attained majority—Civil Procedure Code, 1882, s 410.* Suit by the adoptive daughter of a temple dancing woman, deceased, to compel the trustees of the temple to permit the performance of a certain

next friend No objection was taken by the defendants, on the ground that the plaintiff could

irregularity was waived Kamalakshi *v.* Ramasami Chetti I. L. R. 19 Mad. 127

8. —— **Effect of waiver**—*Landlord and tenant—Waiver of right of forfeiture for non-payment of rent* A landlord who has waived his right to sue for the cancelment of a lease on the raiyat's failure to pay six successive instalments is not barred by limitation from suing for cancelment on further breaches of the covenant. Dulli Chand *v* Meher Chand Sahoo 8 W. R. 138

9 —— *Waiver of vendor binding on purchaser—Sale for arrears of rent* The Government, as auction-purchaser of the

the talukdars any rights which his vendor had waived Obhoy Churn Roy *v.* Asanoollah 2 W. R., Act X, 81

10. —— **Waiver of rights under mortgage**—*Resumption by Government of mortgaged land under Land Acquisition Act, and re-sale to mortgagor—Omission of mortgagee to claim compensation.* Government having under the Land Acquisition Act taken possession of portion of certain land which had been mortgaged by the owner subsequently, while the mortgage was still in force, re sold the portion taken, to the mortgagor, who sold it to a third person *bond fide* for value. In a suit by the mortgagee (who had taken no steps to obtain any portion of the money paid by the Government for the land) praying for the

might not, but for the waiver, have re-attached, on the lands resumed by the Government again

WAIVER—*contd.*

coming into the possession of the mortgagor RAM AWTAR SINGH *v.* TULSI RAM 5 C. L. R. 227

11. —— **Waiver of grounds of enhancement.**—*Reliance on one ground only—Presumption* In a suit for enhancement of rent upon different grounds, the fact that at the hearing the plaintiff relies on one of the grounds only, and that in the judgment of the first Court the whole case was rested on that ground only, is not a safe warrant for the inference that the other grounds were waived BONOMALEE CHURN MYTEE *v.* SHOROOP HOOTAIT 14 W. R. 60

12 —————— *Objection as to absence of demand for enhanced rent—Objection as to want of parties—Objection taken for first time on appeal* Where in a suit for rent at an enhanced rate no objection as to the absence of legal demand for enhanced rent was taken —*Held*, that the suit was properly tried by the Court of first instance on the merits The lower Appellate Court having dismissed the suit on the ground that the inamdar was not a party to the suit, a point on which no issue was raised, although it had been taken in the written statement and which was not made a ground of appeal. *Held*, also, that the point must be considered to have been abandoned at the trial; it was therefore not open to the lower Appellate Court to dismiss the suit on that ground. GOVINDRAV KRISHNAV RAIBAGKAR *v.* BALU BIN MONAPA I. L. R. 16 Bom 586

13. ——— **Waiver of right to execute decree**—*Agreement to give time to debtor—New contract* The granting of a judgment-debtor the indulgence of a temporary stay of the warrant of execution issued to inforce the decree does not prejudice the judgment-creditor's right to execution at a subsequent time BUTCHENNER *v* RAYUDU 5 Mad. 285

14 —————— *Waiver where decree-holder was allowed to perform act under decree in case judgment-debtor failed to do so* *H C* obtained a decree agaist *G R* for the reconstruction in the family house, within one month, of a verandah which had been improperly pulled down by the latter; on failure of *G R* to rebuild it in the specified time, the decree-holder was to be allowed to rebuild it himself at the cost of *G R.* About a month after the reconstruction was begun, but after the lapse of the month allowed to the judgment-debtor, *H C* applied for an injunction to stop the work as not being according to the decree, and for permission to rebuild it himself. *Held*,

strance for nearly a month while the judgment-debtor incurred considerable expense amounted to a waiver of his right to take matters into his own hands GOPEE KISHEN GOSSAIN *v* HEM CHUNDER GOSSAIN . . . 16 W. R. 38

15. ——— **Waver of right to interest on arrears of rent**—*Receipt of arrears of rent for*

WAIVER—*contd.*

long time without interest. By the terms of a kabuliat, rent not paid when due was to bear interest. The zamindar received rent for a period of ten years without making any demand of interest in respect of arrears, and without claiming to apply any portion of the payments towards the discharge of interest. Having subsequently brought a suit for interest, the Courts below were of opinion that the zamindar had waived his claim to interest and dismissed his suit. *Held*, that there were facts justifying such an inference, and that their finding could not be reviewed in special appeal DINDOYAL PORAMANICK *v.* PRAN KISHEN PAUL CHOWDHRY

Marsh. 394 : W. R. F. B. 117 : 2 Hay 423

16. —————— *Omission to enforce interest under kabuliat—Variation in contract* In order to establish variation in a written contract, it must be distinctly pleaded and proved when and how the variation took place, the mere fact of a kabuliat not having been enforced in the most stringent manner does not take away from the lessor the right to enforce it. PEAREE MOHUN MOOKERJEE *v* BROJO MOHUN BOSE 21 W. R. 36

PEAREE MOHUN MOOKERJEE *v.* BROJO MOHUN BOSE . . . . . 22 W. R. 423

17. —————— *Omission to claim interest—Pleading.* Both parties stipulated for payment of rent on certain dates and, if not so

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BOSE *v* GUNGADHUR BISWAS W. R. F. B. 13 : 1 Ind. Jur. O. S. 6 Marsh. 40

18. ——— **Waiver of objection to service of notice of enhancement**—*Omission to appeal from decision finding notice properly served—Question of law and fact.* Plaintiff sued to re- after notice, and got

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On appeal,
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wrong, for, seeing that the first Court which appealed from the finding of the first Court which declared that there had been good service, it might fairly be presumed that they had due notice of the claim to enhance, until evidence sufficient to rebut that presumption should be shown. An objection that notice of enhancement has not been properly served is not an objection purely law, but a mixed objection of law and fact, which may

WAIVER—*contd.*

be impliedly waived by the conduct of the parties. *Chunder Monee Dossee v Dhuronedhur Lahory*, 7 W R, 2, cited and distinguished. SHUSHEE BHOOSUN v MUDDUN MOHUN CHUTTOPADHYA 2 C. L. R. 297

19. ———— Agreement come to under mistaken belief—*Agreement to accept provision in satisfaction of claim to maintenance—Mutual mistake, effect of—Suit by son for partition—Relinquishment of claim* The plaintiff's father, a member of an undivided Hindu family, signed an agreement by which he agreed to accept a provision in satisfaction of his claim for maintenance The agreement was signed by reason of a mistaken belief entertained by the plaintiff's father and the other members of the family that there existed an established custom in the family which rendered the property indivisible. *Held*, in a suit by the plaintiff for a partition of the family property liable to partition, that the agreement having been come to under a mutual mistake, it was no bar to the plaintiff maintaining the suit, for it would not have prejudiced the right of the plaintiff's father if he had chosen to insist upon a partition SOOBRAMANIA TELAVER v SOKKA TELAVER 5 Mad 437

20. ———————— *Agreement to accept portion of property for maintenance—Suit*

only to a portion for maintenance Under that belief the plaintiff accepted the allotment made

21. ———— Waiver by renunciation of rights—*Renunciation of rights—Law of waiver—Privileges of office.* It is not law that every right may be renounced. The general rule is power of renunciation, but there are two marked classes of exceptions. There can be no renunciation of rights and consequent destruction of relative duties prescribed by an absolute law; nor of things inherent in man as man. A man may renounce a

WAIVER—*contd.*

his position as a karnavan CHERUKOMEN *alias* GOVINDEN NAIR v ISMALA 6 Mad. 145

APPUNI v AYANEPALLI EKANATHA THAVAI VARIKARNAVAN SHANGUNI APPUNI v VETTUTHADATHA SHAMA 6 Mad. 401

22. ———— Effect of signing document in which there is an omission—*Omission in wajib ul-urz of interest in property—Imperfection in settlement-proceedings* The mere signature by an agent of a wajib-ul-urz from which the record of an important interest in property was omitted, cannot be construed as a waiver of such right or claim. Still less can the imperfection or inaccuracy of settlement-proceedings operate to extinguish or disallow existing rights IMAMBUNDEE v BHUGWAN DASS 1 N. W. 41 Ed. 1873, 38

23. ———— Effect of acceptance of mortgage money on right of purchase—*Condition in favour of purchase by mortgagee* A mortgaged land to *B*, the mortgage instrument providing that *B* should be entitled to purchase the land if it were not redeemed by 12th July 1843 In 1845

1 Mad. 89

24. ———— Refusal to receive rent in kind—*Effect of refusal on right to sue for rent*

25. ———— Withdrawal of objection to sale in execution of decree—*Effect of, on subsequent right to sue to set it aside.* The plaintiff purchased certain property from the

recovering the land by reason of his having withdrawn the petition, as he could not thereby be considered to have waived his right to sue KUMARASAMY REDDI v. PANNA SOONA MOOROOGAPPA CHETTY 7 Mad. 359

Hindu ... property by ... widow to ... title in certain property in favour of parties suing the

WAIVER—*contd.*

lessees of the property for possession is not a legal relinquishment of her share therein. OOMA CHURN KOONDOO *v* BHOOBUN MOHUN PAL 10 W. R. 98

27. — **Agent's right to execute decree obtained by him as agent**—*Civil Procedure Code, 1882, s 37—Recognized agent—Execution of decree* P filed a suit in the second class Subordinate Judge's Court at Mahad. As *P* resided at Thana, outside the jurisdiction of the

on appeal in *P's* favour The agent then sought to execute the decree. The Court of Mahad passed an order upon his darkhast granting only partial execution Against this order the agent filed an appeal in the District Court at Thana Then, for the first time, the judgment debtors challenged the agent's right to represent *P* who was residing within the District Court's jurisdiction. This objection prevailed, and the appeal was dismissed. *Held*, that the agent could not be prevented from executing the decree which he had obtained as agent. No objection had been taken to the agent's right to represent *P* at any stage of the litigation prior to the final decree That objection must, therefore, be deemed to have been virtually waived, and could not be raised after the defendants had had their chance of success in the litigation. PARVATIBAI *v* VINAYEK PANDURANG

I. L. R. 12 Bom. 68

28. ———— **Remission of part performance of contract**—*Sum accepted on account of interest* A hypothecation-bond provided for payment of interest on the principal sum at the rate of 9 per cent and contained a further provision that, on default being made in payment of interest accruing due, interest should be paid from the date of the bond at the rate of 15 per cent. Default was made when the first and second payments of interest became due. After the second payment had become due, the creditor accepted payment on account of interest of a sum, a little more than the arrears calculated at 9 per cent In a suit by the creditor —*Held*, that the plaintiff had not waived any right under the bond by accepting the payment on account of interest. NANJAPPA *v.* NANJAPPA I L R. 12 Mad 161

29. ———— **Decree payable by instalments**—*Execution of decree—Default—Limitation.* A decree was made for payment of the decretal amount by monthly instalments running over a period of twelve years: and it was provided that on default the decree-holder might execute the decree as a whole for the balance then due In 1883 a default was made, and in 1884 the decree-holder filed an application for execution in respect thereof, but did not proceed with it, and continued to receive the monthly instalments In 1887 he made another application for execution which he relied on the same default. *Held*, that the default, if it was one, had been

WAIVER—*contd.*

waived by the decree-holder, and that such waiver was a good defence to the present application, *Mumford v. Peal, I. L. R. 2 All 857*, and *Asmutullah Dalal v. Kally Churn Mitter, I. L. R., 7 Calc 56*, distinguished. BUDDHU LAL *v.* REKHAB DAS . . . . . I. L. R. 11 All. 482

30. ———————— *Decree payable by instalments, and in default, execution for whole amount to issue—Default in payment of instalments —Waiver by plaintiff of right to execute decree—Receipt by plaintiff of overdue instalments.* By a consent decree passed in a mortgage suit the defendant was ordered to pay to the plaintiff the sum of R1,800 by yearly instalments of R50 payable on 30th April in each year, and in case of default in payment of any instalment the plaintiff was to be

obtained an order for the sale of the property. In order to prevent the sale, the defendants, on the 13th November 1888, paid R60 out of Court, and the application for execution thereupon was allowed to drop The defendants subsequently made the following payments, *viz*, R15 on the 5th June 1889, R25 on the 12th June 1889, R15 on the 1st January 1890, and R50 in the Nazir's office on the 2nd June 1890, which was the day on which

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above payments had waived his right to execute the decree. On appeal to the High Court.—*Held*, that the plaintiff was entitled to execution. The acceptance of the payments did not prove a waiver. They were not accepted on account of the specific instalments in arrears, but on account of the whole decree; and even if they were taken as payments of overdue instalments, they could not by themselves prove a waiver. BALAJI GANESH *v* SAKHARAM PARASHRAM . . I. L. R. 17 Bom. 555

31. ———— **Omission to take objection that pottahs and muchalkas had not been exchanged before suit**—*Suit to recover customary dues payable on account of a chattram.* In a suit by the District Board in charge of a chattram to recover a certain sum as the arrears of various merais, being customary dues payable ... for the benefit of the chattram

the defendants
that there had
muchalkas, but
upon a plea of
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limitation. *Held*, that ... considered to have admitted tacitly that the exchange of pottahs and muchalkas had been dispensed with. VENKATAVARAGA *v.* DISTRICT BOARD OF TANJORE . . . I. L. R. 16 Mad. 305

WAIVER—*contd*

32 ———— Instalment bond—*Waiver—Payment of part of an instalment and interest* Where the terms of a bond were that, if any instalment remained unpaid, then the whole amount was to become due :—*Held*, that part payment and acceptance of part of an overdue instalment would not amount to a waiver, for on payment of a part of an instalment, there would remain something due and there would still be a default Similarly payment and receipt of interest would not amount to a waiver *Cheni Bash Shaha* v *Kumud Mundul, I L R 5 Calc 97*, and *Mon Mohun Roy* v *Durga Churn Gooee, I L R 15 Calc 502*, referred to MOHESH CHANDRA BANERJEE *v* CHINTAMONI SINGH (1904)
I. L. R. 31 Calc. 83

33 ———— *Instalment-bond—Default in payment of instalments—Limitation—Limitation Act (XV of 1877) s 9, Sch II, Art 75—Cause of action—Disability or inability* In an unregistered instalment-bond there was a stipulation that in the event of default in payment of two consecutive instalments the creditor would be entitled to recover the whole amount covered by the bond, which was payable in twelve instalments. The second instalment was due on the 12th June 1899. The plaintiff brought a suit on the 1st June 1908 for recovery of the instalments due on the bond, relinquishing the first two instalments. *Held*, that mere abstinence on the part of the plaintiff from bringing a suit for recovery of the whole amount due, on the failure of payment of

I. L. R. 36 Calc. 394

34. ———— Waiver of right to object to sale—*Civil Procedure Code (Act XIV of 1882), ss 244, 291, 311—Execution-sale, brought about by fraud—Plea of waiver when to be given effect to and to what extent—Public policy—Circumstances from which waiver to be inferred—Knowledge of rights waived, necessity of proving—Burden of proof—Presumption* A waiver is an intentional relinquishment of a known right or such conduct as warrants an inference of the relinquishment of such right, and there can be no waiver unless the person against whom the waiver is claimed had full knowledge of his rights and of the facts which would enable him to take effectual action for the enforcement of such rights. The burden of proof of such knowledge is on the person who relies on the waiver and such knowledge must be made to appear. A presumption of waiver cannot be rested on a presumption that the right alleged to have been waived was known When it appeared from the proceedings that a judgment-debtor only

WAIVER—*concld*

waived objections to an execution-sale on the ground of (i) non-issue of fresh sale proclamations when the sale was adjourned from time to time, and (ii) inadequacy of price as resulting therefrom :—*Held*, that this did not prevent him from attacking the sale on the ground (i) that the sale proclamation had never been issued and had been fraudulently suppressed at the decree-holder's instance, and (ii) that the price realised was inadequate by reason of the decree-holders fraud Whether there has been a waiver or not of the rights of a judgment-debtor to object to a sale and to what extent they may have been waived must depend upon the circumstances of each individual case : and the question has to be decided

35 ———— Jurisdiction—Leave to sue —Letters Patent, 1865, cl. 12. Where there is no want of jurisdiction in this Court over the subject-matter of the action, but leave under cl 12 of the Letters Patent is required before the Court can entertain the suit, the objection that such leave has not been properly obtained may be waived and will be considered to have been waived if the defendant files his written statement and applies for a commission to examine witnesses. *Moore* v *Gamgee, L R. 25 Q B. D 244*, followed KING *v* SECRETARY OF STATE FOR INDIA (1908)
I. L. R. 35 Calc. 394
s.c. 12 C. W. N. 705

WAJIB-UL-ARZ.

See COLLECTOR I. L. R. 15 All. 410

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—WAJIB-UL-URZ.
I. L. R. 2 All. 876
I. L. R. 15 All. 147

See LANDLORD AND TENANT.
I. L. R. 27 All. 338 ; 356
I. L. R. 29 All. 203

See MAHOMEDAN LAW—PRE-EMPTION—CEREMONIES
I. L. R. 9 All. 513

See MAHOMEDAN LAW—PRE-EMPTION—MISCELLANEOUS CASES.
I. L. R. 12 All. 234
I. L. R. 28 All. 499

WAJIB-UL-ARZ—*contd.*

See MOHOMEDAN LAW—PRE-EMPTION—PRE-EMPTION AS TO PORTION OF PROPERTY
I. L. R. 10 All. 182
I. L. R. 11 All. 108
I. L. R. 21 All. 119

See MORTGAGE 10 C. W. N. 778

See OUDH ESTATES ACT (I OF 1869), ss 22, 23. I. L. R. 31 All. 457

See PRE-EMPTION

See PRE-EMPTION—RIGHT OF PRE-EMPTION
I. L R 25 All. 90, 421
I. L R. 26 All. 212

See PRE-EMPTION—RIGHT OF PRE-EMPTION—CO SHARERS
I. L. R. 9 All. 480
I. L. R. 10 All. 472
I. L. R. 26 All. 389

See PRE-EMPTION—RIGHT OF PRE-EMPTION—WAIVER OF RIGHT OR REFUSAL TO PURCHASE
I. L. R. 11 All. 108

CONSTRUCTION OF WAJIB-UL-URZ
I. L. R. 26 All 10, 544; 549; 547

See WASTE LANDS
I. L. R. 19 All. 172

———— testamentary bequest contained in—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—ADOPTION
I. L. R. 24 All. 195

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—ESTATES ABSOLUTE OR LIMITED
I. L. R 19 All. 16

1. ———— *Conditions enabling co-sharer on payment of revenue due to take*

power to transfer or sell Also that, if within twelve years the defaulter or his heir wished to

WAJIB-UL-ARZ—*contd.*

of the defaulter should not get the property, but the person, who had paid up the arrears of revenue should be the owner. *Held*, that, notwithstanding the provision last mentioned, the position of the person who had obtained possession under the wajib-ul-arz by paying arrears of revenue due by a defaulter, was that of a mortgagee under a mortgage by conditional sale as defined in s. 53 of the Transfer of Property Act, 1882, and that the defaulter or his representative, in the absence of a suit for foreclosure, had a period of sixty years within which the arrears of revenue might be paid up and the property redeemed. JAI RAM *v* MAKUNDA (1904) . . . I. L. R. 26 All. 337

2. ———— *Declaration recorded in wajib-ul-arz—Construction of will—Document of testamentary nature as to wishes respecting the succession to property on death—Whether bequest was to person irrespective of his adoption, or whether valid adoption was a condition of inheriting the property—Regulation VII of 1822—Act XIX of 1873* The value as evidence, the importance as records, and the misuse by proprietors, of *wajib-ul-arzes* under Regulation VII of 1822 and Act XIX of 1873, which repealed that Regulation in the North-Western Provinces, commented upon *Lekhraj Kuar* v. *Mahpal Singh, L R 7 I A. 63; I. L R. 5 Calc. 744*, and *Uman Parshad* v *Gandharp Singh, L. R. 14 I. A, 127; I. L. R. 5 Calc. 20*, referred to. A recital in a *wajib-ul-arz* may operate as a will (see *Mathura Das* v *Bhikhan Mal I. L R 19 All. 16*) The weight to be ... depend ... it was ... ceives ... tor in from extrinsic evidence A village ... to be made ... led under ... lar in this ... ven years village I am a Marwari Brahman. He is my ago I adopted my sister's son, Murli heir and successor (*Malik*). If after this agreement, a son is born to me half the property would be received by him and half by the adopted son. If more than one son are born to me the property would be equally divided among them, including the adopted son, as brothers I have two wives now: they will receive their maintenance from him (Murli)" The declarant died in 1885 leaving a natural-born son, who died childless in 1887 In 1896 the respondent (the "adopted son," mentioned in the declaration) brought a suit claiming to be entitled to the property therein mentioned on the strength of his adoption and also on the terms of the declaration, which he contended was a will. Under a ruling of the Privy Council in 1899, the adoption of a sister's son was held to be invalid; and both Courts in India found that a family custom, which would have validated such an adoption, was not established in this suit. The High Court held that the respondent was entitled to succeed irrespective of the adoption *Held*, by the Judicial Committee assuming that the wajib-

WAJIB-UL-ARZ—*concld*

ul-arz might be treated as a will, that the words "adopted son" in the declaration were descriptive

L. R. 12 I. A. 72, I. L. R. 11, Calc., 463, followed *Biresicar Mookerjee v. Ardha Chander Roy, L. R. 19 I. A. 101, I. L. R. 19 Calc. 452,* and *Nidhoomoni Debya v. Saroda Pershad Mookerjee, L. R. 3 I. A. 253,* distinguished LALI *v.* MURLIDHAR (1906) I. L. R. 28 All. 488
s.c. L. R. 33 I. A. 97
10 C. W. N. 730

3. ———————— *Wajib-ul-arz—Entry verified—Verifier's estate, if bound—Will.* An entry in a *wajib-ul-arz*, which a person has verified cannot, by reason of verification, be regard-

4. ———————— *Construction of document—House-tax—Cess—Rent.* Under the wajib-ul-arz of a village called Radhakund the zamindar was declared to be entitled to one *taka* (six pice) per month for every house from the occupants of the village and also from the owners of shops and temples. *Held*, that this payment (which was called "gharghanna") was not a house-tax or cess, but merely ground-rent and did not require special sanction. BALWANT SINGH *v.* SHANKAR (1908) I. L. R. 30 All. 235

WAKF.

See ACT XX OF 1863, s. 18.
15 B. L. R. 167
I. L. R. 3 Calc. 324

See LIMITATION.
I. L. R. 32 Calc. 537

See MAHOMEDAN LAW. 9 C. W. N. 625
I. L. R. 27 All. 320
I. L. R. 33 Calc. 85
I. L. R. 28 All. 633
I. L. R. 36 Calc. 21
I. L. R. 31 All. 136

See MAHOMEDAN LAW—ENDOWMENT.

See MAHOMEDAN LAW—WAKF.

See RIGHT OF SUIT.
I. L. R. 32 Calc. 273

1. ———— **Suit by heir against mutwalli**—*Wakfnamah—Compromise—Recognition of validity of wakf by heir—Right of judgment-creditor of heir to proceed against wakf properties—Privity.* One *D* executed a *wakfnamah* appointing *B mutwalli*. After *D's* death his widow *M* sued to recover a share of the properties as one

WAKF—*concld.*

of *D's* heirs. *B* set up the *wakfnamah* in defence. But the suit was compromised and a *solenamah* was executed, in which *M* admitted the genuineness and validity of the *wakfnamah* and in consideration of an annuity stipulated that neither she nor her heirs should ever in

bound by the *solenamah*; and that he was entitled to show that the *wakf* was invalid and inoperative. The principle of *Srimati Anandmayi Debi v. Dhirendra Chandra Mukherjee, 8 B. L. R. 122,* followed. MUHAMMAD BUKHT *v.* AZMAN REZA (1906)
10 C. W. N. 560

2. ———— **Statement in a will that the testator had at a former time given away or set apart property to charity**—*Not a testamentary devise—Absence of actual delivery—Reasonably clear intention.* A mental act although afterwards sufficiently expressed in conduct will not, unless clothed in appropriate words, create a *wakf*. *Per* CURIAM.—We do not

tion itself. There is a plain distinction between

testator has set apart such and such funds for charitable objects is of comparatively slight value. Where there has been no actual delivery, a reasonably clear declaration is necessary to create a *wakf*. BANUBI *v.* NARSINGRAO (1906)
I. L. R. 31 Bom. 250

WAQF.

See WAKF.

WARG LAND.

See SOUTH CANARA.
I. L. R. 28 Mad. 257

WARRANT.

See INSOLVENCY ACT, s. 50.
I. L. R. 17 Calc. 207

WARRANT—*contd.*

See Warrant Case.

See Warrant of Arrest.

See Warrant of Attachment.

See Warrant of Attorney.

See Warrant of Commitment.

See Warrant of Execution.

——— **arrest or search without**—

See Escape from Custody
24 W. R. Cr. 45
I. L. R. 19 Mad. 310

See Opium Act, s. 9
I. L. R. 24 Calc. 691

See Private Defence, Right of.
7 Bom. Cr. 50
I. L. R 19 Mad. 349

——— **seal warrant**—

See Limitation Act, 1877, Sch. II, Art. 179—Step in Aid of Execution . . **I. L. R. 29 Calc. 580**

——— **search-warrant**—

See Search-warrant

——— **service of**—

See Penal Code, s. 186.
I. L. R. 22 Calc 596; 759
I. L. R. 23 Calc. 896
I. L. R. 24 Calc. 320

1. ——— **Warrants made by Lieutenant-Governor of Bengal**—*Seal of Court.* The Court will order its seal to be impressed on any warrant made by the authority of the Lieutenant-Governor of Bengal, even if not actually signed by him. Anonymous **1 Ind Jur N. S 106**

2. ——— **Search-warrant**—*Criminal Procedure Code, 1861, ss 114, 115—Requisites of warrant.* It is essential to the legality of a search-warrant, under s 114 of the Code of Criminal Procedure, that the production of some specified and particular thing is desired; that the Magistrate alone shall determine that such production is necessary, and that a specified house or place only is to be searched The warrant must, under s 115 of that Code, be directed to some other person only when a police officer is not forthcoming. Queen v. Hossain Ali Chowdhry **8 W. R. Cr 74**

3. ——— *Criminal Procedure Code, s 96—Magistrate, jurisdiction of.*

so buried had an important and material bearing on the case for the prosecution *Held*, that the Magistrate had jurisdiction to issue a warrant to

WARRANT—*concld.*

search for and produce such property upon information which he considered credible, since there was a complaint before him duly affirmed as prescribed by the Criminal Procedure Code; and that it was not incumbent on him to wait until the evidence for the prosecution should have been recorded in the presence of the accused. Queen-Empress v. Mahant of Tirupati **I. L R. 13 Mad. 18**

4. ——— *Criminal Procedure Code (Act X of 1882), s. 96—Issue of search-warrant in the absence of any inquiry, trial, or other proceeding pending before Magistrate* Some treasure belonging to the Native State of Radhanpur was missing. The Administrator of Radhanpur sent a telegram to the District Superintendent of Police at Ahmedabad, stating that part of the missing treasure was in the possession of the

trate of Ahmedabad. ... issued a search-warrant under s 96 of the Code of Criminal Procedure In execution of this warrant, the house of the accused was searched and the police seized and took away certain property belonging to the accused, to his wife, and to his servant. The accused was subsequently arrested under a warrant issued by the Political Superin-

Palanpur, but allowing ... property for some time, as it was possible that a prosecution would be instituted in British India in respect of the stolen treasure. The Magistrate directed that, if no prosecution were instituted within two months, the property should be restored to the persons from whose possession it was taken The District Magistrate subsequently reversed this order as being erroneous, and passed

trate had no ... under s 96 of the Code of Criminal Procedure, as the time of issuing the search-warrant there was no ... trial, or other proceeding

WARRANT CASE.

See Criminal Procedure Code, s. 252
8 C. W. N. 63

WARRANT CASE—*contd.*

See DISCHARGE OF ACCUSED
I. L. R. 28 Calc. 652

See PARDANASHIN WOMEN.
I. L. R. 21 Calc. 588

WARRANT OF ARREST

See ASSAULT ON PUBLIC SERVANT
I L R. 26 Calc. 630

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION
I. L. R. 25 Calc. 20
L. R 24 I A. 137

See MALICIOUS PROSECUTION
I. L R. 19 Bom. 485

See PENAL CODE, s 332
I. L. R 18 All. 246

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION.
5 C. W. N. 71

See PRIVATE DEFENCE, RIGHT OF
11 C. W. N 836

See WITNESS—CIVIL CASES—DEFAULTING WITNESSES.
9 W. R 359
13 W R. 324
5 Mad. 104
I. L. R. 17 All. 277

See WRONGFUL CONFINEMENT
I. L. R. 19 Bom. 72

———— **after order for bail—**

See CRIMINAL PROCEDURE CODE, SS. 75, 76
13 C. W N. 1091

———— **execution of—**

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES
I L R. 24 Calc. 320

———— **illegal issue of—**

See PENAL CODE, s. 186
I. L. R. 24 Calc. 320

———— **not in legal form—**

See PENAL CODE, s 186
I. L. R 23 Cal 896

See PENAL CODE, s 332.
I. L. R. 18 All. 246

———— **of Governor-General in Council**

See BENGAL REGULATION III OF 1818
6 B L. R. 392 ; 459
9 B. L. R. 36

See HABEAS CORPUS
6 B. L. R. 392 ; 459

WARRANT OF ARREST—*contd.*

———— **resistance to—**

See CRIMINAL PROCEDURE CODE, SS 75, 76
13 C. W. N. 109

1 CIVIL CASES.

1. ———— **Absence of warrant**—*Discharge from custody of Sheriff* The court will discharge a prisoner from custody when the jailor holds no warrant for his detention, although he has been properly in the custody of the Sheriff. *In the matter of* SHAH SAHIB 1 Ind. Jur. N S. 191

2 ———— **Informality of warrant**—*Application for discharge—Civil Procedure Code, 1859, s 273—Delay in bringing up prisoner.* B M and several other prisoners in the custody of the Sheriff of Calcutta for debt, without having been brought up to have an order for their allowance made, on being produced for that purpose by the Sheriff, applied for their discharge under s 273 of Act VIII of 1859 Preliminary objections were [illegible]

that a mere informality in a warrant, such as the omission of the time for execution, only renders it irregular, and does not invalidate it ; that advantage having been taken of such irregularity to prejudice the prisoner, affords grounds for an application to the Court to set the warrant aside ; and that a mere delay in bringing the prisoner before the Court after his arrest, if not for a considerable period, does not render his detention illegal. *In re* BHOLANAUTH MULLICK . Bourke O. C. 96

3. ———— **Form of warrant**—*Sufficiency of warrant* Where a person had been taken in execution under a *ca sa* directed to the Sheriff [illegible] ufficient [illegible] words [illegible] to dis- [illegible] diction, [illegible] S. 106

4 ———— **Writ of Calcutta Small Cause Court, form of**—*Act XII of 1865—Fixing subsistence-money.* A writ of the Calcutta Small Cause Court commanding its " Bailiff to take the body of *A*, and have him before the Court on the——day of——to satisfy *B* in the sum of——debt and costs, ordered and decreed by the said Court on the——day of——to be paid to the said *B* with costs of execution, and by virtue thereof to take and convey the said *A* to the common jail of the [illegible]

notwithstanding Act XII of 1865 It was not necessary, in the case of commitment of a debtor to prison by the Calcutta Court of Small Causes,

WARRANT OF ARREST—*contd.*

1. CIVIL CASES—*contd.*

to bring him in the first instance before the Court, as under the provision of Act VIII of 1859, in order to have his subsistence-money fixed. *In the matter of* MEER NAWAUB.

1 Ind. Jur. N. S. 315

5. ——— **Warrant directed to Nazir** —*Arrest of judgment-debtor—Indorsement to peon —Civil Procedure Code, 1882, s. 343—Indorsement of particulars of arrest by Naib Nazir.* Where a warrant issued by a Subordinate Court, directing the Nazir to arrest a judgment-debtor in execution of a decree, was entrusted by the Nazir to a subordinate for execution [illegible]

indorsement must be regarded as *primâ facie* evidence of the authority of the person to whom the warrant is delivered to execute it [illegible]

expressed by a mere indorsement, and that they should be careful in selecting proper persons to discharge that duty, bearing in mind, as far as circumstances permit, the position and caste of the party to be arrested, so as to avoid, through the medium of Court process, subjecting any such party to personal indignity or offence. *Held,* further, that it is important that the person chosen should be made acquainted with the contents of the warrant in order that he may be able to inform the judgment-debtor at whose suit and for what amount he is being taken into custody. Where a warrant for the arrest of the judgment-debtor had been executed, and an indorsement thereon, professedly under s 343 of the Civil Procedure Code, was irregularly made by the Naib Nazir, he not having been "the officer entrusted with the execution of the warrant "—*Held,* that such irregularity did not invalidate the arrest. ABDUL KARIM *v* BULLEN

I. L. R. 6 All. 385

6. ——— **Irregularity in warrant**— *Warrant of arrest in execution of a decree only initialled by proper officer—Civil Procedure Code, 1882, ss. 2 and 251.* A warrant issued for the arrest of a debtor [illegible]

The debtor forcibly resisted the officer, and was tried and convicted, under s 353 of the Penal Code, of assaulting a public servant in the execution of his duty as such. In revision, it was contended, with reference to the requirements of s. 251 of the [illegible]

be allowed, and although it was proper that the person signing a warrant should write his name in full, it could not be said that because the signature was confined to the initials of the name, it was not the duty of the officer to execute the warrant. QUEEN-EMPRESS *v* JANKI PRASAD

I. L. R. 8 All. 293

7. ——— **Validity of warrant**—*Liability of Nazir—Escape of judgment-debtor.* The plaintiff sued out a warrant for the arrest of his judgment-debtor on the 4th December 1876. The warrant was lodged with the Nazir on the 16th December and was to be in force till the 4th January 1877. On the 22nd December 1876 the Nazir was informed that the judgment-debtor was already in the civil jail under a writ of execution issued by another creditor. The Nazir then returned the warrant to the Subordinate Judge who had issued it. On the 29th December the Subordinate Judge again sent it to the Nazir's office, where it was duly received by the Nazir's karkun (defendant No. 2). This fact was not reported by the karkun to the Nazir (defendant No. 1) until the 4th January 1877. On the 1st January 1877 the judgment-debtor's debt was paid by Government, and he [illegible]

karkun for allowing his judgment-debtor to escape *Held,* that the Nazir ought not to have sent the warrant back to the Subordinate Judge, and that there was no necessity for a fresh order on it until the time for which it had to run had expired *Held,* also, that, according to Act VIII of 1859, as it stood at the end of 1876 and until October 1877, the batta for the maintenance of a debtor could not become payable until he was arrested and brought before the Court and the latter made the order for his committal to the civil jail. KASTURCHAND *v.* RAVJI SADASHIV . . I. L. R. 4 Bom 65

8. ——— Warrant not exhausted if on [illegible] nable [illegible] ion of [illegible] 1882, [illegible] dated [illegible] ctuous [illegible] 4th of [illegible] of the

judgment debtor. That application was granted, but the peons sent to arrest the judgment-debtor reported that he had concealed himself, and the Court in consequence struck off the application for [illegible] 1897 the [illegible] it of the [illegible] also was [illegible] n made [illegible] applica- [illegible] h Court, [illegible] ould no

WARRANT OF ARREST—*contd.*

1 CIVIL CASES—*contd*

longer be executed, having regard to s 230 of the Code of Civil Procedure, it was *held* that the warrant of arrest issued on the decree holders' application of the 4th of August 1897 still subsisted and ought to be executed *Anwar Ali Khan* v *Phul Chand, All Weekly Notes, (1898) 137,* followed JIT MAL v JWALA PRASAD.

I L R, 21 All 155

9. ——— **Jurisdiction of High Court**—*Indian High Courts Act, 1861 (24 & 25 Vict, cap. 104), s 11—Letters Patent, 1865, cl 11—Letters Patent, 1800, cls 15 and 21—Jurisdiction of High Court to issue warrant against judgment-debtor and appoint special bailiff for its execution* A Judge, in the exercise of the ordinary original civil jurisdiction of the High Court at Madras,

without jurisdiction. *Sagore Dutt* v *Ramchunder Mitter, 1 Hyde 136,* referred to *Monomotha Nath Dey* v. *Greender Chundu Ghose, 24 W, R 366,* referred to *Jamuna Bhai* v *Sadagopa, I L. R 7 Mad 56,* referred to RAJAH OF RAMNAD v. SEETHARAM CHETTY (1902)

I. L R 26 Mad. 120

10. ——— **Showing warrant**—*Penal Code (Act XLV of 1860), ss 353, 225B—Assaulting a public officer in execution of his duties—Resisting or obstructing public officer in discharge of his duties as such—Warrant, execution of, by person not authorized—Warrant of arrest, issue of, in execution of a Civil Court decree—Notification of contents of warrant, if necessary—Lawful arrest* To make an arrest under a warrant issued in execution of a Civil Court decree valid, it may not be necessary to show the warrant to the person to be

shown to the person arrested, and the contents of the warrant are not notified to him, before or at the time of the arrest, there is no lawful arrest *In the matter of* RAJANI KANTO PAL v EMPEROR (1901) . . . . . . **5 C. W. N. 843**

11 ——— **Signature of warrant**—*Indian Penal Code (Act XLV of 1860), s 225B—Resistance to lawful apprehension—Warrant, legality of—Civil Procedure Code (Act XIV of 1882), ss 251, 337, 644, and Sch IV, Form No 154—Warrant for arrest of judgment debtor, by whom to be signed—Indian Evidence Act (I of 1872), s. 114, cl (e)—Presumption—Judicial and official acts* Under s. 251, Civil Procedure Code, a warrant for arrest, like any other warrant issued in execution of a decree, may be signed by the Judge himself, or by any other officer appointed in that behalf by Court.

WARRANT OF ARREST—*contd.*

1. CIVIL CASES—*concld.*

Queen-Empress v *Janki Prasad, I. L. R. 8 All 293,* referred to Form No. 154, Sch. IV, Civil Procedure Code, as the provision for variation in s. 644, Civil Procedure Code, shows, cannot be taken as implying a direction that a warrant for arrest, in particular, must be signed by the Judge himself Where a warrant for arrest was signed by a *sheristadar* duly authorized to sign warrants, and the judgment-debtor resisted its execution: *Held*, that he had committed an offence under s. 225B, Indian Penal Code. From the mere fact that the warrant for arrest of a judgment-debtor bore the signature of the *sheristadar*, it cannot be presumed, under s 114, cl. (e), Indian Evidence Act, that the *sheristadar* had been duly appointed to sign warrants Evidence of the fact of appointment is necessary *Per* HARINGTON, J —S. 114, cl (e), Indian Evidence Act, authorises the presumption that a particular judicial or official act which has been performed has been performed regularly, but it does not authorize the presumption, without any evidence, that the act has been performed. DEPUTY LEGAL REMEMBRANCER v. MIR SARWAR. JAN (1902) . . . . **6 C. W. N. 845**

2. CRIMINAL CASES

1. ——— **Arrest in pending case**—*Power of Magistrate—Criminal Procedure Code, 1861, s. 68* S 68 of the Code of Criminal Procedure

2. ——— **Warrant on non-appearance to summons**—*Lessee of tolls—Disobedience of summons to appear—Undertaking not to sue.* A, the lessee of a toll, was in arrear to Government in respect of the rent The Magistrate issued a summons to him, whereby it was recited that a plaint

the debtor, defendant, has not appeared in person, the summons has not been obeyed, therefore it is ordered that a warrant be issued for the arrest of the defendant " Proceedings were afterwards taken upon the warrant. *Held*, that all the proceedings taken by the Magistrate were irregular and must be set aside, the defendant undertaking not to take legal proceedings for anything done under the order or warrant *In the matter of* BANKA BIHARI GHOSE

2 B. L. R. A. Cr. 17 : 11 W. R. Cr. 28

3. ——— **Issue of warrant**—*Complaint on oath—Report of police officer—Criminal Procedure Code, 1869, ss 68 and 155.* In cases in which

WARRANT OF ARREST—*contd.*

2. CRIMINAL CASES—*contd.*

the police cannot arrest without a warrant, a warrant cannot legally be issued by a Magistrate except on a complaint made on oath (or under s. 68 of the

4. ——— *Arrest on report of policeman for offence for which arrest without warrant might be made* Where a policeman in whose sight a theft was committed arrested the

BOMYA MAHAR . . 5 Bom. Cr. 99

5. ——— *Validity of warrant—Criminal Procedure Code (X of 1872), s 157—Magistrate out of jurisdiction—Extradition* It was not essential to the validity of a warrant issued under s 157 of Act X of 1872 that the Magistrate issuing it should be, at the time he issues it, within the local limits of his jurisdiction He might issue such a warrant from a place in *foreign* territory REG *v.* LOCHA KALA .

I. L. R. 1 Bom 340

6. ——— **Procedure on warrant**—*Act XII of 1867* When a prisoner was arrested by the Sheriff under a writ of *ca. sa* , it was necessary to bring him before the Court without delay, under s 14 of Act XII of 1867. *In re* RAMCOOMAR DUTT . . 2 Ind. Jur. N S. 340

7. ——— **Operation of warrant**—*Detention of prisoner* The force of a warrant of arrest is at an end when the *prisoner is* brought before the Magistrate MUTHOORA NATH CHUCKERBUTTY *v* HEERA LALL DOSS 17 W. R. Cr. 55

A Magistrate therefore is not at liberty to retain

8. ——— *Warrant issued to unofficial person—Criminal Procedure Code (Act X of 1872), s. 161—Act XXV of 1861, s 77* Under s 77 of the Criminal Procedure Code, a Magistrate ought not to issue a warrant to an unofficial person, except when he is without the assistance of *competent* police officers, and unless the urgency is imminent The force of a warrant of arrest is at an end when the prisoner is brought before the *Magistrate*, and the prisoner cannot lawfully be committed to prison or remanded without sufficient *grounds* , and in the absence of evidence there can be no grounds. *In the matter of the petition of* SURENDRONATH ROY. QUEEN *v.* SURENDRONATH ROY

5 B L. R 274 : 13 W. R. Cr. 27

WARRANT OF ARREST—*contd.*

2. CRIMINAL CASES—*contd.*

9. ——— *Criminal Procedure Code (Act XXV of 1861), s 68—Act X of 1872, ss 142 and 150—Detention of accused.* A warrant issued under s 68, which was a warrant of arrest as described under s 76 (Form B), is *only* for the purpose of bringing an accused person before the Magistrate. It was not a warrant for commitment, and did not authorize the detention of a person longer than is necessary for his production before the Magistrate. To detain him further, there must be a fresh warrant under s. 222, charging the prisoner with some offence, on evidence taken on oath or affirmation, and in the presence of the accused. *In the matter of* MAHESH CHANDRA BANERJEE. QUEEN *v.* PURNA CHANDRA BANERJEE QUEEN *v.* KALI SIRKAR.

4 B L. R. Ap 1 : 13 W. R. Cr. 1

10. ——— *Detention of accused—Order sanctioning detention for indefinite period—Remand of accused. Held*, that the order of a Magistrate sanctioning the detention by the police of an accused person for an indefinite period is illegal At the expiration of twenty-four hours ... be brought ... mand for a ... s 224 of ... No remand without a hearing can last for a longer period. REG *v.* SURKYA VALAD DHAKU . 5 Bom. Cr. 31

11. ——— **Form of warrant**—*Omission to seal warrant—Criminal Procedure Code, 1869, s. 76—Requisites of good warrant* A warrant issued under s 76 of the Code of Criminal Procedure should be stated, should describe the person to be apprehended under it with reasonable particularity, so that there may be no difficulty in establishing his identity, and should be subscribed with the name and full official title of the Magistrate issuing it. Where a warrant was defective in all the above particulars, the prisoner apprehended under it was released by the High Court *In re* HASTINGS

9 Bom. 154

12 ——— *Form of endorsement on warrant* An endorsement on a warrant under s 79 of the Code of Criminal Procedure should be regularly made by name to a certain person in order to authorize him to make the *arrest* DURGA TEWARI *v.* RAHMAN BUKSH

4 C W. N. 85

13. ——— *Act XIII of 1856, s 58—Error in warrant not affecting conviction.* A warrant issued under s. 58 of Act XIII of 1856 should be addressed to some one or more inspectors, and not generally to "all constables and peace officers." Where a warrant in the latter form was executed under the direction of an informal ... the error in the form of the ... held ... 57, ... not

WARRANT OF ARREST—*contd.*

2. CRIMINAL CASES—*contd*

so executed REG *v* NANA MOROJI. *In re* MADHAV MORAR 8 Bom. Cr. 1

14. ——— *Warrant not containing specification of offence* A warrant which did not specify a punishable offence, and which had been issued upon a statement not sufficient to make out any offence, quashed *In re* BIDHUMUKHI DEBI 6 B L. R. Ap. 129
s c BIDHOOMOOKEE DABEE *v* SREENATH HALDAR 15 W. R. Cr. 4

15. ——— Informality in warrant—*Criminal Procedure Code, 1869, s 404—Power of High Court—Irregularity in process of arrest and attachment* The High Court was not empowered to interfere under the provisions of s 404 of the

16. ——— Mode of arrest in foreign territory or out of jurisdiction—*Warrant of arrest for contempt of Court* The High Court of

17. ——— *Warrant to arrest and imprison—Form of warrant—Service of warrant—Irregularity—Defect in warrant—Foreigners, arrest of—Act III of 1864, s 3—Criminal Procedure Code, s. 491.* On the 3rd July 1894, certain foreigners, resident in Bombay, having been arrested by the police and sent to jail under warrant issued under ss 3 and 4 of Act III of 1864, they applied to the High Court and obtained a rule *nisi* under s 491 of the Criminal Procedure Code (Act X of 1882) and under Stat 31 Car II, c. 2

the person whose name appeared in it forthwith to "remove himself from British India by sea, and it further contained the following words: "All officers to whom this order may be communicated are required to see that it is duly obeyed, and, in the event of its being infringed, to apprehend and detain the said Solomon Moses in safe custody in the jail of Bombay under s 4 of the said Act, until he shall be lawfully discharged therefrom." Each warrant was signed by the Secretary to Government and was directed to the Commissioner of Police and to the Superintendent of the Jail.

not doing it There ought to have been a separate order to each prisoner to remove himself from British India, which order should have been duly served upon him Then, in case of his refusal or neglect to comply with its terms, there ought to have been a further order by the Governor in Council authorizing his arrest and detention in jail. (ii) The persons named in them were not indicated with sufficient certainty and particularity. The warrants contained no description of the persons against whom they purported to be directed, and did not give their place of residence (iii) By reason of the direction contained in them that the persons named in them were to remove themselves from British India by sea to the places mentioned in the warrant The particular route to be specified under s 3 of Act III of 1864, is intended to be a route in British India, and not a route beyond the high seas The Government has no jurisdiction to direct a person's movements at sea beyond the limits of three miles from the shore. (iv) *Per* STARLING, *J*—The warrants were also defective, inasmuch as they bore no seal. ALTER CAUFMAN *v.* GOVERNMENT OF BOMBAY I. L R. 18 Bom. 636

18. ——— *Warrants issued under Act XIII of 1859—Execution outside jurisdiction—Criminal Procedure Code, 1882, s. 83—Magistrate, jurisdiction of—Breach of contract of service* S 83 of the Criminal Procedure Code

QUEEN-EMPRESS *v* MUTHAYYA I L. R. 20 Mad. 457

GAURI SHANKAR *v* MATA PRASAD I. L. R. 20 All. 124

19. ——— Endorsement—*Criminal Procedure Code (Act V of 1898), s 79—Warrant, validity of—Endorsement by initials, if sufficient—Arrest*

by reason merely of the endorsement being by initials. ABDUL SIKDAR *v.* MATHU SINGH (1901) 5 C. W. N. 447

WARRANT OF ARREST—*concld.*

2. CRIMINAL CASES—*concld.*

20. ——— Wrong description of accused—*Onus of proof—Resistance to lawful apprehension—Criminal force to deter public servant from discharge of duty—Code of Criminal Procedure (Act V of 1898), s. 75—Penal Code (Act XLV of 1860), ss 225B and 353* A warrant of arrest which contains a wrong description of the accused is not a valid warrant; and a conviction under ss 225B and 353 of the Penal Code of such accused person, who resisted or used criminal force upon his being arrested under such warrant, is illegal. In order to have a conviction for an illegal disobedience of a warrant, the *onus* is on the prosecution to show that the accused is the person against whom the warrant has issued It is not for the accused to show that he is not the person against whom the warrant was issued DEBI SINGH *v* QUEEN-EMPRESS (1901) . . **I. L. R. 28 Calc. 399**
s.c. 5 C. W. N. 413

WARRANT OF ATTACHMENT.

——— Warrant issued by Civil Court—*Resistance to execution of—Legality of warrant—Rioting—Legal common object—Penal Code (Act XLV of 1860), ss 141, 147 and 325—Civil Procedure Code (Act XIV of 1882), Sch IV, Form No 136* Where resistance was made to the execution of a warrant issued by a Civil Court for the attachment of the moveable property of the judgment-debtor, the warrant being general in its terms and not purporting on the face of it to authorize the seizure of the property of the judgment-debtor, nor giving [illegible]

did not constitute an offence under s. 147 of the Penal Code *Held*, further, that, where one of the parties resisting the execution had exceeded his rights and inflicted a severe injury on one of the opposite parties, his conviction of an offence under s 325 of the Penal Code was lawful *Held*, also, [illegible]

I L. R. 29 Calc. 244
s c 6 C. W. N. 164

WARRANT OF ATTORNEY.

1 ——— Extent and operation of warrant—*Civil Procedure Code, 1859, ss. 17 and 49—Acceptance of service and appearance—Act XX of 1862, s 7.* A warrant of attorney to the attorney of a defendant to receive a declaration or plaint, etc , in any action or suit to be brought for the recovery of certain moneys, and to confess the same action or suit, or else to suffer or consent to a judgment or decree in the said action or suit by default, or in any other way to pass or be pronounced against the defendant, empowered the attorney to accept service and appear for the defendant within the meaning of ss. 17 and 49 of Act VIII of 1859. *Held*, that s 7 of Act XX of 1862 referred only to warrants of attorney for the entering up of judgments in the High Court which were in existence before the 1st July 1862 KHALUT CHUNDER GHOSE *v* SARODASOONDERY DOSSEE
Bourke O. C. 244

2. ——— Limitation Act, 1859—*Entering up judgment.* The statute of limitation is no answer to a rule *nisi* to enter up judgment on a warrant of attorney SOOJAN MULL *v* HYDER JUNG BAHADOOR . **1 Ind. Jur O. S. 58**

WARRANT OF COMMITMENT.

——— Signature of Magistrate—*Criminal Procedure Code, 1872, s. 303.* The signature of a Magistrate to a warrant of commitment under s 303 of the Code of Criminal Procedure, 1872. should not be affixed by a stamp. SUBRAMANAY *v.* QUEEN . . . . **I. L. R. 6 Mad 396**

WARRANT OF EXECUTION.

1. ——— Executing a warrant for attachment of property—*Penal Code (Act XLV of 1860), ss. 353, 147, 114—Assaulting a public servant, in the discharge of his duty—Contents of the warrant—Form of the warrant—Non-production of evidence as to terms of warrant—Validity of warrant, and of conviction had upon it.* A warrant for the attachment of whatever property of a judgment debtor which the officer executing it might find on search, which did not describe the area of the search and was different from the form prescribed by the Code of Civil Procedure, Ex IV., No 136, was not a valid warrant. In the absence of any evidence as to the terms of the warrant either by the production of the original or in the form of secondary evidence a [illegible] ...ting or obstructing a public officer [illegible] ...xecution [illegible] ...property, [illegible] QUEEN EMPRESS . . . . [illegible] N. 605
TAFAZZUL AHMED CHOWDHRY *v* QUEEN EMPRESS
I. L R. 26 Calc. 630

2. ——— Extension of time for operation of warrant—*Act X of 1859, s 88—Jurisdiction.* Where a warrant of execution under Act X of 1859, s. 88, was extended for four days after a particular day, when the original warrant was not sixty days old, in order that more moveable property might be pointed out —*Held*, that, until the time so extended has elapsed, an order for sale of immoveable property was without jurisdiction. NABI BAX *v* DIDER BAX SHAH
3 B L. R. A. C. 10 : 11 W. R. 326

3. ——— Return of warrant—*Public servant—Resistance to public servant—Penal Code, s. 183—Civil Procedure Code, 1882, s. 251* A person

WARRANT OF EXECUTION—*concld.*

was convicted under s. 183 of the Penal Code of offering resistance to the attachment of property by a public servant The offence was committed on the 4th February 1883, but the warrant under which the public servant acted was returnable on or before the previous day *Held*, that the conviction was bad *In the matter of the petition of* ANAND LALL BERA ANAND LALL BERA *v* EMPRESS I. L. R. 10 Calc. 18 · 13 C.L R. 209

4. — Irregularity in warrant—*Civil Procedure Code, 1859, s 222—Civil Procedure Code, 1877, 1882, s 251* An execution-sale of the right, title and interest in land was set aside

... the first sale for a declaration of his ... The High ... to s 222 of Act VIII of 1859, the after sale had been rightly set aside, an appeal to the Judicial Committee was dismissed with costs RAM DAYAL *v* MAHTAB SINGH . . . . I L R 7 All. 506

5. — — — *Warrant, validity of—Attachment of property in execution of an invalid warrant—Resistance or obstruction to such*

be found On the 30th March the same warrant was re-issued by the Nazir and made returnable

debtor's men were thereupon prosecuted for and ... of offences under ss. 183 and 186 of the

cution ADHAR MIDDAY *v.* EMPRESS (1900) 5 C W. N. 391

WARRANTY.

See MARINE INSURANCE, I L. R. 36 Calc. 516
13 C. W. N. 425

WARRANTY, BREACH OF.

See CHARTER PARTY 8 B. L. R. 544

WARRANTY, BREACH OF—*concld.*

See CONTRACT—BREACH OF CONTRACT.
14 B. L. R. 180 : 23 W. R. 136
I. L R. 13 Calc 237
L. R. 13 I A. 60

See CONTRACT ACT, s. 78.
I. L R. 4 Calc. 801

See INSURANCE—LIFE INSURANCE
I. L. R. 25 Mad. 183

See RIGHT OF SUIT—MISREPRESENTATION.
I. L. R. 24 Bom. 166

See VENDOR AND PURCHASER—BREACH OF WARRANTY.

——— *Sample—Jute—Examination—Proof of inferiority of quality—Opportunity of examining the bulk—Mode of* ... sample There may be cases in which

but the Court would not condemn the bulk as of inferior quality on proof of the inferiority of a sample, if the plaintiff had the opportunity of examining the bulk but adduces no evidence to prove its quality In examining a certain number of

examination of the sample is, by a trade custom, to be the test of the quality of the bulk. BOISOGOMOFF *v* NAHAPIET JUTE COMPANY (1901)
I. L. R 29 Calc. 587

WARRANTY OF TITLE.

See SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF—GENERALLY.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS . I. L. R. 2 Bom. 258
I. L R 17 Mad. 228

See VENDOR AND PURCHASER—BREACH OF WARRANTY.

See VENDOR AND PURCHASER—CAVEAT EMPTOR.

WASHERMAN.

See MADRAS TOWNS IMPROVEMENT ACT, 1871, s. 1 . I. L R. 1 Mad. 174

See WILL—CONSTRUCTION
9 B. L. R. Ap. 4

WASTE.

See HINDU LAW.
I. L. R. 31 Calc 11; 214; 408

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW—SETTING ASIDE ALIENATIONS, AND WASTE.

WASTE—*concld.*

See Hindu Law—Reversioners—Powers of Reversioners to restrain waste, etc —Who may sue.
6 Moo. I. A. 433
I. L. R. 6 Calc. 198
I. L. R. 9 Calc. 817
Marsh. 622

See Landlord and Tenant—Forfeiture—Breach of Condition
I. L. R. 10 Mad. 351
I. L. R 22 Mad. 39

See Limitation Act, 1877, Sch II, Art. 125 (1859, s 1, cl. 10).
7 B. L. R. 131

———— **by mortgagee in possession.**

See Mortgage—Accounts
I. L. R. 15 Mad. 290

1. ———— **Limitation**—*Allegation of waste—Prayer for protection from contemplated waste. Held, per* Phear, J, that where a suit was one to prevent contemplated waste, it was not barred by lapse of time. Grose *v* Amirtamayi Dasi
4 B. L. R. O. C. 1 : 12 W R. O. C. 13

Biswanath Chunder *v* Khantamani Dasi
7 B. L. R 131

2 ———— **Liability for waste**—*Hindu widow liability for waste committed by her husband*

not liable in that suit to be made answerable out of her husband's assets for any devastation which he might have committed Staves *v* Dias
10 W. R. 444

WASTE LANDS

See Landlord and Tenant—Mirasidars
I. L. R. 1 Mad. 205

See Landlord and Tenant—Nature of Tenancy. I. L. R 28 Calc. 693

See Onus of Proof—Limitation and Adverse Possession.
I. L R. 9 Mad. 175

See Partition. I. L R. 35 Calc. 961

See Settlement—Evidence of Settlement . . I. L. R. 26 Calc. 792

See Settlement—Right to Settlement.
4 Mad. 429

See Settlement—Subjects of Settlement . . 1 Mad. 12 ; 407

See Valuation of Suit—Suits—Waste Lands, Suit for . 7 W. R. 349

———— **grant of—**

See Mortgage—Form of Mortgages.
I. L R. 21 Calc. 882
L. R. 21 I. A. 96

WASTE LANDS—*contd.*

———— **made cultivable.**

See Onus of Proof—Limitation and Adverse Possession
I L R. 24 Calc. 256

———— **right of village to pasturage on—**

See Jurisdiction of Civil Court—Rent and Revenue Suits, Bombay
I. L. R. 21 Bom. 684

1. ———— **Presumption from land lying waste**—*Evidence as to possession* The fact of land lying waste does not of itself show that no one is in possession. Mahomed Ali *v* Shurum Ali
8 W. R 422

2. ———— **Ownership of waste land**—*Presumption as to possession* Where land is waste and there is no visible sign of occupation the possession must be taken to go with the right, and the right is *primâ facie* in the zamindar of the estate to which the waste land belongs Woodwant Mahtoon *v* Hunooman Pershad Singh
22 W. R. 419

3 ———— *Ownership of waste land not belonging to any private person* Unsettled and unoccupied waste land, not being the property of any private owner, must belong to the State Prosuno Coomar Roy *v* Secretary of State for India . I. L. R. 26 Calc. 792
3 C. W. N. 695

4. ———— **Possession of waste land**—*Limitation—Presumption—Proof of title.* There may be such possession of waste lands as to protect a suit from being barred by limitation ; and where the question of possession is doubtful, a presumption will arise in favour of the party who proves title Mahomed Bassir *v.* Kureem Buksh
11 W. R. 268

5. ———— *Possession, presumption of, from evidence of title.* In disputes as to the right to possession of waste and jungle lands, it is only in cases where neither party has exercised any acts of ownership over the lands in question that the Court may resort to evidence of title, and presume that the *party proved* to have title has also possession. Ram Bandhu *v* Kusu Bhattu
5 C. L. R 481

6. ———— *Title to uncultivated or jungle lands—Adverse possession—Limitation—Acts of ownership* If adverse possession ... is proved, the title of a ... may be barred ... to the same ... nd ; the evi... of such a ts... ...ised over ... Singh ... W. R. 369

... Radha Pershad Singh .

See Watson *v* Government
B. L. R. Sup. Vol 182 : 3 W. R 73

WASTE LANDS—*contd.*

7. ——— **Right to use of waste land**—*Permissive use of, by tenants—Right of landlord to erect building on—Works of permanent character executed by licensee—Easements Act (V of 1882), ss. 60, 61.* In a suit by a zamindar to have his right declared to build a house on some waste land in the mouzah, the defendants, who were tenants in the mouzah, resisted the claim, on the ground that they had built wells and water-courses on the land, and had a right also to use it as a threshing-floor and for stacking cow dung: *Held,* that the defendants having acquired no right adverse to the plaintiff as owners, by prescription or otherwise, in the land, their right of use could only be as licensees of the plaintiff, and although he could not interfere with their right to the wells, which were works of a permanent character, and on which the defendants had incurred expenses, he could revoke the license as to the other use claimed of the land, and his claim to build the house should therefore be decreed. LAND MORTGAGE BANK OF INDIA *v.* MOTI . . . . **I. L. R. 8 All. 64**

8. ——— *Rights of zamindar in respect of waste lands—Provisions of wajib-ul-urz as to right of pasturage* *Held,* that a general provision contained in a wajib-ul-urz that

I. L. R. 19 All 172

9. ——— **Act XXIII of 1863, s 5**—*Suit to contest sale* Where the Collector failed to give notice of his intention to dispose of the estates, it was not incumbent on the plaintiff to contest the sale within the period prescribed by s. 5, Act XXIII of 1863 HIMMUT SINGH *v.* COLLECTOR OF BIJNOUR **2 Agra 258**

10. ——— *Act to reclaim waste lands—Suit to contest award by Board of Revenue—Extension of time—Institution of suit.* The

11. ——— **ss. 8, 18**—*Suit for possession—Statute, interpretation of.* Where an Act expressly takes away one particular remedy which would otherwise have been open for enforcing a right of property, or in any other particular interferes with proprietary rights, but does not, in express words or by necessary implication, declare

WASTE LANDS—*concld.*

waste lands of Government, and by understanding the claims and objections mentioned in the Act as claims in respect of Government land, and objection with the same limitation. KRISTO CHUNDER DASS *v.* STEEL . . **I. L. R. 12 Calc 279**

12. ——— **s 18**—*Suit for compensation for land wrongly sold as waste.* A purchaser

7 W. R. 474

WATER.

See WATER-CESS.

See WATER-COURSE.

See WATER-RIGHT.

See WATER-SUPPLY.

——— **dispute, relating to**—

See CRIMINAL PROCEDURE CODE, s 147 **I. L. R. 36 Calc. 923**

——— **liability for damage done by**—

See EMBANKMENTS **I. L R. 3 Calc. 776**

——— **rights concerning**—

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY—WATER.

See PRESCRIPTION—EASEMENTS—RIGHTS CONCERNING WATER

See RIGHT TO USE OF WATER.

——— **right to use of**—

See EASEMENT **I. L. R. 18 Mad. 320**

See MADRAS FOREST ACT, s. 10. **I. L. R. 20 Mad. 279**

WATER-CESS.

See CESS . **I. L R. 10 Mad. 282**

See CONTRACT ACT (IX OF 1872), s. 70 **I. L. R. 30 Mad. 277**

See MADRAS IRRIGATION CESS ACT, s. 1. **I. L. R. 12 Mad. 407**
I. L. R. 19 Mad. 24

WATER-COURSE.

See BOMBAY IRRIGATION ACT. **I. L. R. 28 Bom. 105**

See RIPARIAN RIGHTS. **11 C. W. N. 85**

See WATER RIGHTS.

WATER-COURSE—*concld*

——— **obstruction of**—

See EASEMENT I. L. R. 23 Bom. 506

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—DAMAGES.
I. L. R. 18 Mad. 28
I. L. R. 20 Bom. 283

——— **right to use of**—

See PRESCRIPTION—EASEMENTS—RIGHTS, CONCERNING WATER.

See RIGHT TO USE OF WATER.

WATER-RIGHT.

See RIPARIAN OWNERS
I. L. R. 28 Mad. 236
I L R. 29 Bom. 357

1

lands belonging to the plaintiff had been irrigated for a period of more than 60 years by a channel

his right to the water was based on a contract with Government or whether his right was a proprietary right appurtenant to his ownership of land In either view of the case, the plaintiff is entitled to

damage.

likely to c

stoppage o

act The

without sufficient justification is a violation of legal right, which gives a right of action to the party, whose rights are infringed The observation of Lord Macnaghten in *Quinn* v *Leathem, [1901] A. C. 495, 510,* referred to RAMA ODAYAN v. SUBRAMANIA AIYAR (1907) I. L. R 31 Mad. 171

2 ——— *Damage caused by retention of water—Liability of owner of land for damage caused by storage of water.* An owner of land is not liable for damage caused to other lands

course of enjoyment and the person so doing is liable for damage caused thereby. *Mohonlal* v. *Barjivkore, I L R. 28 Bom. 472,* doubted and distinguished RAMANUJA CHARIAR v KRISHNASAWMI MUNDALI (1907) . . I. L. R. 31 Mad. 169

3. ——— **Madras Act VII of 1865**—*Extent right tax free water to be implied in Grants by*

WATER-RIGHT—*contd.*

Government—Voluntary payment, what amounts to. A grant by the Government of the right to collect the revenue of certain lands will, in the absence of a contract regarding water rights, carry with it, by implication, only an undertaking on the part of Government not to refuse to the ryots holding nunja lands, the quantity of water necessary to enable them to irrigate those lands and so to pay the revenue which they had paid to the Government before the grant In 1826 the Government granted to A by a cowle the revenues of a village T., which was irrigated by a tank The cowle specified the lands granted and no portion of the bed of the tank was included in the grant The ryots of T. and those of other villages were drawing water from the tank by turns in shares proportioned to the extent of their acreage. The Government had on certain occasions levied the cost of repairing the tank in accordance with such shares. In a suit by the grantee of T. against Government to recover moneys collected from him as water-cess under Madras Act VII of 1865 :—*Held,* that the above arrangement regarding the distribution of water by turns and the action of Government in collecting the cost of repairs according to the shares in which the water was so drawn was merely evidence of a customary distribution of the water in the tank according to

quired for the irrigation of those lands, but the Government was not bound to supply them with more than was required for the irrigation of the land irrigated at the time of the grant. Where the quit-rent on an inam is fixed on the income derived from the cultivation of a certain extent of land in a certain manner, the inamdar is entitled to use, free of water-rate, such quantity of water as may be required for the cultivation of such extent in the mode in which such income was calculated whether the water-rate is leviable as a tax or otherwise The engagement between the Inam Commissioner and inamdar amounts to an engagement by which the Government undertake not to take more than a certain share of the income derived from the various sources taken into account in arriving at the amount of such income, as the consideration for relinquishing its reversionary right The Inam Commissioner having power to sell the reversionary right of Government has the power to fix the price according to the rules framed by Government and any engagement by him in that respect, not in contravention of such rules, will be binding on Government. Where the income on which the quit-rent is calculated includes the income derivable from a second crop on a certain extent of wet land and from a single

of distress, will not

WATER-RIGHT—*contd*

on non payment before the specified date, such warrant would be issued as a matter of course *Narayanasawmy Reddi v Osuru Reddi, I L. R 25 Mad 548*, referred to LUTCHMEE DOSS *v.* SECRETARY OF STATE FOR INDIA (1909)
I L. R 32 Mad. 456

4. ——— - **Right of Government to divert and distribute by irrigation works**—*No action against Government without proof of damage—Paramount right of Government higher than that of riparian owners—Easement Act (V of 1882), s 7 (2) (a) and s 7, ill (h)—Right of diversion for riparian and non-riparian purposes—Right of riparian owner to take out water put in by himself.* The Government has power by the customary law in India, to regulate in the public interests in connection with the collection, retention and distribution of waters of rivers and streams flowing in natural channels, and of waters introduced into such rivers by means of works constructed at the public expense and in the public interests, for purposes of irrigation, provided they do not thereby inflict sensible injury o... ...e supply t... to works o... in connection with a natural stream, a riparian owner ...

...porations on whom statutory powers have been conferred and statutory duties imposed *Ponnusawmi Tevar v Collector of Madura, 5 Mad. H C. R. 6*, referred to *Kristna Ayyan v. Venkatachella Mudali, 7 Mad. H. C. R. 60*, referred to *Madras Railway Company v. Zemindar* ...

Bom, 209, referred to. This paramount right of Government is recognised by the Legislature in section 7(2) (a) of the Easement Act. It is independent of the ownership of the bed of the stream and exists alike whether the interest affected that of ryotwari tenants or of the holders of proprietary estates. The right of riparian owners, recognised by section 7, ill. (h) of the Easement Act to the flow water without interruption, is only a right to enjoy without *such interruption as will* ...

WATER-RIGHT—*concld.*

Debi Pershad Singh v Joynath Singh, I. L. R. 24 Calc 865, referred to *Swindon Water-works Company v. Wilts and Berks Canal Navigation Company, L R 7 H. L. (E. & I.), 697*, referred to *McCartney v. Londonderry and Lough Swilly Railway* ...

... tenements provided the quantity so taken does ...

kai Ali, 11 C W. N. 85, referred to. An upper riparian proprietor is entitled to divert water, ...

I. L R 32 Mad. 141

WATER-SUPPLY.

See MUNICIPALITY
I. L. R. 32 Bom 460

——— **causing diminution of—**

See MISCHIEF **I. L. R. 1 Mad. 262**
I. L. R. 10 Bom. 183

WAY.

See PENAL CODE, s. 241
I. L. R 31 Calc. 691

See RIGHT OF WAY

——— **suit to recover right of—**

See CIVIL PROCEDURE CODE (XIV OF 1882), s 44 . **13 C W. N. 451**

WEDDING PRESENTS.

See MINOR . **I. L. R. 36 Calc 768**

WEIGHTS AND MEASURES.

——— **Fraudulent use of**—*Penal Code s. 266—Fraudulent intention* The mere possession of weights in excess of the authorized standard will not support a conviction under s. 266 of the Penal Code; a fraudulent intent must be charged and proved. REG. *v.* DAMO DHAR DALJI
1 Bom. 181

GOVERNMENT *v.* KANGALEE MUDUK
18 W. R. Cr. 7

WELL.

——— **right to use—**

See PRESCRIPTION—EASEMENTS—RIGHTS CONCERNING WATER.
I. L. R. 20 Mad. 389

WHARFAGE.

See BILL OF LADING.

I. L. R. 4 Calc. 736
I. L. R. 5 Calc. 477
I. L. R. 7 Bom. 386

See INTERPLEADER SUIT.

I. L. R. 18 Bom. 231

WHARFINGER.

See BILL OF LADING.

I. L. R. 4 Calc. 736

WHIPPING.

See SENTENCE—WHIPPING.

1. ——— **Juvenile offenders**—*Act VI of 1864, s 3* S. 3 of Act VI of 1864 (the Whipping Act) applies to juvenile as well as to adult offenders. REG. v KUSA VALAD LAKSHMAN.
7 Bom. Cr. 70

2 ——— *First conviction of adults—Substituted punishment* In the case of adults on a first conviction, or in the case of juvenile offenders whether for a first offence or otherwise, whipping can only be in lieu of, and not added to, any other punishment QUEEN v ABDOOL
W. R. 1864, Cr. 38

QUEEN v KANTIRAM. . 1 W. R. Cr. 24

QUEEN v TONAOKOCH . 2 W. R. Cr. 36

QUEEN v AMARUT . 4 W.R. Cr. 20

3. ——— — *Whipping Act (VI of 1864), s. 2—Whipping in lieu of fine or other punishment under the Penal Code (Act XLV of 1860)* When an accused person is sentenced to whipping under s. 2 of the Whipping Act (VI of 1864), the punishment of fine or imprisonment or both cannot be legally inflicted under the Penal Code in addition to the whipping. The word "punishment" in s 2 of the Act means the total of punishments awardable under the Penal Code. QUEEN-EMPRESS v. DAGADU
I. L. R. 16 Bom. 357

4. ——— *Act VI of 1864.* Under Act VI of 1864 (the Whipping Act), a juvenile offender means a person under the age of sixteen years REG v. MUHAMMAD ALI VALAD ABDUL ALI . . 8 Bom. Cr. 9

5. ——— *Act XI of 1864, ss 5, 10—Criminal Procedure Code, s. 392.* By the term "juvenile offender" in s 5, Act VI of 1864 (Whipping Act), is meant an offender under the age of sixteen years *Reg.* v. *Muhammad Ali, 8 Bom Cr. 9,* referred to. EMPRESS v DIN ALI
I. L. R. 6 All. 482

6 ——— **Sentence of whipping when allowable**—*Act VI of 1864, s 4—Offence after previous conviction.* The punishment of whipping under s. 4, Act VI of 1864, can only be inflicted on a second conviction of a person who, having served a sentence of imprisonment, again commits a crime QUEEN v. UDAI PATNAIK
4 B. L. R. A. Cr. 5 ; 12 W. R. Cr. 68

7. ——— *Offence after previous conviction—Previous conviction not shown.*

WHIPPING—*contd.*

On a reference by a Sessions Judge under s. 434 of the Criminal Procedure Code, *a sentence of whipping* in addition to one of rigorous imprisonment in the case of an offence specified in s. 2 of Act VI of 1864 was annulled, as the offence was not committed after previous conviction. REG v SURYA BIN KRISHNA MANDAVKAR . 3 Bom. Cr. 38

REG. v BABJI VALAD BAPU 4 Bom. Cr. 5

8. ——— *Act VI of 1864, s. 3—Second conviction for offence committed before first conviction.* S 3 of Act VI of 1864 (the Whipping Act) does not apply to cases in which the second conviction is for an offence committed previously to the first conviction. REG. v. KUSA VALAD LAKSHMAN . . . . . 7 Bom. Cr. 70

9. ——— *Previous conviction.* A sentence of whipping founded on a previous conviction of the prisoner is only warranted where the subsequent conviction is for the same specific offence as that in respect of which the previous conviction applied. ANONYMOUS
5 Mad. Ap. 1

ANONYMOUS . . . 5 Mad Ap. 39

10 ——— *Theft in dwelling-house—Act VI of 1864, s. 3—Previous conviction of theft.* A prisoner convicted of "theft in a dwelling-house" who has previously been convicted of "simple theft" is not thereby rendered liable to whipping under Act VI of 1864, s 3. REG v. CHANGIA VALAD SHUMIA. .7 Bom. Cr. 68

11. ——— *Act VI of 1864, s. 7—Conviction of dishonestly receiving stolen property—Previous conviction for theft* P was ... class of dis- ... confessed ... been con- ... whipped, ... to be rigorously imprisoned, and, on the expira- ... to furnish security ... ce of theft ... ishonestly ... t of whip- ...

All. 666

12. ——— *Conviction of separate offences—"House-breaking to commit theft," and "theft"—Whipping Act, VI of 1864, s. 2.* Where a prisoner convicted of "house-breaking in order to commit theft," and of "theft" both ... of one continuous criminal ... arge to ... 457 of ... arge to ... ipping ... though ... to the ... REG v ... Cr. 83

... 1864,

13. ——— *s. 7—Conviction of theft.* A sentence of whipping cannot with reference to Act VI of 1864, s. 7, be

WHIPPING—*contd.*

passed on a conviction for theft under s 379, Penal Code as the former section only provides for sentences of imprisonment for a term not exceeding three years. QUEEN v. ESAN CHUNDER DEY

21 W. R. Cr. 40

14. ——— *Attempt at house-breaking with view to theft* In the case of a conviction of attempting the commit house-breaking by night with intent to commit theft, a sentence of whipping was annulled as being illegal REG v YELLA VALAD PARSHIA . . 3 Bom. Cr. 37

15. ——— *Substitution of whipping for other punishment—Sentence—Theft* Whipping may be substituted for any other punishment for the offence of theft in a dwelling-house QUEEN v JUNGHOO KHAN . 3 W. R. Cr. 36

16. ——— *Act VI of 1864 s 7—Whipping in addition to other sentences* A sentence of whipping passed on a person who is already under sentence of death, or transportation or penal servitude, or imprisonment for more than five years, is illegal If the sentence of whipping precede, instead of follow, the other sentence, the passing of the latter sentence renders the infliction of the whipping illegal ANONYMOUS

I. L. R. 1 Mad. 56

17. ——— *Act VI of 1864—Power of Magistrate* When a Magistrate in exercise of the powers conferred by s 46 of the Criminal Procedure Code, 1861, passed a cumulative sentence against a person convicted at one and

Penal Code, sentence the prisoner to whipping under Act VI of 1864; nor could he exceed twice the extent of his ordinary jurisdiction as defined by s 22 of the Criminal Procedure Code, 1861. *Held,*

MACPHERSON and JACKSON, *JJ.*, that the Magistrate may in such case, in addition to awarding double the punishment which may be awarded for a single offence, award the punishment of whipping; but only one whipping can be awarded. NASSIR v. CHUNDER

B. L. R. Sup. Vol. 851; 9 W. R. Cr. 41

RUTTUN BEWA v. BUHUR. JHOWLA v. BUHUL

14 W. R. Cr. 7

18. ——— *Act VI of 1864 Penal Code, ss. 325, 342, 378—Criminal Procedure Code (Act XXV of 1861), s. 46—Cumulative sentences* Where the prisoner was convicted by the Magistrate of three distinct and separate offences, and was sentenced to a month's imprisonment for the offence of wrongful confinement under s. 342 six months' imprisonment for the offence of voluntarily causing grievous hurt under s. 325, and to whipping with twenty stripes for the offence of that under s. 378 of the Penal Code, it was held (KEMP and PHEAR, *JJ*, dissenting) that the sentence was legal Where a person is convicted at the same time of two or more offences punishable under the

... not followed. MANIRUDDIN v. GAUR CHANDRA SHAMADAR.

7 B. L. R. F B. 165 : 15 W. R. Cr. 89

19. ——— *Magistrate of*

20. ——— *Whipping in addition to imprisonment—Criminal Procedure Code, 1872, ss. 305, 310* In passing a sentence of whipping in addition to six months' imprisonment, a Deputy Magistrate ordered that the prisoner should be brought before him at the termination of the imprisonment, and that the sentence of

21. ——— Grounds for sentence of whipping—*Statement of grounds in judgment.* When a sentence of whipping is imposed, the grounds for that punishment should be stated on the judgment. BADIYA v. QUEEN

I. L. R. 5 Mad. 158

22. ——— *Previous convictions, proof of—Kyfeut* As a rule, before flogging is given as an additional punishment, there ought to be formal evidence upon the record of the previous convictions relied on. The conviction and identity of the prisoner ought to be proved in the regular way: a mere kyfeut is no evidence whatever QUEEN v. NUZEE NUSHYO

15 W. R. Cr. 52

23. ——— Mode of infliction of sentence of whipping—*Stay of sentence, grounds for—Act VI of 1864, ss 11 and 12* Meaning of the words "execution shall be stayed" in Act VI of 1864, s 11. Ss. 11 and 12 together mean that a man sentenced to whipping is not to be

WHIPPING—*concld.*

24. ——— **Time after sentence within which whipping may be given**—*Act VI of 1864, s 9.* A sentence of flogging cannot be carried out after the expiry of the limit of fifteen days from the date of sentence provided in s. 9 of Act VI of 1864. ANONYMOUS **6 Mad. Ap. 38**

This ruling was *held* to be applicable to s. 310 of the Code of Criminal Procedure, 1872 ANONYMOUS . . . . . . **7 Mad. Ap. 30**

25. ——— **Added to imprisonment**—*Whipping Act (VI of 1864, as amended by Act III of 1895), s 4—Dacoity—Penal Code—(Act XLV of 1860), s. 395—Previous conviction—Sentencee.* Under s. 4 of the Whipping Act, a sentence of whipping in addition to imprisonment is not legal in the case of a conviction of dacoity which was committed prior to the previous conviction of a similar offence. *Reg* v. *Surya, 3 Bom. H C. R Cr C 38* , and *Reg.* v *Kusa, 7 Bom H. C R, Cr C, 70,* followed. KING-EMPEROR *v.* BABYA BHIVA (F B, 1901)
I. L. R. 25 Bom. 712

pending an appeal by the accused. It is only when whipping is added to imprisonment in an appealable case that the whipping may, and ought to, be postponed under s 391 of the Criminal Procedure Code MEYYAN *v.* EMPEROR (1902)
I. L. R. 26 Mad. 465

WHIPPING ACT (VI OF 1864)

See WHIPPING.

WIDOW.

See CO-WIDOWS.

See DOMICILE **I. L. R. 19 Bom. 697**

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES
7 C. W. N. 678

See HINDU LAW.
I. L. R. 29 Bom. 346
9 C. W. N. 651
10 C. W. N. 802
I. L. R. 31 Calc. 11 ; 214 ; 656 ; 698
I L. R. 33 Calc. 842 ; 1079
I. L. R. 36 Calc. 75

See HINDU LAW—WIDOW.

See HINDU LAW—
ADOPTION BY WIDOW.
I. L. R. 33 Bom. 88
ADOPTION BY WIDOW, AFTER RE-MARRIAGE.
I. L. R. 33 Bom. 107

WIDOW—*contd.*

See HINDU LAW—
ALIENATION—ALIENATION BY WIDOW
MAINTENANCE—RIGHT TO MAINTENANCE
DAUGHTER
I. L. R. 28 Calc. 278
SON'S WIDOW
WIDOW —
PARTITION—RIGHT TO PARTITION —WIDOW

See HINDU WIDOW.

See HINDU WIDOW RE-MARRIAGE ACT (XV OF 1856), ss 2-5.
I. L R 33 Bom. 107

See KHOJA MAHOMEDANS.
I. L. R. 29 Bom. 85

See LIMITATION ACT, 1877, SCH II, ART. 120 . . **I. L. R. 19 All. 169**
I. L R. 21 Calc 157
L. R. 20 I. A. 155

See MAHOMEDAN LAW—
DOWER
WIDOW.

See MAHOMEDAN LAW—INHERITNACE.
5 W. R. 221
17 W. R. P. C. 108
11 Bom 104
I. L. R. 3 Calc. 702
I. L. R. 11 Calc 14
I. L. R. 12 All. 290
L. R. 17 I. A. 73
I. L. R. 19 All 169
I. L. R. 21 Bom 118
I. L. R 21 Mad 27
I L. R 25 Calc. 9
L. R. 24 I. A. 196

See MAHOMEDAN LAW—WILL
I L. R. 25 Calc. 5
L. R. 24 I. A. 192

See MORTGAGE. **I. L. R. 32 Bom. 36**

See PENSION. **I. L. R. 30 Mad. 266**

See WILL. **I. L. R. 31 Mad. 283**

——— estate of—

See HINDU LAW. **I. L. R. 28 Bom. 458**
12 C. W. N. 769
13 C. W. N. 147

See LAND REGISTRATION ACT (BENGAL ACT VII OF 1876), ss. 52, 55, 62
I. L. R. 35 Calc. 120

See SPECIFIC RELIEF ACT, s 42
8 C W. N. 465
L. R. 31 I. A. 67

——— lien of—

See MAHOMEDAN LAW—DOWER.

WIDOW—*concld*

1. ———— **Re-marriage**—*Hindu Law—Death of the son by the first husband—Succession to the son.* A re-married Hindu widow is entitled to succeed to the property left by her son by her first husband, the son having died after the re-marriage. *Akora Suth v Boreani, 2 B L R. 199,* followed. BASSAPA *v.* RAGAVA (1905)
I. L. R. 29 Bom. 91

2. ———— **Maintenance, suit for**—*Widow having her husband's property in her hands—The property sufficient to maintain her for some years—Suit for declaration and for arrears of maintenance—Premature suit* The plaintiff, a Hindu widow, filed a suit to recover arrears of maintenance and to obtain a declaration of her right to maintenance At the time the suit was brought, she was found to be in possession of a fund belonging to her husband's family estate, which sum was sufficient to provide for her maintenance for five years at the rate allowed by the lower Court *Held,* that no cause of action had accrued to the plaintiff. At the date when the suit was brought, the Court was not in a position to forecast events or to anticipate the position of affairs five years later DATTATRAYA WAMAN *v.* RUKHMABAI (1908)
I. L. R. 33 Bom. 50

WIFE.

See DEFAMATION—IMPUTATION ON A WIFE

See HINDU LAW—CONTRACT —HUSBAND AND WIFE

See HINDU LAW—HUSBAND AND WIFE
I. L R 13 All. 136

See HINDU LAW—PARTITION—RIGHT TO PARTITION—WIFE.

See HINDU LAW—PARTITION—SHARES ON PARTITION—WIFE

See HUSBAND AND WIFE

See LUNATIC I. L. R. 15 All. 29
I. L. R. 23 Bom. 653

See MARRIED WOMAN.

See RESTITUTION OF CONJUGAL RIGHTS.

See WILL—CONSTRUCTION.
4 B. L. R. O. C 53
I. L. R. 13 Mad. 379
I. L. R. 22 Bom. 774

See WITNESS—CIVIL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES.
I. L. R. 18 Bom. 468

———— **action for harbouring**—

See RESTITUTION OF CONJUGAL RIGHTS.
I. L. R. 1 Bom. 164

———— **costs of**—

See DIVORCE ACT (IV OF 1869), s. 7.
I. L. R 29 Calc. 619
I L. R. 30 Calc. 631

WIFE—*concld.*

———— **custody of**—

See HABEAS CORPUS. 13 B. L R. 160

See HINDU LAW—GUARDIAN—RIGHT OF GUARDIANSHIP 23 W. R. 178
I L. R. 12 Bom. 110

See MAHOMEDAN LAW—CUSTODY OF WIFE 5 B. L. R. 557
13 B L. R. 160

———— **evidence of**—

See EVIDENCE—CRIMINAL CASES—HUSBAND AND WIFE
B. L. R. Sup. Vol. Ap. 11
7 Bom. Cr. 50

———— **maintenance of**—

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIFE.

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

———— **relinquishment of**—

See BIGAMY. I. L. R. 19 Calc. 627

———— **removal of husband's property by**—

See THEFT 6 Bom. Cr. 9
8 Bom. Cr. 11
1 Mad. Ap. 23
I. L. R. 17 Mad. 401

———— **safety of**—

See RESTITUTION OF CONJUGAL RIGHTS
I. L. R 34 Calc. 971

WILD ANIMALS.

See FERÆ NATURÆ.

1. ———— **Animals feræ naturæ**—*Escape of wild animals kept in confinemnet—Return or pursuit of such animals.* Wild animals are no [illegible]

during such pursuit his property remains. CHOYTUN CHURN DOSS *v.* COLLECTOR OF SYLHET
21 W. R. 75

2 ———— *Capture of wild elephant—Right of owner of land where captured —Right of finder.* A wild elephant, having fallen into a pit made by *K N* in his own land, was secured, [illegible]

3. ———— *Escaped elephant —Ownership—Recapture.* A tame female elephant escaped from her master's field in company with a herd of wild elephants and resumed her natural wild habits The owner-plaintiff abandoned his search after two months, and then offered a reward

WILD ANIMALS—*concld.*

of R200 *to any person who should recapture her.* At the end of four months she was recaptured by the defendant, who was compelled to tame her in the same way as if she had been an ordinary wild elephant Plaintiff offered the reward of R200 to the defendant and demanded the elephant, but the demand was refused. *Held,* that under the circumstances the plaintiff had lost all claim to the animal. PEAL *v.* CAMPBELL

3 C L. R. 515

4. ———— *Elephant—Animals feræ naturæ—Right of property— Animus revertendi—Recapture.* When a wild animal has escaped from captivity, and pursuit of it has been *given up, the property which a man may formerly* have had in it, ceases, and it becomes open to any one else to reduce the animal to his possession, when it will, for the time, become his property. An animal, which has gone away, and may be supposed to be likely to return to a state of captivity, is not a wild animal Where an elephant, which had apparently been in a state of domestication for a long time, disappeared from the jungle, where it regularly grazed, but resumed its domestic habits on being recaptured —*Held,* that the elephant was not a 'wild animal,' and that the property in it never ceased with the original owner *Chytun Churn Doss* v. *The Collector of Sylhet, 21 W R 75,* and *Peel* v. *Campbell, 3 C. L R. 515,* referred to. MAHADAR MOHANTA *v* BALARAM GAGOI (1908) I. L. R. 35 Calc. 418

s c. 12 C W. N. 547

WILFUL DEFAULT.

See EXECUTOR I L. R 32 Bom. 364

See WILL I. L R. 32 Bom. 364

WILL.

See BABUANA GRANT

12 C. W. N. 958

See CIVIL PROCEDURE CODE, 182; SPECIFIC RELIEF ACT 8 C. W. N. 197, 465

See CONSTRUCTION OF DOCUMENT

I. L. R. 31 All. 5

WILL—*contd.*

See COSTS—COSTS OUT OF ESTATE.

I L. R. 25 Calc. 553

See DOMICILE. I. L. R. 4 Calc. 106

See HINDU LAW 9 C. W. N. 1033

I. L. R. 33 Calc. 947; 1306

I. L. R. 31 All. 339

See HINDU LAW—

ADOPTION—WHO MAY OR MAY NOT ADOPT I. L. R. 26 Bom. 491

See HINDU LAW, PROBATE, WILL.

I. L. R. 31 Calc. 111; 166; 186; 357; 895, 914

See HINDU LAW—WILL.

See HINDU LAW, WILL

I. L R 32 Calc. 861; 992; 1051

9 C. W N. 528

See LAND TENURE IN CALCUTTA.

1 Moo. I. A. 305; 399

See LIMITATION ACT, 1877, s. 19—ACKNOWLEDGMENT OF DEBTS

I. L. R. 15 Mad. 380

See LIMITATION ACT, 1877, s 19—ACKNOWLEDGMENT OF OTHER RIGHTS

I. L R. 1 Mad. 366

See LIMITATION ACT, 1877, s 187.

10 C. W. N. 864

See MAHOMEDAN LAW.

I. L R. 29 Bom. 267

I. L. R. 28 All. 342; 715

See MAHOMEDAN LAW—ENDOWMENT.

I. L. R. 17 Bom. 1

L. R. 19 I. A. 170

See MAHOMEDAN LAW—WILL.

See MALABAR LAW—WILL.

See MORTGAGE (BY EXECUTOR)

12 C. W. N. 993

L. R. 35 I. A. 139

See MORTGAGE—FORM OF MORTGAGES.

I. L. R. 1 All. 753

See MORTGAGOR AND MORTGAGEE.

I. L. R. 33 Bom. 1

See OCCUPANCY HOLDING.

12 C. W. N. 1086

See ONUS OF PROOF—WILL.

See PRACTICE—CIVIL CASES—PROBATE

I. L R. 30 Calc. 528

See PRESIDENCY TOWNS SMALL CAUSE COURTS ACT (XV OF 1882), s. 19 (f)

I. L. R. 32 Bom. 575

See PROBATE.

See PROBATE AND ADMINISTRATION ACT. s. 50

9 C. W. N. 180

See SUCCESSION ACT, 1865, s 84

I. L. R. 31 All. 259

WILL—*contd.*

See SUCCESSION ACT, s 116.
10 C. W. N. 695

See TRUST I. L. R. 18 Bom. 551

See WAJIB UL-ARZ
I. L. R. 28 All 488
10 C. W. N. 249; 730

See WAKF I L. R. 31 Bom. 250

——— **construction of—**

See DEED—CONSTRUCTION
I. L. R. 20 Calc. 373

See EXECUTOR I. L. R. 26 Bom 571

See HINDU LAW—GIFT—CONSTRUCTION OF GIFTS I. L R. 29 Calc. 260
I. L. R. 36 Calc. 75

See LIFE ESTATE 5 C. W N. 569

See LIMITATION ACT, 1877, s 10
I. L. R. 8 Calc. 788
I. L. R. 14 Bom. 476

See LIMITATION ACT, 1877, SCH II, ART. 182 . I. L. R. 15 Calc. 66
L. R. 14 I. A. 137

——— **construction of, suit for—**

See COSTS—COSTS OUT OF ESTATE
I. L. R. 15 Calc. 725
L. R. 15 I. A. 127
I L R 21 Calc. 683

See LIMITATION ACT, 1877, SCH. II, ART 120 . . I. L R. 20 Calc. 906

——— **decision as to construction of—**

See RES JUDICATA—ESTOPPEL BY JUDGMENT . I. L. R. 20 Calc. 888

——— **decision as to genuineness of—**

See RES JUDICATA—ESTOPPEL BY JUDGMENT . . I. L. R 16 Mad. 380
I. L. R 20 Calc. 906
I. L. R. 21 Bom. 563

——— **execution of—**

See PARDANASHIN WOMEN.
5 C. W. N. 505

——— **execution of, question of—**

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION.
I. L. R. 20 Bom. 238
I. L. R. 21 Bom. 335

——— **exemplification of—**

See SUCCESSION ACT, s 237.
8 B. L. R. Ap. 76

——— **invalidity of—**

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.
5 C. W. N. 383

WILL—*contd.*

——— **nuncupative—**

See HINDU LAW—WILL—NUNCUPATIVE WILLS.

——— **pencil alterations in—**

See PROBATE—OF WHAT DOCUMENTS GRANTED.
I. L. R. 29 Calc. 311

——— **power to make—**

See SALSETTE, LAW APPLICABLE IN.
I. L. R. 19 Bom. 680

——— **question of validity of—**

See CERTIFICATE OF ADMINISTRATION—PROCEDURE 11 W. R. 341
17 W. R 277
I. L. R. 16 Bom. 712

——— **revocation of—**

See HINDU LAW—WILL—NUNCUPATIVE WILLS I. L. R. 3 Calc. 626

See SUCCESSION ACT, s 56.
I. L R. 1 Calc. 158

See WILL—REVOCATION.

——— **statement in—**

See EVIDENCE—CIVIL CASES—RECITAL IN DOCUMENTS
I L. R. 1 Bom. 561

See EVIDENCE ACT, 1872, s 32, CL. (6).
I L. R. 20 Bom. 562

——— **suit by person claiming under—**

See CIVIL PROCEDURE CODE, 1882, s 50
I. L. R. 6 Bom. 73

1. ATTESTATION.

1 ——— **Directions as to attestation** —*Succession Act, s. 50—Probate* An unprivileged will will not be recognized by the Court and admitted to probate unless executed in accordance [illegible]

[illegible]

v. GABRIEL [illegible]

2. ——— **Presence of witnesses**—*Succession Act (X of 1865), s. 50* [illegible]

[illegible] nesses who must sign the will in the presence of the testator *In the goods of Roymoney Dossee, I. L. R 1 Calc. 150*, and *Hurro Sundari Dabia v. Chunder Kant Bhattacharjee, I. L. R. 6 Calc. 17*, cited. *In the matter of the petition of* HEMLOTA DABEE . . . . I. L. R. 9 Calc. 226

WILL—*contd.*

1. ATTESTATION—*contd.*

s.c. GRISH CHUNDER BANERJEE *v.* HEMLOTA DEBI . . . . . 11 C. L. R. 359

3. ———— Attesting witness—*Succession Act, s. 50—Signature made for testator by party afterwards attesting.* The person making the signature of a will for the testator is not competent as an

11 Bom. 8[illegible]

4. ———— Mode of attestation—*Execution of will—Wills Act, XXV of 1838, s 7.* S. 7 of the Wills Act, XXV of 1838, enacts "that no will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned: (that is to say) it shall be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction, and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and such witnesses shall subscribe the will in the presence of the testator, but no *form of attestation shall be necessary*" A testator signed his will in the presence of a witness who subscribed it in his presence, and some time afterwards, upon the arrival of another witness, the testator, in the joint presence of the former witness, and the other subscribing witness, acknowledged his subscription at the foot of the will. The second witness then subscribed the will, and the first witness in his and the testator's presence acknowledged his subscription, but did not re-subscribe. *Held,* by the Judicial Committee (affirming the decision of the Supreme Court at Calcutta), that the requirements of the Act had not been sufficiently complied with; it being necessary that both witnesses should be jointly present at the same act of the testator and jointly subscribe it in his presence. CASEMENT *v.* FULTON

3 Moo. I. A. 395

Court is satisfied that the testator's signature was on the will when the witnesses attested it. MANICKBAI *v.* HORMASJI BOMANJI

I. L. R. 1 Bom. 547

6. ———— Sufficiency of attestation—*Succession Act (X of 1865), s. 50—Probate—Hindu Wills Act (XXI of 1870), s. 2.* By the Succession Act, s 50, no particular form of attestation is necessary: therefore, where, to a document purporting to be her last will and testament, the name of the testatrix was written by *A*, and the testatrix then in the presence affixed her mark, and *A* in her presence wrote beneath it "by the pen of *A*," and the testatrix was then identified to the Registrar, who was present, by *B*, who had seen her affix her mark to the document, and who in her presence put his signature as having identified her. —*Held,* a sufficient attestation; and probate was granted. *In the goods of* ROYMONEY DOSSEE

I. L. R. 1 Calc. 150

7. ———— *Succession Act (X of 1865), s. 50, cl. 3—Initials of witness. Semble:* If the attesting witnesses affix their initials at the time of witnessing the execution of a will, it is a sufficient compliance with the terms of s. 50 of the Succession Act. AMMAYEE *v* YALUMALAI

I. L. R. 15 Mad. 261

8 ———— *Will not attested by two witnesses—Succession Act (X of 1865), s 50, Hindu Wills Act ((XXI of 1870), s 2, cls. (a) and (b).* The Hindu Wills Act (XXI of 1870) applies s 50 of the Indian Succession Act (X of 1865) to those wills only that are mentioned in s. 2, cls (*a*) and (*b*), of the former Act. A will which was not such a will as there mentioned was *held* to be valid, though not attested by two witnesses. *In re* BAPUJI *v* JAGANNATH.

I. L. R. 20 Bom. 674

9. ———— *Pardanashin lady —"In the presence of"—Succession Act (X of 1865), s. 50.* After execution of her will by a

of which the testatrix sat, all that the Registrar actually saw of her being her hand. The testatrix admitted her execution of the will, and her admission was endorsed on the will and witnessed by the Registrar, and the person who identified her, at the same time. *Held, that the witness* was "in the presence of" the testatrix within the meaning of s. 50 of the Succession Act (X of 1865). HORENDRANARAIN ACHARJI CHOWDHRY *v* CHANDRAKANTA LAHIRI I. L. R. 16 Calc. 19

10. ———— *Succession Act* ... *attestation of will* ... *essary.* ... probate ... hat he ... d. and

WILL—*contd*

1. ATTESTATION—*contd.*

witnesses who were dead were proved There was no direct evidence that the testator had acknowledged his signature to these witnesses, or that the will was otherwise properly attested by a second witness *Held*, that strict affirmative proof of due attestation is not absolutely necessary in cases of this class: and if the circumstances are such as to warrant the Court in reasonably concluding from those circumstances that the will has been duly attested, probate may be granted That upon the whole evidence it could reasonably be concluded that the will had been duly attested in accordance with law *Right* v *Sanderson, L. R. 9 P. D. 149*, referred to SIBO SUDARI DEBI *v.* HEMANGINI DEBI . . 4 C. W. N. 204

11. ———— *Grant of probate—Signature—1 Vict, c 26 (Wills Act), s 9—Succession Act (X of 1865) s 50* To the will of *A*, a British-born subject and a member of the Bengal Civil Service, who died in India possessed of per- ... testa- ... words ... is *A's* ... robate, ... of the will *Semble* A signature by mark would be a sufficient signature to a will by a witness under the Succession Act *In the goods of* WYNNE

13 B L. R. 392

12. ———— *Attesting witness, when he should sign—Succession Act (X of 1865), s 50* The signatures of two or more attesting witnesses to a will required by s 50 of the Succession Act (X of 1865) must be attached to the will after, and not before, the testator's signing or affixing his mark to it *Quære* Whether a will can be properly attested by a marksman. BISSONATH DINDA *v* DOYARAM JANA

I. L R. 5 Calc. 738 . 5 C. L. R. 565

13. ———— *Succession Act (X of 1865), s. 50—Hindu Wills Act (XXI of 1870), s. 2.* S 50 of the Succession Act (X of 1865) clearly ...

testatrix admits a signature on a will to be hers ...

Roymoney Dossee, I. L. R. 1 Calc 150, followed. *In the matter of the petition of* HURRO SUNDARI DABIA HURRO SUNDARI DABIA *v.* CHUNDER KANT BHUTTACHARJEE

I. L. R. 6 Calc. 17 : 6 C. L. R. 303

14. ———— *Succession Act (X of 1865), s 50—Witness—Signature—Mark.* The direction contained in s 50, cl. 3, of the Succession Act (X of 1865) as to the signature of witnesses attesting an unprivileged will is not satisfied by ...

15. ———— *Will attested by marksmen—Witness—Signature—Mark—Succession Act (X of 1865), s. 50* The direction contained in s 50, cl 3, of the Succession Act, as to each of the witnesses signing the will, is not satisfied by the witnesses affixing their marks, and it is ...

the admission of the testator, such attestation is ...

... SIRCAR *v* NAGENDRA NATH MITTER

I. L. R. 11 Calc. 429

16. ———— *Acknowledgment of signature by testator—Attestation—Witness—Succession Act (X of 1865), s 50.* The signature ...

... *Nagendra Nath Mitter Mozumdar, I. L. R. 11 Calc. 429*, referred to and followed. AMARENDRA NATH CHATTERJEE *v* KASHI NATH CHATTERJE

I. L. R. 27 Calc. 169

17. ———— *Unattested alterations in a Hindu Will—Letters of administration—Succession Act (X of 1865), s. 58.* In a will properly attested, some subsequent alterations were made by the testator in the presence of the Registrar, but these alterations were unattested. *Held* that under s 58 of the ...

WILL—*contd.*

1. ATTESTATION—*concld.*

presence of the testator, and so letters of administration should issue, not with the copy of the will, but with the copy of the will without the alterations. RAGHUBAR DYAL *v* RAM RAKHAN LALL 1 C. W. N. 428

18 ——— **Repudiation of signature by attesting witness.** The mere fact of an attesting witness to a will repudiating his signature does not invalidate a will, it if can be proved by the evidence of other witnesses of a reliable character ... es re- ... there ... essed ... with s 50 of the Succession Act NUBO KISHORE DOSS *v* JOY DOORGA DOSSEE 22 W. R. 189

19. ——— **Forged attestations, effect of**—*Effect on title given under genuine portion of* ... will of ... to *R.* ... were ... e heir ... *R, R* relied on the will which was produced by other defendants in the suit. *Held*, that *R's* title could not be affected by the forgery. PARAMMA *v.* RAMACHANDRA . . . I. L. R. 7 Mad 302

2 CONSTRUCTION.

1. ——— **Construction of will**—*Powers to construe will without administration suit—Chancery practice.* A testator by his will devised certain house property, first for the celebration of pujahs and the worship of an idol, and then that his children with their families should be allowed to live there. One of the sons used the premises for the purpose of his business as akauraj, which was objected to by the other sons as being contrary to the terms of the will One of the defendants also contended that, before the Court could construe the terms of the will to ascertain the meaning of the testator ... administration ... character of ... Court could construe the will without an administration suit. That questions between trustees and beneficiaries and between trustees and strangers requiring the construction of provisions in a trust-deed have been determined without the Court being asked to undertake the entire administration of the trust. *In re Weall, L. R 42 Ch D. 674*, approved. BHOGOBUTTY PROSONNO SEN *v.* GOOROO PROSONNO SEN I. L. R. 25 Calc. 112

WILL—*contd.*

2. CONSTRUCTION—*contd.*

precise, it cannot be strained for the purpose of giving effect to what possibly might have been ... to show that *G* had used the word "purchase" ... testator's desire had he foreseen the death of his younger brother in his own lifetime, but was not expressed or implied in the terms of the testament, and that the house did not pass under the will to the testator's widow. GEORGE *v* GEORGE 6 N. W. 219

3. ——— **Appointment of executors by implication**—Plaintiffs sued in 1894 to recover property belonging to the estate of a testator, claiming to be his executors under a will. *The* property was alleged to have been entrusted by the testator in 1893 to the defendant The will contained no express appointment of executors, ... should take care ... was ... upon ... ance ... ntiffs were not appointed executors by implication. SESHAMMA *v.* CHENNAPPA I. L R. 20 Mad. 467

4. ——— **Effect of words excluding** ... *d*, a Parsi in- ... e 13th Febru- ... the following ... espondent) by ... ised him; his ... art from him; ... orced by him, ... ze as his own; ... he first-named ... d whose son *E* ... pressly directed ... widow Dhanbai that neither his daughter ... should take any share of his property, the whole of which he bequeathed to his brother *R*, who, however, predeceased him. *Held*, that the use of mere ... by any effective ... exclude his ... succeeding ... KAIKHUSRU ... Bom. 637 *v.* JERBAI

5. ——— **Commission of manager of estate how calculated**—*Intention of testator* Other questions disposed of in the Court of first instance having remained undecided by the High Court, which dealt with the question of jurisdiction alone, were considered with reference to whether

WILL—*contd*

2 CONSTRUCTION—*contd.*

there had or had not been shown any good reason for reversing or varying the order of the original Court. Among these, the question whether the

L. R. 7 I. A. 197

6. ——— **Armenian will**—*Devise—Absolute estate—Estate for life* An Armenian, by

A." *Held*, that the will was to be construed according to equity and good conscience, and not according to English law The rule applicable was that, unless a contrary intention appeared, the estate given was an absolute one *A* took an absolute estate under the devise. BROUGHTON *v* POGOSE

12 B. L. R 74 : 19 W. R. 181

7. **Superstitious uses, English law against**—*Application of English law to India. Semble* The English rule of law which prohibits the bequest of money for superstitious uses has no application in India JUDAH *v* JUDAH

5 B. L. R 433

8 ——— **Bequest for performance of masses**—*Validity of bequest.* A bequest in a will of a sum of money for the performance of masses in Calcutta is valid ANDREWS *v* JOAKIM

2 B. L. R. O. C. 148

9. ——— *Validity of bequest —Gift to superstitious uses* A bequest by a Roman Catholic of Portuguese descent, born and domiciled in Calcutta, for the performance of masses, is not a gift to superstitious use. DAS MERCES *v* CONES . . . 2 Hyde 65

10. ——— Bequest for masses held void as infringing the rule against perpetuities COLGAN *v* ADMINISTRATOR GENERAL OF MADRAS . . . I. L. R. 15 Mad. 424

11. ——— **Legacy to attesting witness**

I. L. R. 4 Mad. 244

12. ——— **Legacy to minor**—*Absolute gift—Discretion of executor.* Where there is an absolute bequest and power to executor to delay

that, once

. 281

WILL—*contd.*

2. CONSTRUCTION—*contd*

13. ——— **Legacy whether to be paid out of particular fund or out of general assets**—*Demonstrative legacy* Payment of legacies, or gifts of stipends, having been refused by the representatives of the testatrix, on the ground that she had no power to dispose of the fund out of which the will must be construed to direct their payment —*Held*, on a consideration of the whole will, that the words of the gift were wide enough to charge them upon the whole of her moveable estate; also that, if the words of the will were to be taken in a more restricted sense, the gift of the stipends must be regarded as a demonstrative legacy, and in that view they would be payable out of the general estate, on failure of the particular fund pointed out MIRZA *v* UMDA KHANAM MIRZA *v* GUNNA KHANAM

I. L. R. 19 Calc. 444
L. R. 19 I. A. 83

14. ——— **Devise of one kani out of**

one kani selected by him out of the land in question *Held*, that plaintiff had the right to make his selection and was entitled to a decree. NARAYANASAMI GRAMANI *v* PERIATHAMBI GRAMANI

I. L. R. 18 Mad. 460

15. ——— **Domestic servant**—*Legacy,*

in my service ten years and upwards at the time of my death R100 for every rupee of monthly salary drawn by them from me respectively." The plaintiff had been in the service of the testator

to attend at the testator's residence from early in

8 B. L R. 244

16. ——— *Washerman. Held*, on the evidence, that the plaintiff had failed to prove he was a domestic servant of the testator, so as to entitle him to take a legacy under this clause. BHIM DAS *v.* UPENDRA MOHAN TAGORE

9 B. L. R. Ap 4

17. ——— **Husband and wife**—*Trustee —Sole use and benefit.* A testator made the following bequest in his will: "I give devise, and

WILL—*contd.*

2. CONSTRUCTION—*contd.*

bequeath to my dearly beloved wife all the stock-in-trade, furniture, mourning coaches, horses belonging thereto, stones, marbles, tools, implements, and materials connected with my trade and business, and all my right and interest therein; and after payment of my debts and other expense I give, devise, and bequeath the rest and residue of my outstandings and collections for her sole use and benefit, with liberty to continue and carry on such trade and business." The testator's widow married a second husband, and they carried on the business of the deceased together. They afterwards separated, and she brought a suit against her husband for a declaration of her right under the will, and for an account from her husband of the profits, etc., of the business during their marriage. *Held* (reversing the decision of the Court below), that, on the true construction of the will, the stock-in-trade, etc, was not bequeathed to the wife for her sole and separate use independent of any future husbands; her husband did not become a trustee for her in respect of such stock-in-trade or the profits of the business and he was not bound to render an account ORD *v.* ORD

4 B. L. R. O. C. 53

18. ———— Dedication to religious purposes—*Rule against perpetuities.* If there is a valid dedication of premises for religious purposes this is not invalid merely because it transgresses against the rule forbidding the creation of perpetuities. BHUGGOBUTTY PROSONNO SEN *v* GOOROO PROSONNO SEN . . I. L. R. 25 Calc. 112

19. ———— Charitable bequest—*Bequest for spiritual benefit—Uncertainty—Superstitious uses* NEJ, a Hebrew merchant domiciled in Calcutta, and possessed of both real and personal property, died, leaving a will, by which, after appointing his mother, *K E J*, and his brother *JEJ* executrix and executor thereof, and making various bequests and provisions, he made the following bequest of the residue of his property: "And what may remain after payment of the abovementioned sums, as well as the debts, shall remain

benefit according to their judgment. *Held*, assuming that the High Court should act in conformity with the English Court of Chancery in carrying out charitable bequests, that, as far as the bequest

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5 B. L. R. 433

20. ———— 43 Eliz., c. 4—*Mortmain, Statutes of—Hospital—Clause prohibiting alienation* A testator left his personal property to trustees in trust to pay thereout certain annuities to his son and daughter, and, after bequeathing some pecuniary legacies, devised certain immoveable property to the trustees in perpetuity in trust for the support of hospitals in the North-West

never be sold. In a suit for the construction, and for declaration of the trusts, of the will, it appeared that the income of the personalty was not more than sufficient, after payment of the legacies, to pay the annuities to the testator's children, and that the immoveable property was greatly in need

valid devise, and one to which the Court give effect, as being a charitable trust within the

Held, also, that, if the prohibition against a valid one, the Court could not order a sale merely because it would be advantageous to the charity

tion, the trustees had power to sell, or alienate, the property for the purpose of maintaining the hospitals BROUGHTON *v.* MERCER

14 B. L. R. 442

21. ———— Void bequests—*Uncertainty—"Surplus"—General residuary bequest.* A testator by his will directed as follows:

perusal of Mohabharat and of Kartick. Should prayer of God during the month of Kartick. Should there be any surplus after the above expenditure, then I do hereby direct my trustee to spend the said surplus in the contribution towards the marriage of the daughters of the poor in my class and of the poor Brahmins, and towards the education of the sons of the poor amongst my class, and of the poor Brahmins, and other respectable castes, as my

WILL—*contd.*

2. CONSTRUCTION—*contd.*

trustee will think fit to comply " *Held*, that the gifts were valid testamentary bequests, and that the words "should there be any surplus after the above expenditure" created a general residuary bequest. *Held*, on appeal (affirming the decision of the Court below), that a general residuary bequest was created by the concluding words of the clause, which would absorb any of the preceding bequests, if they should happen to be invalid. *Quære* Whether the bequests to pundits holding tolls, and for the reading of the Mohabharat and Pooran and for prayer to God, were valid DWARKANATH BYSACK v BURRODA PERSAUD BYSACK
I. L. R 4 Calc. 443

22. ———————— *Cy près, doctrine of*. A testatrix bequeathed the interest of a Government promissory note to "The Calcutta Armenian Orphans College Funds for the Relief and Enjoyment of the poor families, Widows, Orphans, and Schools of the Armenian Nation," to be received half-yearly by the wardens of the funds for the time being Although there was a charity in Madras, called "The Armenian Orphans' College," there was none in Calcutta or elsewhere answering the description of the Calcutta Armenian Orphans' College, but there were two, and only two, charitable, institutions in Calcutta which provided for the relief and enjoyment of the poor families, widows, orphans, and schools of the Armenian nation Of these, one, the Church of St. Nazareth, distributed money amongst, and gave relief to, the poor families, widows, and orphans of the Armenian community; and the other, the Armenian Philanthropic Academy, educated gratuitously the poor and orphans of the same community The note was invested by order of

of the fund *Held*, that the *cy pres* doctrine ap-

1 Mad. 420

23. ———— Failure of object—*Cy près*

WILL—*contd.*

2 CONSTRUCTION—*contd*

of the residuary clause is so limited in its scope, or requires so small an amount to satisfy it, that it would be absurd to allow a large fund bequeathed to a particular charity to fall into it. On the failure of a specific charitable bequest, jurisdiction arises to act on the *cy près* doctrine, whether the residue be given in charity or not unless upon the construction of the will a direction can be implied that the bequest if it fails, should go to the residue In applying the *cy près* doctrine, regard may be had to the other objects of the testator's bounty, but primary consideration is to be given to the gift which has failed, and to a search for objects akin

by the lower Court be plainly wrong, a Court of Appeal should not interfere with it. MAYOR OF LYONS v ADVOCATE GENERAL OF BENGAL.
I L. R. 1 Calc. 303 : 26 W. R. 1
L. R. 3 I. A. 32.

24. ———— Charitable gift—*Cy près doctrine—Lapse—Construction of will* A testator directed his executor to set apart a sum of R7,000 to provide a fund for or towards the education of two or more boys at St. Paul's School, Calcutta, such boys to be natives of Calcutta, of poor and indigent parents, or fatherless children of Armenian or other Christian religion. The testator died in 1867 In 1864 the St Paul's School, Calcutta, was removed to Darjeeling. In the St. Paul's School, Calcutta, the fees for day scholars and day boarders were R8 and R10 respectively. In the St Paul's School, Darjeeling, there were no day scholars nor any day boarders, and the cost of a regular boarder would be about R400 per annum *Held*, that the gift did not lapse, being a general charitable bequest, and that under the circumstances it must be executed *cy près* MALCHUS v BROUGHTON . . I. L R. 11 Calc. 591

25. ———————— *Gift—Cy près, doctrine of—Lapse of legacy—Costs.* Under the will of *A*, who appointed the Administrator-General of Bengal his executor, *B* had a life interest in the residue of the testator's estate *B* brought a suit against the Administrator-General to have it declared that a pecuniary legacy, given under the will, had lapsed and fallen into the residue Prior to the hearing it was agreed between *B* and the Administrator-General that the costs of the suit

I. L. R. 13 Calc. 193

WILL—*contd.*

2. CONSTRUCTION—*contd.*

26. ———————— *Appointment of trustee—Failure to carry out wishes of testator* Where a testator had made a bequest for charitable purposes and had made no express provision for the management of the charitable trust so created, except by directing that, in the event of his heirs failing to carry out his wishes in respect of the trust fund, the Civil Court should take the fund and the management of the trust summarily into its own hands —*Held*, that, in the absence of misconduct, the widow, and not the Collector, was the proper person to be appointed trustee. HORI DASI DABI *v* SECRETARY OF STATE FOR INDIA

I. L. R. 5 Calc 228 : 4 C. L. R. 77

27. ———————— *Bequest to charity—Public charity—Trust affecting land—Perpetuity—Parsi religious ceremonies · baj rozgar, nirangdin, yezashni, ghambar, and dosla—Civil Procedure Code (Act XIV of 1882), s 527.* A Parsi by his will directed that the income arising from a one-third share of a bungalow in Bombay, to which he was entitled, should be devoted in perpetuity to "the performance of the *baj rozgar* ceremonies and the consecration of the *nirangdin* and the recitation of the *yezashni* and the annual *ghambar* and *dosla* ceremonies" He further directed that the said share should not be sold or mortgaged Evidence was given, which showed that the above-mentioned religious ceremonies were performed among Parsis rather with a view to the private advantage of individuals than for the public benefit. *Held*, that the trusts of the will were void, and that the direction that the property should not be sold was invalid LIMJI NOWROJI BANAJI *v* BAPUJI RUTTONJI LIMBUWALLA

I. L R. 11 Bom. 441

28. ———————— *Bequest to a person with a direction that it should be used in good works (sárá kám)—Direction void as being vague and indefinite—Succession Act (X of 1865), s. 125* A testator left a legacy to his wife in the following terms. "R2,000 to be credited in our shop in the name of my wife Bai Bapi Interest at 6 per cent. to be paid to her every year If in her lifetime she demands the money to use in a good work

bequest in favour of good works (sárá kám), but a bequest to the testator's wife, with a direction to use it in good works (sárá kám), and as that direction was void for uncertainty, she was entitled to the money as if the will had contained no such direction. BAI BAPI *v.* JAMNADAS HATHISANG

I. L. R. 22 Bom. 774

29. ———— **Children**—*Domicile—Rules for interpretation—Accretions to property from rents.* Where a testator has an ascertained domicile, the construction of his will must depend on the law of that domicile; but if no particular law is applicable, the will is to be interpreted by principles of natural justice. In such cases, in applying the rules of Hindu, Mahomedan, or English law to the wills of Hindus, Mahomedans, or East Indian Christians respectively, their particular habits and modes of life may be looked to as a guide to the interpretation From the context of the will and surrounding circumstances, "children" may be interpreted as illegitimate children. Where by the will the income of estates was left to devisees for life, with a gift over of the corpus on their death, and a portion of the income, instead of being divided among the tenants for life, was applied to the purchase of other estates —*Held*, that those estates did not pass to the remainder men, but formed the absolute property of the tenants-for-life, and passed to their devisees BARLOW *v.* ORDE.

5 B L. R. 1, 13 W. R. P. C 41
13 Moo I. A. 277

30. ———— **Contingent gift**—*Puttro poutradi, meaning of—Absolute estate* A Hindu, *B L M*, died in 1874, leaving a widow, *K K D*, a daughter's daughter, *H D D*, and a brother, *R L M*, with whom he was on bad terms By his will, which was made on the 9th of August 1870,

estate according to the shastras, and enjoy profits thereof for her life, and that on her death, in the event of a daughter or daughters having been born to him, then she or they, and on the death of her or them, then her or their son or sons (the testator's daughter's sons) should in like manner take and become the owner or owners of the estate according to the shastras, and that in the event of there being no daughter or daughter's son of the testator living at the time of the death of his widow, then his granddaughter (daughter's daughter), *H D D*, should take the whole estate absolutely from generation to generation (*puttro poutradi*); and that in the event of no son or daughter being born to the testator after the execution of his will, and of his granddaughter (daughter's daughter), *H D D*, dying childless, or being a barren or childless widow, or otherwise disqualified ... property should go to the ... charitable ... object of ... institutions ... *R L M*, ... if she ... was not survived the testator's widow ... then a barren or childless widow or otherwise disqualified, would take, not a life-interest, but an absolute estate, to the exclusion of *R L M*. *Held*, also, that the words "puttro poutradi" has generally the effect of defining the estate given as an estate of inheritance, and did not by themselves

WILL—*contd.*

2. CONSTRUCTION—*contd.*

necessarily denote that the estate given was to be one descendible to heirs male only *Held*, also, that in case of *H D D* not surviving *K K D*, or of her being at the time of the death of *K K D* for any reason disqualified from taking the estate, then upon the death of *K K D* the gift to the Government of the reversion to the exclusion of *R L M*, would take effect, and was a good and valid gift HORI DASI DABI *v.* SECRETARY OF STATE FOR INDIA I. L. R. 5 Calc. 228: 4 C. L. R. 77

31. ———— *Gift to children on their attaining 21* Where words of contingency form part of the description of the class of persons to take, as in the case of a gift to those "who shall attain the age of 21," the words must receive their natural construction, and no estate vests in any one till he attains the prescribed age In such a case there must be something in the context pointing to a different construction, or something in the will inconsistent with the literal construction to justify a Court in adopting any but the literal construction In the case of words of contingency occurring in the description of the class of persons to take a mere gift over is not sufficient to change their meaning BALLIN *v.* BALLIN I. L. R. 7 Calc. 218: 8 C. L. R. 28

32. ———— *Period of distribution—Survivorship* *A*, a Hindu, made the following provisions by his will "I have two

if there be a daughter or granddaughter in the female line surviving, such survivor shall receive a share of the property; the expense of the marriage of such female child only shall be defrayed out of the estate," and also provided that, "so long as my infant grandson shall not have attained his majority, *the whole of my estate shall remain undivided.*" All the persons named survived the testator. *Held*, that they took absolute interests in the shares named, and that the estate became divisible on the infant son of *D* attaining majority. ELLOKASSEE DOSSEE *v.* DURPONARAI BYSACK . . . . I. L. R. 5 Calc. 59

33. ———— *Vesting of estate in executors—Directions to executors, effect*

out of the income thereof, having let them out to hire, and after paying taxes and ground rent divide the proceeds every three months between the testa-

The will proceeded as follows: Should my son *M* happen to die before the decease of his wife,

same manner receive the income once in every three months till they attain the age of 21 years, and then the amount of their share shall be divided into equal portions, and each of them having become the owner of his portion shall receive the same from my executors, but if *H M* die before *M*, and *M* die without having had legitimate male children then I give and bequeath the shares of *my son M* to my son *J* as a provision for his support, etc. If my sons *M* and *J* die without having male issue, and if their wives, that is to say, *H M* and *C J*, die without having male issue begotten by my sons, then I give my garden, etc., actually and entirely to the sons and daughter of my daughter *G*, begotten by her first husband, *G A*, that is, to *A M B* and *N* or in case of their death to their sons and daughters, lawfully begotten, or to such of them as shall survive at the time My said garden shall be divided into equal shares, and each of

nitely and out of the income to make repairs, pay taxes and ground-rent, and apply the rent to the maintenance of the sons, was sufficient to vest the legal estate in the trustees *Secondly*, that such estate was an estate in fee *Thirdly*, that the children of *G* took equitable estates in remainder

implied, the share of *A* reverted to the heir-at-law of the testatrix *Fifthly*, that wherever any estate in fee is devised to a trustee in trust without any limitation of the estate of the *cestui que trust*, the latter takes the beneficial estate in fee. SHIRCORE *v.* ADMINISTRATOR-GENERAL

1 Ind. Jur. O. S. 50

WILL—*contd.*

2. CONSTRUCTION—*contd.*

34. ——— *Gift to children* A testator, after providing for payment of debt, etc, directed that the whole of his property should be disposed of and the proceeds placed in the Oriental Bank with power to the executors to invest the same in mortgages, and to leave existing mortgages untouched. The will then contained this direction: "That a monthly stipend of R15 be paid to my daughter *E S* for her own benefit, and R20, for the benefit of her two ... and in the event

attaining their age of majority, I request that my executors pay to each of them severally and proportionably the full amount of interest accruing from my estate (*the existing provision for my two daughters to continue during their natural life*), and after their demise the said interest in like *manner to revert to their heir or heirs in succession*" *Held, first,* that a direction to pay a monthly stipend to *E S* and *M D* respectively was simply a charge upon the testator's estate to pay the said stipends to *E S* and *M D* for their respective lives. *Secondly,* that *E S* and *M D* were severally entitled during the lifetime and minority of their children to a monthly stipend of R10 in respect of each child, such payment to

would become vested on the death of each one dying under twenty. *Fourthly,* the limitation of the gift, "during their natural life and after their demise, the said interest in like manner to revert to their heir or heirs in succession," did not prevent the children from taking their several shares absolutely under the will. *Semble* The rule in *Wild's Case, 6 Rep 17,* is not applicable to personalty. AGNEW *v.* MATHEWS

1 Ind. Jur. O. S. 74 : 1 Mad. 17

35. ——— *Gift over —No mention of time for the occurrence of specified uncertain event—Succession Act (X of 1865), s. 111, ills. (d) and (e), application of.* A testator by his will bequeathed to one *K* a legacy with the proviso that if "after the expiration of nine years from my death . . . *K* should die without son or grandson, then *M* shall get his (*K's*) properties." The uncertain event, namely, the death of *K* without son or grandson, did not happen *before* the expiry of nine years from the testator's death, that is, before the period of distribution. *Held,* that where a will fixes the nearer limit of time beyond which the specified uncertain event is to happen, but does not fix either any definite point of time at which or any further limit of time within which that event is to happen, it does not amount to the mentioning of a time for the occurrence of that specified uncertain event That s. 111 of the Succession Act lays down a hard-and-fast rule *regulating the validity of certain classes of contingent bequests,* which must be applied wherever applicable without speculating on the intention *of the testator. Norendra Nath Sircar v. Kamalbashini Dasi, I. L. R. 23 Calc. 563,* followed, that this case came under s. 111 of the Succession Act, and the gift over, that is, the legacy to *M,* could not take effect, as the specified uncertain event contemplated did not happen before the

MOHENDRO NATH MUKERJEE *v* KASISWAR ... JEE

3 C. W. N. 478

36. ——— *Gift over on* ... A testator made the follow- ... ly brother ... after my ... nd collect ... be in the family way; should she *bring forth a male;* in that case he will be the sole heir of my property and effects on his attaining proper age. If, on *the other hand, she* is delivered of a female child, all the expenses of her marriage or maintenance *till* that period should be defrayed from my estate. I also wish that she should receive a legacy of a ... for R2,000 ... *y son dies* ... *d property* ... *ther.* My ... t. promis- ... is to be main- ... s to live in our ... ther's protec- ... e widow was ... *enciente* turned out to be a daughter. *Held,* that the clause in italics was one purporting *to give* the property, and not only the management of it to *N,* the power of management having already been given him in appointing him executor; that the provisions for maintenance of the widow, and for the marriage expenses of the daughter, tended to show (putting aside the legacies) that the widow and daughter were not to take the larger estate which they would have successively taken as heiresses, and that the wife of the testator having borne to him a son, and the apparent intention of the testator having been to give the estate to *N,* if the son did not take, or if the estate to the son failed by reason of his not attaining proper age, the gift over to *N,* on the principle laid down in *Jones v. Westcomb, 1 Eq. Cas., Abr, 245,* took effect on

WILL—*contd.*

2. CONSTRUCTION—*contd.*

failure of the gift to the son, even though such failure was not in the precise manner expressed in the terms of the gift OKHOYMONEY DASEE *v.* NILMONEY MULLICK I. L. R. 15 Calc. 282

37. ——— *Vesting—Period of distribution—Gift of dividends.* S, a Portuguese inhabitant of Bombay, by his will dated 19th March 1866, devised all his estate, real and personal, to his executors in trust to realize the same, and invest the proceeds thereof in the public funds, and directed as follows: "(i) The dividends arising therefrom shall be applied, at the discretion of my executors, towards the maintenance and education of my children until each of my sons attains the age of twenty-one years, when his or their share shall be paid unto him or them; (ii) I desire further that whatever

[illegible]

survivors or survivor of them." *Held*, that the gift to the sons, contained in the first clause, was a gift of his share of the dividends to each son on his attaining twenty-one years of age, and that by such gift his share of the corpus became vested in each son when he attained that age *Held*, further, that the provisions of the third clause, which related to the distribution, did not divest the shares so vested Clear words must be used to divest an estate once vested. *Held*, also, that only such of the daughters as were surviving at the period of distribution specified in the second clause of the will were entitled to a share in the estate DESOUZA *v.* VAZ I. L. R. 12 Bom. 137

38. ——— *Vesting—Postponement of enjoyment—Accumulation until*

[illegible]

majority) must be paid to *J*, the respondent retaining the corpus until *J* should attain the age of thirty years. *Gosling* v. *Gosling, Johns* 265, followed GOSAVI SHIVGAR DAYAGAR *v.* RIVETT-CARNAC . . . I. L. R. 13 Bom. 463

39. ——— *Perpetuities, Rule against—Superstitious uses—Trust for masses—Executor—Assent of—Vesting of bequest.* An Armenian died in Madras in 1836, leaving a will whereby she appointed executors and bequeathed a certain sum "that the income thereof be given for perpetual masses for the benefit of my soul and for the souls in purgatory," and she also bequeathed, *inter alia*, R42,000 to her granddaughter, for life, and provided that in the event of her marrying and having children she could bequeath to them the said R42,000, but in the event of her dying without issue, R14,000 out of

[illegible]

contemplation of the marriage of the granddaughter, the subject of the second legacy was settled as provided in the will except as to the R14,000, as to which it was declared that in the

[illegible]

the direction that interest accruing thereon be paid to the wife until further order The husband died without issue, and subsequently in 1890 the wife died, not having re-married The Administrator-General of Madras took out letters of ad-

[illegible]

residue of the estate of the testatrix. *Held* by COLLINS, *C. J.*, and HANDLEY, *J.*, affirming SHE-

[illegible]

I. L. R. 15 Mad. 424

40. ——— *Succession Act (X of 1865), ss 68, 105, 159—Trust fund to be called after testator's name—Perpetuities—Rule against—Creation of fund, and dispositions except directions for making it a perpetuity, held valid—*

WILL—*contd.*

2. CONSTRUCTION—*contd.*

"*Personæ designatæ,*" *bequest to persons as—Vesting of legacy, time of—Income of fund, gift of—Tenancy-in-common—Joint tenancy—Advancement out of minor legatees' share for his benefit, power of—Vested interest, liable to be divested by condition subsequent—Precatory trust, expression of wish held not to create—Patent deficiency as to objects of bequest—Failure of legacy—Charitable uses, void bequest to.* Where by his will a testator directed the establishment in the Bank of Madras by the executor and trustee of the will, of a fund to be called after the testator's name, the "Garratt Trust Fund," and directed "that such trust fund shall never be removed from deposit in the said bank of Madras at Madras so long as that Bank shall exist," and "that 'The Garratt Trust Fund' shall be a continuing fund to all time," and that the interest therefrom should be enjoyed by certain legatees and "the same shall be inherited by any child or children of them hereafter from time to time and from one generation to another in accordance with all legal rights :"—*Held*, that there was nothing illegal about the creation of this fund, except the direction that the securities representing it should never be received from deposit in the Bank of Madras, which, as an attempt to create a fund in perpetuity, was invalid, but that this did not prevent the intention of the testator to create and endow the fund from being carried out, and that the legatees took an absolute interest The testator bequeathed "to my grandchildren by my said late daughter *E W*, also to my grandson *F W M* and to his step-brother *G W M*" in equal shares a certain fund *Held*, that this was a bequest to the testator's grandchildren by his late daughter *E W* not as a class, but to them invidually as *personæ designatæ*. *Held*, also, that, under the terms of the will, the testator's said grandchildren by the late *E W* and *F W M* and *G W M* took vested interests in their respective shares in the said fund from the death of the testator; that the gift to them of "the benefit, interest and profit" of the fund was a gift of the corpus of the fund *by virtue of s. 159 of the Indian Succession Act;* that they took as tenants-in-common, not as joint tenants; and that under a power given to the executor to make disbursements from the said fund for certain purposes for the benefit of *F W M* in connection with his going to and returning from England the executor was not authorized to apply, towards those purposes, more than *F W M's* one-ninth share in the said fund, as it was not the intention of the testator to give *F W M* a benefit out of that fund over and above that share, and that the executor, in making disbursements for the purposes specified, was only empowered to trench upon the principal of that share if the income, as applied under the power of disbursement for *F W M's* support and maintenance in England, were not sufficient. *Held*, also, that under the terms of the devise in the third and fourth clauses of the will of a certain house and premises to *F W M*, the devisee took on the testator's death a vested interest in that property,

of the will of a certain house and premises and furniture to the children of the testator's late daughter *E W* (who was dead at the date of the will), there was an absolute gift to the children of *E W* of the testator's whole interest in that property, and that such gift was not controlled by the directions in the latter part of the fifth clause that the house should not be sold until the youngest grandchild attained the age of eighteen years, which must be regarded merely as an expression of the wish of the testator and not as a precatory trust, and was of no legal effect; and that the children of *E W* who were living at the testator's death did not take as joint tenants, but took as *personæ designatæ*, each an equal share in the property, which vested in them on the death of the testator, and therefore the share of one of them, *E G W*, who had survived the testator, but died subsequently, having vested in *E G W*, passed to *E G W's* representative, the ninth defendant. In the sixteenth clause of the will the testator directed his executor and trustee out of a certain sum of R500 to "disburse various petty pensions to some poor people who have been mentioned to him" (the executor and trustee) "by me." *Held*, that there was a deficiency on the face of the will as to the objects of this bequest, and by s 68 of the Indian Succession Act no extrinsic evidence ... the intention of the testa-

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sioners and the Poor ... thereto, being a bequest to charitable uses, was void under s. 105 of the Indian Succession Act, as the testator had nearer relatives than nephews. and the will was executed less than twelve months before his death. ADMINISTRATOR-GENERAL OF MADRAS *v.* MONEY

I. L. R. 15 Mad. 448

41. ——— *Joint tenancy-in-fee—Life estate—Intention of testator—Restricted enjoyment, direction as to* A testator devised his state should his wife remain his widow, for the ... of his wife, and her child then living,

WILL—*contd*

2. CONSTRUCTION—*contd*

of his children in equal shares when of the age

and that the remaining clauses of the will were merely intended to restrict the mode in which they were to enjoy the gift HALIBURTON *v* ADMINISTRATOR-GENERAL OF BENGAL

I. L. R. 21 Calc. 488

42. ———— *Duress—Forfeiture—Condition of residence* A testator by

for the cause of pilgrimage, they should forfeit

mother. *Held*, that under the circumstances the plaintiff's absence did not work a forfeiture. *Clavering* v. *Ellison, 7 H L. Cas. 707*, referred to. TIN COURI DASSEE *v* KRISHNA BHABINI

I. L. R. 20 Calc. 15

43. ———— *Vested interest—Conditions repugnant—Condition restricting immediate enjoyment—Commission allowed to trustees, calculation of* Where a testator who died

the corpus LLOYD *v.* WEBB

I. L. R. 24 Calc. 44

44. ———— **Absolute gift**—*Repugnant gift over—Indefiniteness of gift—Reputed wife—Marriage, proof of* On the construction of a will which was as follows: "I hereby declare all former wills cancelled. I desire that my wife should obtain possession of all my property and enjoy the benefit of all moneys that may accrue until her death, when I wish that whatever may remain shall be used for the education of the children of the Eurasian and Anglo-Indian community. I desire that this will be administered by the Official Trustee of Madras" *Held*, (i) that the reputed wife should take under the will without strict proof of the marriage, no fraud being imputed to her in the matter of the marriage; (ii) that the gift to the wife was absolute and the gift over bad for repugnancy. ADMINISTRATOR-GENERAL OF MADRAS *v* WHITE . **I. L. R. 13 Mad. 379**

45. ———— *Restriction on legatees—Enjoyment—Residuary estate.* Where a

gift prevails, and does not fall into the residue of the testator's estate. Therefore, where a testator gave legacies to certain of his grandsons and granddaughters but nevertheless declared that

in-common; and where the testator especially provided as to the legacy left to one grandson that upon the happening of certain events it should be paid to his other garndchildren:—*Held*, that

ADMINISTRATOR-GENERAL OF BENGAL *v.* APCAR

I. L. R. 3 Calc. 553

46. ———— **Proviso for cesser**—*Condition—Conditional limitation—Breach of condition—Residence* P C T, a Hindu, died living an only son, G M T, and having first made his will

WILL—*contd.*

2. CONSTRUCTION—*contd.*

the annual proceeds of such investments, so far as the same would extend, to pay certain annuities and postponed legacies as they became due, and to pay such surplus income as might from time to time exist to the person entitled to the beneficial enjoyment of the real property or the surplus rents or profits thereof, with an ultimate trust, after all the legacies and annuities had been satisfied, for the person or persons entitled to the beneficial enjoyment of the real property. And as to the realty upon trust until all the debt and legacies had been paid, and all the annuities had fallen in, to receive the rents, and thereout in the first instance to pay the unsatisfied legacies and annuities, and to pay the surplus rents to the person

the trustees to pay R30,000 per annum to the person for the time being entitled to the beneficial enjoyment of the real property or the surplus income thereof. He further directed them, after all the annuities and legacies had fallen in and been satisfied, to convey the real estate, so far as the then condition of circumstances would permit, unto and to the use of the person entitled, under the limitations contained in the will, to the beneficial interest therein. The first limitation was to *J M T* for life. At the end of the limitations of the real estate, the will contained the following proviso: "Provided always, and I hereby declare if any devisee, or tenant-for-life . . . . . shall permit or suffer the said property so devised and limited as aforesaid, or any portion thereof, to be sold for arrears of Government revenue, or shall, after attaining his majority, cease to keep up in a due state of repair, and to use as his residence in Calcutta, the said baithakhana house and premises where I now

and limitations in this my will contained and declared shall wholly cease and determine as to him, and the person next in succession to him under the

for the purpose of avoiding and setting aside the trusts and limitations of the will, except so far as they were for payment of debts, legacies, and annuities. This suit was dismissed on the 1st of April

tenant-for-life, to the realty. *J M T* and others, claiming under the limitations in the will, appealed

WILL—*contd.*

2. CONSTRUCTION—*contd.*

to the Privy Council; and *G M T* filed a cross-appeal in which he claimed that the gift of the life-estate to *J M T* ought to be declared void. By the order of Her Majesty in Council, which was dated the

ficially entitled to a life-interest in the reality, and also in the personality directed to be conveyed or converted into a fund, subject to the payments on the will directed to be made, and to the provisions in the will not thereby declared to be void; and also until the legacies and annuities fell in and were satisfied, to R2,500 a month out of the net rents of the reality, and also to the surplus rents of the same and the surplus interest of the personality; and that, upon the failure or determination of *J M T's* life-interest, *G M T* was entitled as heir-at-law to the real and personal property. The proviso for cessor was not among the provisions of the will which were declared void. *J M T* was one of the

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the trustees contested the suit, but in March 1872
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WILL—*contd.*

2. CONSTRUCTION—*contd*

fore that, until *J M T* came into full beneficial enjoyment of the life-estate given him by the will, or at all events until he became entitled to the surplus rents, the time had not arrived when that clause was intended to apply. *Held*, further, that, assuming that such time had arrived, the action of the plaintiff, in contesting the right of *J M T*, under the will, to occupy the baithakhana house and premises, debarred him from claiming that effect should be given to the clause of forfeiture for non-residence. Even apart from any action by the plaintiff, the conduct of the trustees in disputing the right of *J M T* to possession of a portion of the baithakhana house, and refusing to repair, would suspend the operation of the forfeiture clause until October 1872, inasmuch as it prevented him until that time from obtaining such a possession as was contemplated by the forfeiture clause The forfeiture clause was not brought into operation by the judgment and order of the Judicial Committee of 9th August 1872 *Held*, on the evidence, that *J M T* had complied with the conditions as to residence GANENDRO MOHUN TAGORE *v* JUTTENDRO MOHUN TAGORE . . 12 B. L. R 1

On appeal to the Privy Council —*Held*, that, as

at an end, and *J M T's* state perfected by a conveyance But held on the evidence that there had

L. R 1 I. A. 387

47. ——— Power of appointment—*Execution of power—Marriage settlement.* A tes-

daughters, *B* and *C*, each one share; the interest to be paid to them quarterly or half-yearly as may be most convenient Second, I request that these shares shall not be transferable during their lifetime. Third, at the demise of any of my children without issue, any such share to be divided in the

WILL—*contd.*

2 CONSTRUCTION—*contd.*

above proportion to the survivors. Fourth in the event of issue, they may bequeath their share to any one of their children they may select, subject to the above conditions." *C* married in 1874, and, by a settlement made in consideration of the marriage, her share was assumed to be assigned to trustees upon certain trusts In 1875 *C* and her husband made the following joint will "We do hereby constitute the survivor of us to be executor or executrix in our estate

tion of the testator's estate and for the construction of his will —*Held*, that the settlement of 1874 could not operate upon *C's* share in consequence of the direction of the testator, that it should not be trans-

will, and that the child of *C* took the whole of her mother's share FEHRSEN *v.* SIMPSON

I. L R 4 Calc. 514

48. ——— *Gift of income for life with power to appoint—Invalid power of appointment—Gift over in default of appointment —Gift of residue equally between two sons and then to next of-kin* A Parsi by his will devised a

should respectively appoint, such appointment to affect their own respective moiety only and not that of the other of them," and in default of appointment on trust to sell the house and divide

to apply the sum of R50 for the maintenance of his son *R* until he should attain 21 years of age and

dividends, and produce only of the corpus of the whole of the moveable property," and after the

WILL—*contd.*

2. CONSTRUCTION—*contd.*

directed that the above bequest should extend and be applicable to his son *N*, and that the executors should divide the income of the moveable property between *R* and *N* instead of giving the whole to *R* The Court was of opinion that, under the will and codicil, *R* and *N* were each to have a moiety of the income for their respective lives, and that on their death one moiety of the corpus was to go to their next-of-kin The Court, however, declined to make a declaration to that effect, as *R* who at the date of suit was unmarried, might afterwards marry and have children who would not be bound by a declaration made in this suit. BYRAMJI JEHANGIR LAMNA *v.* RATNAGAR JAMSETJI RATNAGAR . **I L R 18 Bom 1**

49. ——— *Bequest of power of management to widow and daughter for life—Estate—Gift to two persons as joint tenants or tenants-in-common.* *N W* a Parsi, died in 1843, leaving a widow *A* and a daughter *M* and two grandsons (sons of *M*) him surviving By his will (written in the Gujarati language) he directed that during her life his widow and daughter were "to agree together and to manage the affairs with unanimity," and after *A's* death he gave the whole power over his estate to his daughter *M* "and so long as *M* enjoys her natural life, everything is to remain with her." The will then continued, "After the death of *M*—*M* has two sons, namely, Bhai Navroji and Bhai Nusserwanji—these two

[illegible]

my wife and to my daughter, *M*" *Held*, (i) (confirming FULTON, *J.*), that *A* and *M* took only a life-interest in the estate (ii) (Varying the decree of FULTON, *J*) that *M's* two sons took the estate as joint tenants subject to the life-interests of *A* and *M*, and not as tenants-in-common NAVROJI MANOCKJI WADIA *v* PEROZBAI

I L. R. 23 Bom 80

50. ——— **Gift in remainder expectant on termination of estate for life**—*Devise of talukh—The Oudh Estates Act (I of 1869)—Registration—Acceleration of remainder on failure of*

[illegible]

the talukhdar had died intestate, would have been within the exception, in reference to the effect of non-registration of will contained in s. 13 of the same Act. AJUDHIA BAKSH *v.* RAKMAN KUAR

I. L. R. 10 Calc 462: L R. 11 I. A. 1

51. ——— **Vesting of interest**—*Divesting—Executory trust.* *H*, by his will, bequeathed to his daughter *A M H*, "on her attaining her 18th year the sum of Company's R10,000, with any interest that may have accrued thereon, if she marries, to be settled upon herself and children ... her money to be

[illegible]

paid to her. *In the matter of the will of* HUNTER *In the matter of* ACT XXVIII OF 1866

I. L. R. 4 Calc. 420

52 ——— *Interest not subject ... A B etc.*

[illegible]

child to be put in possession of his or her ... when they shall respectively attain the age of 25 years; and whenever either of my daughters shall enter into the holy state of matrimony, I request that a proper settlement may be made upon her and her children, and in the event of either of my children departing this life without leaving husband, wife, or lineal descendants, or her share shall be divided equally amongst our other children or their lawful issue; but on no account shall any division of the principal of my estate take place till after the death of their mother. *Held* (reversing the decision of PHEAR, *J.*) that after the mother's death, each child took a vested interest on attaining the age of 25 years,—that is, at the time when possession is to be given,—and not an interest subject to be divested in the event of the child dying without husband, wife, or lawful issue TAYLOR *v.* PHILLOTT PHILLOTT *v* MORRIS . . . **1 Ind Jur. N. S 375**

53. ——— *Divesting clause—Gift over on legatee's death "prior to division" of the estate—Gift not void for uncertainty—Succession Act (X of 1865), ss. 75, 91, 106* A testator directed his trustees and executors to hold

WILL—*contd*

2 CONSTRUCTION—*contd*

his real and personal estate upon trust to sell the real estate either together or in parcels, and either

case of males, or, in the case of females, when they should respectively attain that age or marry. He directed that, in the event of any of such persons dying in his lifetime, or at any time thereafter "prior to the said division," leaving lawful issue, such issue should be entitled to the share which their deceased parent would have taken One of the legatees who had attained the age of 21 years at the testator's death died five months after him, before payment of the legacy, and left lawful issue *Held*, that the legacy vested in interest in the legatee at the testator's death, but that the legatee having died prior to the division of

v. BACHMAN . . . . I. L R 6 All 583

54. ——— *Bequest to orphan in Military Orphan Asylum—Direction to trustees* A special case was stated for the opinion

Bourke O. C. 104

55. ——— *Gifts of life interest or corpus—Discretion of executors to hand over corpus—Costs.* *C*, a Portuguese inhabitant of Bombay, died in April 1884, leaving three sons, *M*, *S*, and *J* (defendant No 3), and two daughters,

WILL—*contd.*

2. CONSTRUCTION—*contd.*

sale-proceeds (after payment of two legacies thereout) be divided equally between her two sons *S* and *J*. The seventh clause of the will was as follows: "7 I further direct that the amount which may fall to the share of my son Joaquim Amador Bocarro under (c) of paragraph 6 above should be held in trust by my executors hereinafter named and converted by them into Government securities;

reform himself, and take off all his evil tendencies, and lead a steady, quiet, and orderly life, or should he, on account of illness or other reasonable cause, be in urgent need of pecuniary assistance, I leave it to the discretion of my executors either to make over to my said son Joaquim Amador Bocarro

suit praying for a declaration that they had a valid charge upon *J's* interest therein, and that his interest should be ascertained and declared, and he himself ordered to pay the amount of their

under certain circumstances and at their discretion,

WILL—*contd.*

2. CONSTRUCTION—*contd.*

legacies given by the sixth clause) an absolute interest in one-fourth share of *S's* moiety and a life-interest in his (*J's*) moiety, subject to the contingency of the executors in their discretion handing over the corpus of the share, or part thereof, for his absolute use, in which event the plaintiffs had the right to the same so far as their debt was unsatisfied. *(vi) As to costs, the plaintiffs* and third defendant *J* should pay their own costs; that the executors and defendants Nos. 4 to 12 should have their costs paid out of *J's* share in *S's* moiety of the sale-proceeds, and, if that fund were not sufficient to pay such costs, the plaintiffs and the third defendant *J* to pay the deficiency. BECHAR AKHA *v.* DECRUZ

I L. R. 19 Bom. 221

Held, in the same case on appeal, confirming the decree of the lower Court, that under the above clause of the will there was a clear gift to the wife or issue of *J*, but that *J* was to have the power of

with costs other than the costs of defendants 4 to 12 whose costs may be added to their costs in the Court below. BECHAR AKHA *v* DECRUZ

I L. R. 19 Bom. 770

56 ——— *Bequest to executors and trustees in trust for son of testator and his widow—Life-interest—Estate in fee—control and management of executors and trustees.* A Hindu by his will bequeathed certain property to his executors and trustees "upon trust for my son *T* and his heirs from the time of my death to allow him to occupy and use the same, and to enjoy the income thereof, and after the death of my son *T*, in trust

them without leaving such male issue to my son *T* and his heirs according to the rules of Hindu law." The sons *T* and *P* both survived the testator and

WILL—*contd.*

2. CONSTRUCTION—*contd.*

following, which showed a clear intention that *T* should only take a life-interest, to be followed by the same interest in his widow, after whom the heirs of *T* would take as purchasers *Held*, also, that the trustees were intended to take the legal estate any to have the control of the property, allowing *T* to enjoy the income of it. SMITH *v* TRIVHOVAN DAS MANGALDAS . . I. L. R. 19 Bom. 401

57. ——— *Bequest to wife with obligation of maintaining and educating children*

"she thereout maintaining, educating, and bringing up" his children in a manner suitable to their degree in life After his death, the property ... to be divided,

...ttain the ...jority in ... eighteen ...ontended ... rents for ...hat under ... the rents ...ducating, ...nly two ... attained

surviving children (*P* and *D*), having attained majority and having received property under the will of an uncle, were now no longer in need of being maintained by the widow. The obligation imposed upon her therefore by her husband's will was discharged, and she was now entitled to a life-interest free from all further obligation to maintain his children. NATHA KEBRA *v* DHUNBAIJI.

I. L. R. 23 Bom 1

58. ——— Trust—*Creation of trust—Uncertainty* A Hindu by his will, after appointing certain persons executors for the purpose of managing his estate after his death, gave them the following directions: "You should give my brothers, their wives and children, according to your wishes." *Held*, that no trust was created by these words. KUMARASAMI *v.* SUBBARAYA.

I. L. R. 9 Mad. 325

59. ——— *Validity of trust—Direction as to debt due from attesting witness* Where a testator directed that a debt due to him by ... should not be claimed, ... that ... legacy ... 244

LAZAR . . . I. L. R. ...

60. ——— *Precatory trust*—*W. R.* by his will, made the following gift to his wife, *M A R*: "I give to my dearly beloved wife

2. CONSTRUCTION—contd.

the whole of my property both real and personal (described), feeling confident that she will act justly to our children in dividing the same when no longer required by her" *M A E*, by her will, left to the children certain portions of such property, leaving to the child *A C R*, amongst other things certain banking shares. These shares were attached in the execution of a decree against the executors to her estate as belonging to such estate *Held*, by the High Court, that she took under her husband's will a life interest only in his property with a power of appointment in favour of the children, and that the shares belonged to *A C R*, and could not be sold in execution of the decree as part of the estate of *M A R* RAYNOR *v* MUSSOORIE BANK.

I L R. 2 All. 55

Held, by the Privy Council, reversing the decision of the High Court, that the widow took an absolute interest in the property, and that no trust for the benefit of the children was created In order to create a precatory trust, the words must be such that the Court finds them to be imperative on the first taker of the property, and the subject of the gift over must be well defined and certain MUSSOORIE BANK *v*. RAYNOR

I. L. R 4 All. 500 : L. R. 9 I. A. 70

61. ——— **Expression of wish**—*Bequest* A testatrix, entitled to Government notes under a gift, coupled with the condition that she was to receive only the interest during her life, and that after her death, the notes were to be held in trust for all her heirs, gave the following directions to *S K*, whom she made her principal legatee : "I direct *S K*, under this will, to pay every month R644-7-1 (being one-third of R1,933 5-4, my monthly pay allowed by the Government for notes, which are deposited) to my dependents and personal servants, as detailed below . . . Be it known that the expenses of the imambarra, etc, will be continued for ever; and also the pay of *G K* and *M A* will be defrayed for ever, *i e*, generation after generation The rest of the servants will be paid for life only" *Held*, that these words constituted a bequest, and were not merely the expression of a wish. Also that the bequest was not one of legacies payable out of a specified sum and no other; the statement that the monthly payments to be made amounted to one-third of the sum received monthly by the testatrix not limiting the source of the legacies SULEMAN KADR *v*. DORAB ALI KHAN.

I. L. R. 8 Calc. 1 : L. R. 8 I. A. 117

62. ——— **Will confirming trust-deed** —*Construction of deed—Forfeiture* *S*, being desirous of securing and settling his property, executed a deed of trust whereby he conveyed and assigned all his real and personal property unto trustees, upon (among others) the following trust: that immediately after his death the trustees should convey, assign, transfer, and make over all the premises mentioned in the deed unto such person or persons as *S* should, by his last will, attested by two witnesses, direct and appoint, and in default of such direction and appointment, unto the next heirs of *S*, their heirs and assigns, for ever, and in the meantime to pay the Government revenue out of the rents and profits of the real property, and employ the residue and accumulations as well as the produce and accumulations of the personal property "in such a manner as may procure the daily worship of the household idols", mentioned in the deed and pay what they considered a fair and proper sum to the wives and family of *S* living at his death and residing in the family dwelling house By his will, dated the same day as the deed, *S* declared that he ratified and confirmed the deed, subject to such provisions as were contained in his will, which were that the trustees should not charge the fund for the maintenance of those who should not live in the family dwelling-house and for the appointment of new trustees *Held*, *first*, upon the authority of *Wilson v. Pigott, 2 Ves Jun*, that the powers of the trustees (under the deed) did not cease on the death of *S*, and that the directions in the will, although not strictly within the words, amounted to a good appointment in equity, so that instead of the trustees of the deed conveying the property on the death of *S* to his son, they should continue to hold subject to the trusts of the deed as modified by the will. *Secondly*, that the words "in such a manner as may procure the daily worship," etc, meant in such manner as shall be sufficient to procure the daily worship, etc, and that the trustees were not authorized to apply such portion of the trust funds as they in their discretion might think fit, but only such portion as was reasonably sufficient for those purposes General debts and liabilities are not charges against property forfeited upon conviction of felony HURRYDOSS BONERJEE *v* HOGG.

1 Ind. Jur. O. S. 86

63. ——— **Gift of residue to a class** —*Postponement of period of distribution—Vested interests—Succession Act, ss 98, 101, 102* A testator gave his residuary estate to trustees upon trust to invest and "to pay, transfer, or divide the same unto, between, or among the children of my brothers *A* and *B* respectively, to be paid, transferred to, and divided among, them in the proportions and at the times hereinafter mentioned, that is to say, the share of each and every son of my said two brothers shall be double that of each and every daughter, and the shares of each son shall be paid to him or them respectively upon his or their attaining the age of 21 years, and the share of each daughter to be paid to her or them on her or their respectively attaining that age or previously marrying, with benefit of survivorship between and among all the said sons and daughters." The testator left him surviving his two brothers and a sister, *C A* and *B*, both died before the eldest of the testator's nephews or nieces attained 21 or married In a suit instituted by the widow and executrix of

WILL—*contd.*

2. CONSTRUCTION—*contd.*

A to have it declared that the above bequests were void under ss. 101 and 102 of the Succession Act, and *the testator died intestate as to the residue of* his estate, and that she as executrix of *A* was en-

valid. *Semble* S 98 of the Succession Act applies only to vested interests. MASEYK *v* FERGUSSON. **I. L. R. 4 Calc. 304**

64. ——— *Postponement of period of distribution—After-born child, share of—Lapsed bequest—Succession Act, s. 98.* A testator gave his residuary estate to trustees upon trust to invest and "to pay, transfer, or divide the same unto, between, or among the children of my brothers

be double that of each and every daughter, and the shares of each son shall be paid to him or them respectively upon his or their attaining the age of 21 years, and the shares of each daughter to be paid to her or them on her or their respectively attaining that age or previously marrying, with benefit of survivorship between and among all the said sons and daughters" After the death of the testator, and before the period of distribution arrived, a son was born to *B* and one of the sons of *A* died intestate and unmarried. *Held*, that the after-born son of *B* was entitled to a double portion as one of the male children of the testator's brother, and that the share of the son of *A* was divisible among the surviving male and female children in equal shares. MASEYK *v.* FERGUSSON **I. L. R. 4 Calc. 670**

65. ——— **Residuary estate of moveable and immoveable property**—*Claims to, against executors and trustees* If a testator appoints persons to be his executors and trustees,

SEE *v.* DEBENDRONATH TAGORE **I. L. R. 2 Calc. 45**

66. ——— **Attesting legatee**—*Succession Act (X of 1865), ss 90, 94—Bequest to three children "or the survivors or survivor of them"—Incapacity of one to take by his attestation of the will—Residuary bequest to widow—Construction—Doctrine*

James, Cornelius and Florence, or the survivors or survivor of them;" and the will contained a residuary bequest in favour of the wife James (who was appointed a trustee) was an attesting witness to the will. The widow having died, Florence

The effect of the bequest to the three children or the survivors or the survivor of them" would, in case James had predeceased the testator, have been to take the case out of the ordinary rule that a legacy lapses where the legatee dies during the lifetime of the testator. But, as the two children had not survived James, the contingency on the happening of which they were to take had not happened. The testator having made a testamentary disposition which was incapable of taking effect, the share of James fell into the residue. The doctrine of acceleration could not be applied to such a case. CAMANI *v.* BAREFOOT (1902) **I. L. R. 26 Mad. 433**

67. ——— **Bequest to "eldest son to be born"**—*Bengali will—Terms of art—Words, of direct and simple gift—Vesting of a bequest, words necessary for—"Parjyapta haibek," meaning and effect of—Appointment of guardian with direction to make over gift on legatee attaining majority, effect of—Judges trying a cause consulting another Judge, propriety of—Ex parte hearing—Re-hearing, application by respondent for—Unconscionable bargain.* In construing Bengali wills, it must be remembered that there is no line of precedents attaching to Bengali terms meanings which make them understood as terms of art by Bengali lawyers The only safe course is to give to the words their plain and ordinary meaning There are no particular words necessary to the vesting of a bequest or a legacy. The words "*parjyapta haibek*;" whether they mean "descend to" or "devolve or go" or "shall become vested," have *the effect of vesting the legacy at once* Where there is a bequest in favour of a person simply,

who have heard the arguments and who are responsible for the decision, can hardly with pro-

interest in a certain moiety under a will, together with an allowance of R50 per month, which she took

WILL—*contd.*

2. CONSTRUCTION—*contd.*

of the rights of the parties under it the High Court, on the view that *F* would, on their construction of the will, be entitled to a large amount of accumulations of the moiety, which together with her allowance she had been induced to part with to *A L B* for only R3,000. *Held*, on the facts, that the bargain was an unconscionable one and could not be sustained On the construction put on the will by the Judicial Committee on appeal *F* took no interest in the moiety of the residuary estate, and had assigned nothing but her allowance; there was therefore no ground for holding the assignment to *A L B* to be an unconscionable bargain. HARRISS *v.* BROWN (1901)

I. L. R. 28 Calc. 621
s.c. 5 C. W. N. 729
L. R. 28 I. A. 159

68. ——— **Charitable gift**—*Succession Act (X of 1865), ss. 90 and 105—Hospitals, gifts to—Registration of gifts to hospitals—Corporate bodies, gifts to hospitals not—" For the benefit of the inmates of the Hospital," meaning of—Personal bounty, motives of—Residue—Property subject to*

should be a corporate body, it is sufficient if there be some responsible authority charged with the general administration of the funds of the institution Under s. 90 of the Succession Act, property which is the subject-matter of a trust which is incapable of taking effect *primâ facie* falls into the residue, and it can only be prevented from so doing by the express directions of the testator *In re Bagot, [1893] 3 Ch. 348*, and *Blight* v. *Hartnell, L R 23 Ch D 218*,

ADMINISTRATOR-GENERAL OF BENGAL (1901).
6 C. W. N. 321

69. ——— *Charitable pur-*

calculated to promote the public good, as they

WILL—*contd.*

2. CONSTRUCTION—*contd.*

70. ——— *Succession Act (X of 1865) s 105—Bequest to charitable uses by a testator leaving a widow him surviving—Validity—" Nearer relative " than a nephew or niece* By s. 105 of the Indian Succession Act, no man having a nephew or niece or any " nearer relative" shall have power to bequeath any property to charitable uses, except by will executed not less than twelve months before his death and deposited as by the section is provided A testator by his will bequeathed property to charitable uses, and died two days thereafter, leaving to widow him surviving. On question being raised as to the validity of the bequest :—*Held*, that the bequest was valid The term " relative " in s. 105 of the

71. ——— **Executor**—*Suit by legatee against executor for arrears of rent—Limitation* A

testator's death It was contended that by the will the four houses were given to the widows. *Held*, that the son was the sole owner of the

and they were entitled to the arrears of rent for the whole period claimed. RAMDHAN *v.* MANIBAI (1900) . . . . . . I. L. R. 25 Bom. 429

72. ——— The testator in his will made use of the following expression with reference to expenses for *pujahs*, etc.—"You (*i.e.*, the executors) are to pay my share of the

referred to NISTARINI DASSI *v.* NUNDO LAL BOSE (1902).
I. L. R. 30 Calc. 369
s.c. 7 C. W. N. 353

WILL—*contd.*

2. CONSTRUCTION—*contd.*

73. ———— Executor by implication—*Probate and Administration Act (V of 1881), s. 7—Will, construction of—Osees—Co-adjutor—Overseer.* On a construction of the will, held that the *shebait*

overseers BROJO CHUNDER GOSWAMI *v* RAJ KUMAR ROY (1901) . . . . 6 C. W. N. 310

74. ———— Time of payment to legatee—*Absolute gift—Age of majority of legatee—Direction in will for postponement of payment until a later period, than majority, effect of—Privy Council, leave to appeal to—Civil Procedure Code (XIV of 1882), s. 596—Value of subject-matter.* Where a will confers an absolute gift, but directs that the property so

person for the intervening period; and the legatee is entitled to have the property handed over to him as soon as he attains his majority A question arose between an executor and a residuary legatee as to whether, under a will, the legatee was entitled to have the residue handed over to him on his attaining majority or whether such payment was not to be postponed until he reached the age of twenty-five, the executor in the meantime having a right to the income. The Court held

and contended that the matter in dispute was of the value of R10,000, as required by s 596 of the Civil Procedure Code, inasmuch as it involved the right to the whole fund *Held*, refusing leave, that the subject-matter of the dispute was only the income, and was not of the requisite value. The case had proceeded on the hypothesis that the executor had the *corpus* of the estate as a trustee, and the only question was as to the income. HUSENBHOY AHMEDBHOY *v* AHMEDBHOY HABIBBHOY (1901) I. L. R. 26 Bom. 319

75. ———— *Will—Bequest to religious and charitable purposes.* The residuary clause of the will of a Hindu governed by the Mitakshara school of Hindu Law was as follows: "And as to the rest and residue of my estate, I give and devise the same to my executor in trust to spend and give away the whole thereof in charity in such manner and to such religious and charitable purposes as he may, in his discretion, think proper." The bequest of the residuary estate was *held* to be a valid charitable bequest. The direction to spend and give away the whole of the residue in charity governs the words that immediately follow, and therefore the purposes for which the *fund is to be spent* must be charitable, although they may at the same time be religious. *Ram Gopal Bonnerjea* v. *Sibkissen Bonnerjea, 1 Bom. H. C. 76 note* followed. *In re White, [1893] 2 Ch. 41; Baker* v. *Sutton 1, Keen 224; Pocock* v. *Attorney-General, L. R. 3 Ch D. 342; Morarji Cullianji* v. *Nenbai, I. L R 17 Bom. 351; Deb Shankar Naranbhai* v. *Motiram Jageshwar, I. L. R. 18 Bom 136; Runchordas Vandrawandas* v. *Parbatibhai, L. R. 26 I. A 71; Morice* v. *Bishop of Durham, 10 Ves. 522, Gangbai* v. *Thabai Mulla, 1 Bom H. C. 71; Advocate-General* v. *Damothar Madhowji, 1 Bom H. C. 76 note, Blair* v. *Duncan, [1902] A C. 37; Sib Chunder Mullick* v. *Treepoora Soondry, 1 Fulton 98;* and *Townsend* v. *Carus, 3 Hare 257,* referred to. PARBATI BIBEE *v.* RAM BARUN UPADHYA (1904) . . I. L. R. 31 Calc. 895
s.c. 8 C. W. N. 653

76. ———— *Will—Charitable*

issue of *B*, or if no issue, the adopted son of *B*, or if no adopted son, then such person as *B* should by deed or will appoint, should become shebait. *Held*, that the limitation to *B* was valid. A direction to the executors to set apart a specific sum for distribution among the testator's "poor relations, dependants and servants," is a valid charitable bequest *Morice* v. *Bishop of Durham, 10 Ves. 522,* distinguished. *Attorney-General* v. *Duke of Northumberland, 7 Ch D 745,* and *Horde* v *Earl of Suffolk, 2 Mylne & Keene, 59,* referred to.
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I. L. R. ... lc. 166

77. ———— *Construction of will—Conditional bequest—Condition that legatees should "humbly apply for subsistence"—Condition* ... not in sub-
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then pending for partition of ... the father of the appellant in his will made a bequest ... on the condi-
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WILL—*contd*

2. *CONSTRUCTION—contd*

that this condition was not complied with by a letter from the respondent's father to the Collector of the district, who was administering the estate,

the inadequacy of the bequest, and demanding "something suitable to our dignity," the letters neither in substance or spirit evidencing a humble request for subsistence in the sense of the will. In this view it was held necessary to decide a contention that the bequest was void as coming within the prohibition laid down in the *Tagore Case, L R I A Sup Vol 47 9 B L R 377.* VEERABHADRA RAJU BAHADUR GARU *v* CHIRANJIVI RAJU GARU (1905) I. L. R. 28 Mad. 173 s c. L. R. 32 I. A. 105

78. ———— *Will—Genuineness—Procedure to be followed in deciding—Consideration of contents if should precede proof of execution* A Judge concluded that a will was a forgery primarily from a consideration of its contents, which he thought to be so extraordinary as to overbalance altogether the evidence of witnesses, who spoke to having been present and seen the testator sign the will and to having themselves signed the will as witnesses *Held,* that the method of procedure adopted was erroneous. It was not permissible to the Judge first to make up his mind about the contents of the will and then look at the positive evidence in favour of its execution from that standpoint. BULLI KUNWAR *v.* MUSSAMMAT BHAGIRATHI (1905). 9 C. W N. 649

79. ———— *Repugnancy in*

prevail, has no application when the supposed inconsistencies are found in one and the same provision ADVOCATE-GENERAL OF BOMBAY *v* HORMUSJI (1905) . . I L. R. 29 Bom 375

80. ———— *Will suppressed—Void—Sale, if valid* A grant of letters of administration obtained by suppressing a will containing no appointment of executors is not void *ab initio* and a sale of a property of the deceased by the administrator, who has obtained a grant of an administration under such circumstances to a purchaser, who was ignorant of the suppression of the will, is valid, even where the grant is revoked after the sale *Ellis* v. *Ellis,* [1905] *1 Ch. 613,* referred to. *Boxall* v. *Boxall, 27 Ch D. 220,* followed The defence of purchase for valuable consideration without notice is available against a claim based on an equitable title, but not against one based on a legal title. The will in this case contained the clause "On my demise *G*, son of *P*, or any full brother of *G*, that shall be born in equal shares, shall become the owner of the share or shares left by me and until the said *G* attain majority *P* and *B*, wife of *P*, shall remain trustee, *i e*, guardians and next friends." —*Held,* that there was neither an express nor implied appointment of executors under that clause. GOPAL DAS AGARWALLA *v.* BUDREE DASS SUREKA (1906) 10 C. W. N. 662

on the east side of the house of my step-brother, I give the same to my younger son Chiranjiv Mahadev for his life. He shall have no authority either to mortgage or to sell the said property. He shall only receive the income of the said property and I give the property after his death to his son or to his sons in equal share should there be

Act (X of 1865) KASHINATH CHIMNAJI *v* CHIMNAJI SADASHIV (1906) . I. L. R. 30 Bom. 477

82. ———— *Fund specified, liable for debts and expenses even when there is a residue undisposed of* Where a will directs that the funeral and testamentary expenses should be

83. ———— *"Such debts and liabilities as aforesaid"—"Such," meaning of—*

more than Rupees five thousand the said share shall be made over to him absolutely, but if otherwise then I direct that the said share shall be held or settled by my Executors upon trusts, until the said Ardeshir shall be free from such debts and liabilities or until he shall die, to

WILL—*contd.*

2. CONSTRUCTION—*contd.*

apply the income of the same in or towards the maintenance and support of him, his wife and children or such or one or more of them the said Ardeshir, his wife and children as the trustees may at their absolute discretion determine and the education or other benefit of such children including their marriage, but when and so soon as the said Ardeshir shall be free from such debts and liabilities as aforesaid upon trust to pay

only to debts and liabilities existing at the time when the residue was divisible. *Held*, that the debt, and liabilities to which the clause related were debts or any liabilities likely to result in a debts or debts of more than Rupees five thousand and it was with debts of that description that a comparison was implied by the word "such." Time was no part of their description and reference was made to time only to indicate the event on which certain consequences were to follow according as debts and liabilities of the description indicated did or did not exist. BAI JAIJI v. MACLEOD (1906) . . **I. L. R. 30 Bom. 493**

84 ———————— *Will—Appointment by general bequest—Power created subsequently to the will—Indian Succession Act (X of 1865), s. 78—Civil Procedure Code (Act XIV of 1882), s 527, case stated under.* A general power of appointment may be well exercised by a will executed previously to the creation of the power and that too by a mere residuary gift. DINSHAW SORABJI v. DINSHAW SORABJI (1907)

I. L. R. 31 Bom. 472

85. ———————— *Will—Construction of will—Uncertainty—Bequests of purposes of popular usefulness, or for purposes of charity.* By her will *N*, after making various bequests bequeathed the residue of her estate as follows —"As to whatever immoveable (and) moveable (property) and property in cash belonging to me may be in excess or may remain over as surplus after a disposition shall have been made in accordance with what is stated in the clauses above written, my abovementioned six executors are to make use of the same in such manner as they may unanimously think proper for purposes of popular usefulness or for purposes of charity. And I give to them (i.e.) my abovementioned trustees full authority to use the same in that manner." *Held*, that the gift of the residue was bad for uncertainty. *Runchordas v. Parbatibai, I L. R. 23 Bom. 725,* relied on. TRIKUMDAS v. HARIDAS (1907) . . **I. L. R. 31 Bom. 583**

86 ———————— *Technical words to have their legal effect, unless intention to the contrary apparent on the face of will—The words "in trust" do not always create a trust—Merger—Where trust in favour of party in whom legal estate vested, equitable estate merges in the legal estate—General disposition of whole estate will not be cut down, unless intention so to cut down is clear. Will must be construed as a whole—The words "as she may require" mean, "as may be necessary"* In construing wills, the test to be applied is what did the testator mean, having regard to the words used. Technical words or words of known legal import must have their legal effect even though the testator uses inconsistent words, unless those inconsistent words are of such a nature as to make it perfectly clear that the testator did not mean to use the technical terms in their proper sense. *Per* LORD DAVEY in *Lalit Mohan Singh Roy v. Chukkun Lal Roy, I. L. R. 24 Calc. 834, 846,* referred to. The words "in trust" do not invariably create a trust. The principle that a trustee cannot take beneficially has no application where the trust is in terms in favour of the party, in whom the legal estate is vested. Where both the legal and equitable estate are given to the same person, the two estates merge, and the person to whom they are given, takes the legal estate. Where a ... generality of ... unless the ... e will must ... consistent ... general ... best" ... rson is ... rposes authorised to draw money for ... amounts "as he may require," he can draw only such amounts "as may be necessary" for the purpose and not any amount "as he may think fit." A will contained the following, *inter alia*, clauses:—(1) "I will and bequeath to my dear wife Annie in trust and for her maintenance and support during her life all the money, property, goods and chattels, of which I may die possessed whatsoever and wheresoever situated and I appoint my dear wife Annie sole administratrix of this my last will and testament." (X) "I further will that my dear wife Annie as sole executrix of this my last will and testament shall draw from current deposit accounts whether here or in Great Britain such sum or sums of money as she may require for her maintenance and for the working and maintenance of my pro... ... dispose of all ... property ... the pro- ... part of ... appear ... occurs." ... testator ... e words ... rds "she ... in the ... stituted ... the in- ... mainten- ... rds "in

WILL—*contd.*

2 CONSTRUCTION—*contd*

trust" in clause (1) were not intended to create any trust, but only to indicate the nature of her estate and that she should enjoy only the income for her life and should not deal with the *corpus* except as authorised by the will (ii) That clause (X) did not create any trust, and that the words 'she shall receive and dispose . . in the interests of the property' were simply enabling words, which authorised her to apply, as she thought fit, the income of the property, upon the property. The testator intended that she should have an unfettered discretion in the maintenance and development of the property, without being questioned by any one interested in the reversion (iii) That a life estate was given to the widow by the words "during her life" and such estate was not cut down by the words "for her maintenance and support" which were simple words of description or motive, and that, if a trust was intended, it was for her benefit only, in which case the legal and equitable estate merged and she took the legal estate (iv) The words "as she may require" in clause (X) did not authorise the widow to draw any amount "as she

87 ———— *Construction of document—"Money"—General personal estate—* Where a testator after clearly indicating an inten-

whole will, to bequeath all his personal property to the legatees, it was not necessary to construe the term used in its strict limited signification, but the whole of the testator's personal estate passed. *Cadogan* v *Palaji, L R 25 Ch D 154,* referred to CHEDA LAL v GOBIND RAM (1902)
I. L. R 30 All 455

88. ———— *Gift to charitable purpose—Unnecessary and useless object—Cy-près doctrine—Trust incapable of being carried out at testator's death—Diversion of funds to useful and beneficial purpose—Power of Court* On the

WILL—*contd*

2. CONSTRUCTION—*contd.*

nearly as possible to the original intentions of such donor Each case in which an application

I L R. 32 Bom. 214

89. ———— *Bequest to a charity—General charitable intention—Death of executors—Charity not established—Accumulations of interest on fund—Residue of estate—Cy-près doctrine.* Where a testator has manifested a general charitable intention, the bequest will not fail merely because the executors are dead, and the land which the testator desired for his charity is not available for the purpose The fact that a charity has not been established earlier does not render the interest accrued on the fund applicable as a portion of the residue of the estate. Accumulations of interest form part of the capital for the purpose of carying out the object of the charity ADVOCATE-GENERAL OF BENGAL v. BELCHAMBERS (1908) . I L R 36 Calc. 261

90.———— **Secret Trusts—Indian Trusts Act, ss. 5, 81**——*"Attendant circumstances" under s 81, what are—Admissibility of extrinsic circumstances to prove that legatee took as trustee or to prove resulting trust in favour of next-of-kin—Benamee, proof of, in case of wills governed by English law* On the 19th April 1892, *W. T.* executed a will in the following terms :—This is the last will and testament of Mr William Taylor, of Parlakimedi, Ganjam, India I give, devise and bequeath unto S S S Gourachandra Gajapati Narayana Deo, Zamindar of Parlakimedi, all that I may possess at the time of my death, including my property at Kodaikanal, and shares and other property in the Commercial Land Mortgage Bank, Madras, also books, furniture

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whereof I, the said William Taylor, have to this, my last will and testament, set my name this 19th day of April one thousand eight hundred and ninety-two (1892) *W. T.* died in January 1902. Subsequent to his death, a letter written by him bearing date 28th April 1895 and addressed to the then zamindar of Parlakimedi (the legatee under the will) and containing an endorsement that it was to be opened after the death of *W. T.* was found. The letter directed the legatee to convert the testator's property into money and remit the proceeds to *R. T.*, brother of *W. T.* The legatee proved the will and died in 1905 and this letter was not communicated in the lifetime of *W. T.* In a suit brought by the next-of-kin of the testator for the administration of the estate against the son and heir of the legatee :—*Held, per* SIR ARNOLD

WILL—*contd.*

2. CONSTRUCTION—*contd.*

WHITE, C J, and SANKARAN-NAIR, J., that the letter of the 28th April 1895, not having been communicated in the testator's lifetime did not

intend to depart from the English Law and the Court will impose a trust on a legatee only when there is fraud according to English Law. *Manuel Louis Kunha v. Jnana Coelho, I. L R. 31 Mad. 187*, referred to. *Per* SIR ARNOLD WHITE, C J.—The letter is not admissible to show that the testator did not intend the legatee to take the interest which the will purported to give him "Attendant circumstances" in section 81 of the Trusts Act means the same as surrounding circumstances and it is only when the latter can be considered for the purpose of ascertaining the intention of the testator under the English Law that evidence of an attendant circumstance can be given to show that the testator did not intend to dispose of the beneficial interest in property devised by will Under the English law the letter could not be looked at to show that the legatee under the will was not intended to take the beneficial interest and the Indian law is the same *In re Boyes Boyes v. Carritt, 26 Ch. D. 531*, distinguished Where the "attendant circumstances" show an intention to dispose of the beneficial interest to any one, whether he is or not the legatee named in the will, there will be no resulting trust under section 81 of the Trust Act The words "I have no doubt he will carry out my wishes" do not show that it was not the intention of the testator to dispose of the beneficial interest In the case of wills executed by an English testator, the law of "benami" cannot be applied so as to override the provisions of the Trusts Act or the Succession Act or the English principles of equity on which these provisions are based. *Per* SANKARAN-NAIR, J., that the letter may be looked at for the purpose of determining whether the legatee was only a benamidar or trustee for some other person It is also admissible to show that the legatee was only a trustee under section 81 of the Trust Act. An "attendant circumstance" under section 81 of the Trust Act, means a circumstance that *accompanies or follows the transfer or bequest.* The letter was intended to accompany or follow the will and may therefore be taken into consideration to discover the intentions of the testator. The letter must be read with the words of the will that the testator had no doubt that the legatee would carry out his wishes; and the two read together clearly show that the legatee was not intended to take any beneficial interest RICHARD TAYLOR v. THE RAJAH OF PARLAKIMEDI (1909).

I. L. R. 32 Mad. 443

91. ———— —"Malik," meaning of—*Construction of—Absolute interest—Hindu widow.* Unless there is something in the context qualifying it the word *malik* used in a will bears its technical meaning When a testator bequeathed his property to his issue if he happened to have

THAKUR PRASAD v JAMNA KUNWAR (1909).

I L R. 31 All. 308

3. EXECUTION.

1 ———— Succession Act s. 50—*Signature of testator—Nature of execution required* To entitle the executor to probate, the signature of

2. ———————— *Execution of will by impression of facsimile of the name—Succession Act, s. 50.* A testator, who for a number of years, was, as he was unable to write, in the habit of

on the said document *Held*, that the execution of the will in this case was proper and came strictly within the meaning of the words used in s. 50 of the Indian Succession Act. NIRMAL CHUNDER BANDOPADHYA v. SARATMONI DEBYA

I. L. R 25 Calc 911
2 C. W. N 642

3. ———————— *Want of proof of due execution and of knowledge by testatrix of contents of will.* Where the defendant claimed the property in dispute under the will of a Hindu

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PARBHUDAS . . . . I. L. R. .. Bom. 229

4. ———————— *Probate and Administration Act (V of 1881), s 50—Evidence as to the execution of a will by a person near death.* On a question of fact raised in 1887, whether an alleged testator had or had not been able to duly execute his will, as he was said to have done during his last illness, the judgment of the District Court in the affirmative was restored The judgment of the High Court which would have revoked the probate granted in 1882 was reversed, upon the consideration of conflicting evidence as to the mental capacity of the testator, and as to the genuineness of his signature. ROMESH CHUNDER MUKERJI v. RAJANI KANT MUKERJI.

I. L. R. 21 Calc. 1

WILL—*contd.*

3. EXECUTION—*contd.*

5. ———— *Evidence as to execution—Duty of Judge.* The question whether an alleged Hindu will was genuine or not was

some respects obscure and unsatisfactory, and in reference to which the Court below had differed,

2 C. W. N. 177

6. ———— *Proof of due execution of will where the mental capacity of testator is in dispute—Rules for decision of such cases—Presumption—Duty of Appellate Court in deciding*

the testator was in such a state of mind as to be

WILL—*contd.*

3. EXECUTION—*contd.*

ordinary circumstances the competency of a tes-

lenged by evidence, which shows that it is, to say the least, very doubtful whether his state of mind was such that he could have "duly executed" the will as he is alleged to have done, the Court

not proved and refused probate WOOMESH CHUNDER BISWAS *v* RASHMOHINI DASSI.

I. L. R. 21 Calc. 279

On appeal to the Privy Council: On the weight of the evidence the Judicial Committee decided that the proponent had not discharged the burden of proving him to have been capable. The present case did not resemble one where a testator, near death, might, with the requisite degree of knowledge, have executed a disposition of his property for which, previously and while his mind was still in vigor, he might have given instructions. RASH MOHINI DASI *v* UMESH CHUNDER BISWAS . . . . I. L. R. 25 Calc 824
L. R. 25 I. A 109
2 C. W. N. 321

7. ———— *Proof of execution of will—Probabilities—Evidence.* The fact of the execution of a will was disputed by a testator's relations They impugned the will mainly on the theory of the improbability of its having been executed by him under the circumstances existing at the time, and in the presence of the witnesses alleged to have attested it They admitted his intention to execute such a will, but contended that, having long deferred the execution, he

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cogent and clearly made out. But in their Lordship's opinion, it was neither the one nor the other, and was based on an exaggerated view. The suggested inferences against the will were

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8. ———— *Suit by testator's son contesting validity of will—Alleged testamentary incapacity.* Although the mental faculties of a person suffering from partial paralysis may have been affected by his physical weakness, he

WILL—*contd.*

3. EXECUTION—*contd.*

may still be capable of devising and of executing a will of a simple character, although unfit to originate or to comprehend all the details of a complicated settlement In one sense the testator may not have been in the state which the witnesses described as "his full senses" He was feeble in body. The vigour of his mind was impaired, and his utterance was defective. On the other hand, there was nothing in the evidence which could reasonably lead to the inference that he was incapable of understanding such business as fell to his lot, or of regulating the succession to his property At the hearing of the suit, it was alleged that he was subject to insane delusions, as to which, however, the Courts below concurred in finding that they had not been shown to have existed. The statements made by him alleged to have been the result of delusion, had not been shown to be altogether without foundation As to this, their Lordships' opinion was that, in order to constitute an insane delusion affecting the question of testamentary capacity, it should have been shown, *not only that it was unfounded, but also that it* was so destitute of foundation that no one, save an insane person, would have entertained it The judgment that this testator had not testamentary capacity appeared to them to have had the unsafe basis of speculative theory derived from medical books and judicial *dicta* in other cases, and not to have been founded on the facts proved in this SAJID ALI *v* IBAD ALI . I. L. R. 23 Calc. 1
L. R. 22 I. A. 171

9. ———— *Incapacity from*

on the 9th February 1891, having at different times, in the interval, made four codicils. The widow, applying for probate, of all the above, propounded a fifth codicil, alleging it to have been made by her husband on the 6th February 1891. The son petitioned for probate to be delivered to him and to the widow, but only of the will and of the first two codicils, contesting the three later codicils as having been made under undue influence exercised by the wife. He disputed the last codicil, not only on the ground of undue influence, if the codicil had been in fact executed, but because at the time of the alleged execution his father was almost unconscious, and unable to understand what he was doing The High Court, in its original testamentary jurisdiction, refused probate of the three disputed codicils, granting probate of the will and of the first two codicils only. The Appellate High Court granted probate of the will and of the five codicils, finding that no undue influence had been exercised, and that the fifth had been executed by the testator with knowledge and comprehension of its contents and of his free volition. The Judicial Committee affirmed the judgment of the Appellate Court as to the absence of undue influence. In their opinion, if there was not e

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husband's weakness, and of their differences ... for little But in regard to the fifth codicil, they affirmed the judgment of the original Court, finding

act. SALA MAHOMED JAFFERBHAI *v* DAME JANBU
I. L. R. 22 Bom. 17
L. R. 24 I. A. 148
1 C. W. N. 481

10. ———— ———— *Execution of will —Evidence on the question of whether the testator was of sound disposing mind at time of execution —Reversal by Appellate Court of decision of Judge who heard evidence and entirely disbelieved their testimony—Onus of proof* On a contested application for probate in which the question was whether a testator was of sound disposing mind on ... he was alleged to have

... in support of the ... their ... s, and ... Appellate Court being of opinion that he had not given adequate consideration to the possibility that in spite of the testator's physical infirmity, his mental capacity was sufficient, reversed the decision and granted probate of the will and codicil. *Held*, by the Judicial Committee (reversing the judgment of the Appellate Court), that the medical evidence entirely justified the view of the Judge who heard the evidence, namely, that it left the onus on the plaintiff who propounded the will quite undischarged, so that in the absence of other reliable evidence he had no alternative *but to* dismiss the application It is always difficult for Judges who have not seen or heard the witnesses to refuse to adopt the conclusions of fact of those who have, but that difficulty is greatly aggravated when the opinion Judge who heard them has formed the opinion not only that their inferences are unsound on the ... story, but that

(1909) . . . I. L. R. ...

11. ———— *Will—Execution —Testamentary capacity—Will drafted according to instructions and signed by testator without at the time understanding all its provisions. Semble* Where it was proved that a will was prepared

WILL—*contd.*

3 EXECUTION—*concld.*

according to the testator's instructions by the person entrusted with its preparation, who moreover was fully conversant with the testator's affairs and was apparently on intimate terms with him, so that the testator would have ample reason for believing that the will placed before him for signature was drawn up in accordance with his instructions, it should be considered his will if he set his hand to it, and it would not be necessary to prove that at the time he was capable of understanding all its provisions. *Perera* v *Perera*, [1901] A C 354, referred to *Held*, on the facts of the case, that the testator was not merely supposing

4 FORM OF WILL

1. ———— **Buddhist will**—*Probate—Succession Act* (*X of 1865*), *s* 331 Probate may

2 B. L. R. A. C. 79: 10 W. R. 417

2 ———— **Testamentary document**—*Will to have effect on contingency—Probate* *A*, being ill and away from home, wrote to his brother *B* certain directions as to the management of his property, and concluded: "Brother, if I die of this sickness and *C* survive me, then whatever

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pany's papers, etc. I appoint you turney (executor) in all matters relating to *C*," etc. *A*

3 ———— *Imperfect form of will—Will unexecuted by testator—Blank spaces*

WILL—*contd.*

FORM OF WILL—*concld.*

in body of will—Application for probate. A testator died leaving as his will a printed form of will

queathing all his property to his wife and appointing her sole executrix *Held*, that this was sufficient, and the will should be admitted to probate. *In the goods of Pasmore, L R. 1 P & D. 653*, referred to *In the goods of* PORTHOUSE.

I. L. R. 24 Calc. 784

4. ———— **Document intended to take effect partly in the lifetime of the executant and partly after the executant's death**—*Probate and Administration Act* (*V of 1881*), *s* 3. There is no objection to one part of an instrument operating *in præsenti* as a deed and another *in futuro* as a will. *Cross* v. *Cross, S Q B. 714 · 15 L J N. S Q B 217*, referred to CHAND MAL *v* LACHHMI NARAIN.

I. L. R. 22 All. 162

5. ———— **Codicil**—*Probate, application for—Document referring to will* After letters of administration with the will annexed had been granted, the administrator found a book containing memoranda in the testator's handwriting, made after the date of the will, and directing certain dispositions of his property. One entry referred in express terms to the will. The testator was a domiciled Scotchman *Held*, on a petition by the administrator, asking that the memoranda might be admitted to probate, that the memoranda were not testamentary documents, and the petition was therefore dismissed *In the goods of* WEMYSS . . . . **I. L. R 4 Calc. 721**

5. INSPECTION OF WILL.

———— **Practice**—*Application by next-of-kin of deceased.* The Court, on the application of one who is next-of-kin of a deceased Hindu, ordered a person in possession of an alleged will of the deceased to bring in and deposit the same with the officer of the Court for the purpose of being inspected, and a copy thereof taken by such applicant. *In the case of* BALKRISHNA GANPATJI.

1 Bom. 114

6 NUNCUPATIVE WILL.

1. ———— **Validity of nuncupative will**—*Roman Catholics of Portuguese extraction—Intestate succession* *Quære:* Whether a Roman Catholic or Portuguese extraction can, under the law current amongst members of that church in Chittagong, take under a nuncupative will; and if not, to what is a wife entitled under the law regulating succession of intestates amongst members of that church? REBEIRO *v* REBEIRO.

3 W. R. 63

WILL—*contd.*

6. NUNCUPATIVE WILL—*contd.*

2. ——————— *Nuncupative will of a Mahomedan—Probate and Administration Act (V of 1881), ss. 3, 24, 25, 26, 62—Succession Act (X of 1865), s 244 and Ch. IX* Probate may be granted of a nuncupative will *In the matter of the will of* MAHOMED ABBA *In re* MARIAMBAI.

I. L. R. 24 Bom. 8

7. RENUNCIATION BY EXECUTOR.

1. ——————— **Procedure after renunciation** —*Proof of execution of will in Court—Administration accounts* A Hindu testator empowered his executor to lay out such portion of his estate as the executor might think fit towards charitable purposes, and did not dispose of the residue of the estate The executor renounced, and no probate of the will or letters of administration, with the will annexed, was granted. In a suit by the testator's sole heiress for construction of the will and for administration, the Court allowed the execution of the will to be proved in Court, declared that it was void for uncertainty, and directed the usual administration accounts to be taken SURBOMUNGOLA DABEE *v.* MOHENDRONATH NATH.

I. L. R. 4 Calc. 508

2. ——————— *Executor—Intermeddling with estate—Degree of interference necessary to charge executor—Suit for account against executor—Account on footing of wilful default—Practice—Limitation—Limitation Act (XV of 1877), s 10, Sch. II, Art 120.* In law a very small interference or intermeddling with the estate of his testator on the part of a party appointed executor under a will is sufficient to [illegible] An executor [illegible] s an executor [illegible] all the liabil- [illegible] ng once acted, the subsequent renunciation is void, and he continues liable to be sued in the character of an executor *Rogers* v. *Frank, 1 Y. & J. 409,* followed. Modern practice allows of an order charging wilful default being made at any time during the action on a proper case being shown. The plaintiff brought a suit against the executors of the will of her grandfather, praying for a declaration that she was absolutely entitled to the property of her grandfather and for an account of the property in the hands of the executors The plaintiff claimed as heir and not under the will. *Held*, that she was only entitled to accounts for six years preceding the suit as she took no interest in the property under the will, and the executors were not trustees for *her* and the property did not vest in them for any specific purpose in her favour. Such a suit is not a suit for the purpose of following such property in the hands of the executors and trustees. AYESHABAI *v.* EBRAHIM (1908).

I. L. R. 32 Bom. 364

WILL—*contd.*

8. REVOCATION.

1 ——————— **Evidence as to revocation of a will**—*Onus of proof of revocation of will.* A will duly executed is not to be treated as revoked either wholly or in part, by a will which is not [illegible]

stand together. It is not enough to show that the will which is not forthcoming differed from the earlier one, if it cannot be shown, in what the difference consisted It is also settled that the burden of proof lies upon him who challenges the existing will. These propositions are of general application. MIRZA *v* UMDA KHANAM. MIRZA *v.* GUNNA KHANAM . **I. L. R. 19 Calc. 444**

L. R. 19 I. A. 83

2. ——————— **Revocation of portion of will**—*New page of will not duly executed substituted by testator after execution of will—Dependant relative revocation—Probate.* After the death of the testator (H G. Meakin), his will was found among his private papers in a sealed envelope with the words "H. G. Meakin's will, not to be opened until after death," written in his handwriting on the face of the envelope. The will was wholly in his writing, and was written on four separate sheets of paper pinned together. The first, third and fourth pages were of blue paper and of the same size, and each of them was signed at the bottom by the testator and by two witnesses. The fourth page stated the date of the will and was signed by the testator and was duly attested by the said two witnesses. The actual execution of the will took place (as was proved by evidence) in March or April 1894. The second page, however, was of a different kind of a paper page, and was from the other pages and of smaller size, and was signed by the testator, but not by witnesses. This second page contained a bequest to a child who was born in May 1894, *i e.*, some months after the will was executed The executors propounded the will. *Held*, that probate must be refused. KER *v.* MEAKIN . **I. L. R. 20 Bom. 370**

3. ——————— *Lost Will—Presumption of revocation—Secondary evidence—Onus of proof—Probate and Administration Act (V of 1881), ss 20, 24.* If a will, shown to have been in the custody of the testator, is not forthcoming at the time of his death, it is presumed to have been destroyed by him, unless there is sufficient evidence to rebut the presumption. *Welch* v. *Phillipps, 1 Moo P. C. 299; Brown* v. *Brown, 27 L. J. Q. B 173; Sugden* v. *Lord St. Leonards, 1 P. D 154,* referred to. But such pre- [illegible] unless there [illegible] will was [illegible] 's death. [illegible] ferred to. [illegible] le of this [illegible] g fakirs, country and specially those [illegible]

WILL—*contd.*

8. REVOCATION—*concld.*

another presumption may well arise, namely, that when such a document is not forthcoming after the testator's death, it has been mislead. If a will is found to have been validly executed and not been revoked, and yet is not forthcoming, it may be proved by a certified copy, and letters of administration limited, until the original will is produced, may be granted. ANWAR HOSSEIN *v.* SECRETARY OF STATE FOR INDIA (1904).

I. L. R. 31 Calc. 885
s.c. 8 C. W. N. 885

4. ———————— *Will—Separated Hindu domiciled in the United Provinces—Revocation of will—Evidence—Presumption.* A separated Hindu residing at Meerut executed a will on the 20th of January, 1885, and registered the same in the office of the District Registrar on the 22nd of January of the same year. The testator died on the 16th of October, 1899. On the 8th of July 1902, a suit was instituted by certain persons who claimed the property of the testator

in the disappearance of the will had had access to the house of the testator since his death. *Held,*

coming at his death it has been destroyed by him,

9. CANCELLATION, SUIT FOR.

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BHAJAN KUNWAR *v.* GURUCHARAN KUNWAR (1905)
I. L. R. 27 All. 14

10. PRACTICE.

———————— *Practice—Civil Administration—Further directions—Advocate General*

WILL—*contd.*

10. PRACTICE—*concld.*

by consent, added as party—Right to question validity of legacies—Estoppel—Laches—State demand—Khoja Mahomedan Will—Gift to a class—construction. M, A Khoja Mahomedan, died in 1864. By his will and codicil he left his property to trustees, upon trust, *inter alia,* to pay his daughter *L,* a monthly sum during her life and, after her death, to pay it to her children. *M's* residuary estate was charged in favour of certain charitable objects. In 1868 the Advocate General commenced a suit (962 of 1868) for the administration of *M's* estate. In 1869 *L* died, leaving four children surviving her. In 1871 a decree for the administration of *M's* estate was granted to *R,* the husband of *L,* in another suit (370 of 1870). In 1873 a decree for administration was passed in the Advocate General's suit (962 of 1868). By the decree the Advocate General was given liberty to join in taking the accounts and making the enquiries directed in suit 370 of 1870. In 1899 the Commissioner made his final report in suit 370 of 1870, to which, however, exceptions were filed. In

on the assumption that it was valid. The Advocate General was now, by consent of the parties,

entitled at this stage to raise the point. *Held* (reversing TYABJI, *J.*), that the Advocate General

practice is to allow the result of those accounts

further hearing, on the construction of the will, that such of *L's* children as were in existence at the death of the testator were entitled to the annuity at *L's* death. ADVOCATE GENERAL *v.* KARMALI (1905) . . **I. L. R. 29 Bom. 133**

11. PROBATE.

1. ———————— *Probate and Administration Act (V of 1881)—Will—Document by a shebait appointing another shebait.* Where the *shebait* of an endowed property executed a

WILL—contd.

11. PROBATE—contd.

could not be applied for. CHAITANYA GOBINDA PUJARI ADHICARI v. DAYAL GOBINDA ADHICARI (1905) . . . **I. L. R. 32 Calc. 1032**
s.c. 9 C. W. N. 102

2. ———————— *Probate—Deed-poll executed at same time as will and referred to in it —Will giving benefit to solicitor, who prepared it—Onus of proof—Testamentary writing—Succession Act (X of 1865), s 51* A will made reference to a deed-poll which was executed at the same time, and also contained clauses under which the solicitor, who prepared it, took some benefit, and was appointed an executor of the will, and a trustee of the testator's estate The first Court granted probate of the whole will, but the

Judicial Committee, that the onus was on the solicitor to show that the deed-poll and the disputed parts of the will expressed the true intention of the testator, who understood and approved of them, and that on the evidence and under the circumstances of the case he had discharged that onus The law relating to the case of person taking a benefit under a will prepared by himself as laid down by Lord Wensleydale in *Barry* v. *Butlin, 2 Moo P C 480*, and approved of in *Fulton* v *Andrew, L R 7 H L 448*, followed *Held*, also, that the deed-poll was not a testamentary document requiring probate, the reference to it in the will not being for the purpose of making, or so as to make, its contents parts of the will; it was, therefore, not within s 51 of the Succession Act (X of 1865) BAI GANGABAI v BHUGWANDAS VALJI (1905) . . **I. L. R. 29 Bom. 530**

3 ———————— *Will—Execution, proof—Probate, delay in taking—Probate taken on necessity arising—Revocation, application for, made after the death of persons competent to give best evidence—Probate and Administration Act (V of 1881), s 50* K died leaving an infant son, a daughter and a widow and some property of very trifling value The son claimed to be heir through his mother to a large estate and this claim was then under litigation The son died 5 years after *K's* death having shortly before obtained a decree for the said estate The widow thereupon adopted *K's* brother's son, and then proved in common form a will purporting to be *K's*, which contained provisions for the prosecution of his son's claim under litigation, and directed his widow, to adopt *K's* brother's son should his son die, provisions being also made for his daughter out of his estate On an application made 12 years later on behalf of *K's* daughter's son for revocation of the probate, the High Court held the terms of the will to be reasonable and the evidence sufficient to establish the will considering the difficulty of establishing a will so long after its execution, the persons who would be expected to

WILL—contd

11. PROBATE—contd.

give the best evidence in the matter having died. The Judicial Committee affirmed that decision and pointed out that the delay in taking out probate was accounted for by the fact that, until *K's* son's death and the adoption in his place, there was no very urgent necessity for taking out probate, *K's* estate being of itself of trifling value. KALI DAS CHUCKERBUTTY v. ISHAN CHUNDER CHUCKERBUTTY (1905) . **9 C. W. N. 49**

4. ———————— *Will—Execution —Solicitor-executor preparing and attesting Will —Clause permitting him to charge for professional and other services—Proof—Onus—Independent advice—Fiduciary relation—Deed referred to in Will—Probate—Succession Act (X of 1865), s 51* If a party writes or prepares a will, under which he takes a benefit, that is a circumstance that

unless the suspicion is removed and it is judicially satisfied that the paper pronounced does express the true will of the deceased *Barry* v *Butlin, 2 Moo. P. C. 480*, and *Fulton* v. *Andrew, L. R 7 E. & I. Ap 448*, approved But there is no rule of law as to the particular kind or description of evidence, by which the Court must be satisfied. The degree of suspicion excited and the weight of burden of removing it must depend largely on the nature and amount of the benefit taken and all the circumstances of the case The ... to be ... evi... ...use... ...tor, who prepared and attested the will and was also ... to charge for pro... It also ... one per... ...ness, for ... of the ... ...fied ... hat ... ...se, ... no ... ...nd... independent advice in this matter and ... ent evidence was adduced that this clause in particular was called to the testator's attention. Where a deed-poll previously executed by the testator was referred to in the will, but not for the purpose of making its contents a part of the will.—*Held*, that it was not a testamentary document requiring probate, although the will in terms purported to confirm the deed. BAI GUNGABAI v. BHUGWANDAS VALJI (1905).
I. L R. 29 Bom. 530
9 C. W. N. 769

5 ———————— *Forgery—Probate —Executor* When a probate having been granted in the name of several persons as executors, one of them applied for revocation on the ground

WILL—*contd.*

11 PROBATE—*contd.*

that the will was a forgery and that he himself did not apply for probate and was not cited and that the probate was obtained behind his back: *Held*, that he was entitled to have his name struck out of the probate, but he had no *locus standi* to challenge the will. SRINATH GHOSH *v.* MUKUNDARAM CHUCKERBUTTY (1908) . 12 C. W. N. 573.

6. ———— *Probate—False Will—Costs* A beneficiary who successfully resists an attempt by another beneficiary to prove a false will is not as a matter of right entitled to be paid his costs out of the estate The costs are in the discretion of the Court and may be directed to be paid out of the estate of the deceased in a suitable case S 102 of the Probate and Administration Act does not justify a contrary inference BARADA PROSHAD BANERJEE *v.* GAJENDRA NATH BANERJEE (1909) . 13 C W. N. 557

12 VALIDITY OF WILL.

1. ———— **Military testamentary document**—*Application for probate—Lapse of time—Invalidity of will.* A military testament valid in its inception may be deprived of its privilege by lapse of time *In re* GODBY. 1 Hyde 196

2. ———— **Will of Cutchi Memon**—*Will disposing of ancestral property* Wills made by members of the Cutchi Memon community, whereby the testators disposed of property which was proved to be ancestral, *held* to be invalid MAHOMED SIDICK *v.* AHMED ABDULA HAJI ABDSATAR *v.* AHMED . I. L. R. 10 Bom. 1

3 ———— **Will of East Indian testa-** [illegible]

4. ———— **Question of due execution and validity of will**—*Disposition of immoveable property in British India.* The validity of a [illegible]

[illegible]

5 ———— **Will procured by importunity of wife**—*Succession Act, s 48—Undue influence* The wife of the testator persuaded him to execute a will in supersession of a former will less favourable to her, but the influence which she exerted was not such as to deprive the testator of the exercise of his judgment and volition. *Held*, that the conduct of the wife did not amount to

WILL—*contd.*

12 VALIDITY OF WILL—*contd.*

undue influence MORISON *v.* ADMINISTRATOR-GENERAL OF MADRAS . I. L. R. 7 Mad. 515

6. ———— **Proof of genuineness of will**—*Registration and attestation.* When a document propounded as a will is proved to have been executed and registered by the alleged testator it is still essential to enquire into the circumstances connected with its execution and registration, when the will is inofficious and there are other suspicious matters connected with it. KISTO CHURN MOJOOMDAR *v.* DWARKA NATH BISWAS. 10 W. R. 32

7 ———— **Blank spaces left in body of will**—*Alterations and erasures in will—Presumption—Pencil writing subsequent to the execution of the will—Intention of testator.* The circumstance that blank spaces are left in the body of a will is no objection to its being a valid will. If a will contains alterations and erasures, the presumption will be that they were made after the will was executed; and if there is no evidence rebutting that presumption, they will form no part of the will. The lower Court, having declined to grant probate of a will (which it held to be proved), on the ground that it was an incomplete will, being of opinion that the blanks, alterations and cancellations in the will showed that the deceased intended it to be a draft, and not the final expression of his wishes:—*Held*, that, the will being one which did not require to be signed by the testator, probate should be granted to include a pencil addition proved to have been made by an attesting witness at the desire of the testator, but excluding all other additions, erasures, or cancellations. PANDURANG HARI VAIDYA *v.* VISHNU VINAYAK KANE. I. L. R. 16 Bom. 652

8. ———— **Will in excess of power of** [illegible]

suit, praying that the will might be declared invalid The defendants were the testatrix and those who took under the will. While the suit was pending, the testatrix died. *Held*, that the will should be declared to be invalid so far as it operated to defeat the award. MAGANLAL PURUSHOTTAM *v.* GOVINDLAL NAGINDAS I. L. R. 15 Bom. 697

9. ———— **Addendum**—*Will of Oudh Talukdar not registered under Oudh Estates Act (I of 1869), s 13—Subsequent addendum executed and duly registered, referring to and explaining will.* Where a will made by an Oudh *Talukdar* was executed on the 29th of April, 1881, but was not [illegible]

will and registered on the same day, an objection

WILL—*contd.*

12 VALIDITY OF WILL—*contd.*

that the original will had not been registered in accordance with s. 13 of the Oudh Estates Act, and was therefore invalid, was overruled, and the document was *held* to be effective as a testamentary instrument, whether the *addendum* was regarded as a codicil or a will SATRUPA KUNWAR *v.* HULAS KUNWAR (1902) . . **I. L. R. 25 All. 121**

10. ———— **Forged will**—*Probate and Administration Act (V of 1881), s 84.* Acts done by a person under a title created by a will which has been declared to be a forgery are void. But any lawful payments made by a person to whom probate of such a will was granted but subsequently revoked may be re-imbursed out of the estate of the deceased, under s 84 of the Probate and Administration Act PUNDIT PRAYRAG RAJ *v* GOUKARAN PERSHAD TEWARI (1902)
6 C W. N. 787

11. ———— **Unsoundness of mind**—*Application for probate—Plea of unsoundness of mind on the part of the testator—Burden of proof.* If a party writes or prepares a will under which he takes a benefit, or if any other circumstances exist which excite the suspicion of the Court, and whatever their nature may be, it is for those who propound the will to remove such suspicion, and to prove affirmatively that the testator knew and approved the contents of the will; and it is only where this is done that the *onus* is thrown upon those who oppose the will to prove fraud, or undue influence, or whatever they rely on to displace the case for proving the will. *Barry* v *Butlin, 2 Moo P C 480*, *Fulton* v *Andrew, L R 7 H L, 448*, *Tyrrell* v *Painton, [1894] P D. 151*, and *Farrelly* v *Corrigan, L R (1889) A. C 563*, referred to LACHHO BIBI *v* GOPI NARAIN (1901)
I. L. R. 23 All. 472

12. ———— **Test of ascertaining whether a document is a will or not**— [illegible]

[illegible] of a document propounded as a will.—*Held*, that it was not a will, but an erkrarnamah, the irrevocability of the document being perfectly in- [illegible] e fact that [illegible] document [illegible] the parties [illegible] v DEO [illegible] W. N. 614

13. ———— **Undue influence**—*Probate—Caveat—Validity of will—Objection to a particular clause of will.* In a suit for probate, the caveators assailed the whole of the will on the ground of undue influence, but the Probate Court granted Probate disallowing that objection. *Held*, that in a subsequent suit it was not competent for the caveators to show that any particular

WILL—*contd.*

12. VALIDITY OF WILL—*contd.*

clause in the will had been inserted through undue influence. *Allen* v. *M'Pherson, 1 H. L. 191*, referred to NUZHATUDDOWLA ABBAS HOSSEIN *v* MIRZA KURRATULAIN (1904).
I. L. R. 31 Calc. 186

14. ———— [illegible] —*Validity of* [illegible] *Probate, dela*[illegible] *form—Onus o*[illegible] *Act (V of* [illegible] was executed the day before the death of [illegible] testator in 1878, and probate was obtained in 1884 in common form with issue of citations. On an application made in 1896 by the appellants for revocation of probate on the ground that the [illegible]

[illegible] *obtain proof of the will in solemn form* [illegible] out precedent after so long an interval from the date of probate. That the appellants should at least have shown when they became aware of the probate, and that considering the difficulty of proving the will in solemn form after the long time that had elapsed, there was sufficient evidence of its [illegible] ication was [illegible] ministration [illegible] as doubtful [illegible] whether the burden of proof was not on the appellants to show that the will was fictitious, no "just cause" had been shown for revoking the probate *Held, on the evidence*, that, under the circumstances of the case there was no ground for differing from the decision of the High Court. KALI DAS CHUCKERBUTTY *v.* ISHAN CHUNDER CHUCKERBUTTY (1904) . **I. L. R. 31 Calc 914**

15. ———— **Evidence as to due execution and registration properly obtained**—*Proof of will—Presumption as to official acts duly performed* The registration of a document is a solemn act to be performed in the presence [illegible] to act as Regis- [illegible] ties during [illegible] persons are [illegible] identified [illegible] fore him in [illegible] s signature [illegible] te fraud on [illegible] presumed [illegible] propounded [illegible] ne on the [illegible] ration, and [illegible] abilities of the [illegible] rt, which had [illegible] Judge, was [illegible] reputation, [illegible] Registration [illegible] *bona fides* of [illegible] Office was inadmissible to [illegible]

WILL—*contd.*

12. VALIDITY OF WILL—*contd.*

the transaction. GANGAMONI DEBI *v.* TROILUCKHYA NATH CHOWDHRY (1905).
I. L. R. 33 Calc. 537
s.c. 10 C. W. N. 522
L. R. 33 I. A. 60

16. ——— Execution under pressure —*Free agency—Importunity—Indian Succession Act (X of 1865), s. 48, Illus. (g) and (h).* A will is not invalidated on the ground of its having been executed under pressure, unless the pressure was such as the testator could not resist. Illus. (g) and (h) of s. 48 of the Succession Act practically lays down the rule which should guide all Courts on the question of importunity. They indicate the law as stated in Williams on Executors and Administrators. JAJNESHWARI SAHA *v.* UGLESHWARI DASSYA (1907) 11 C. W. N. 824

17. ——— *Succession Act (X of 1865), ss. 101, 102—Hindu Wills Act (XXI of 1870), s. 3, para. 4.* A power to distribute property conferred by a testator under his will, which is exercisable "when my grandsons may attain their age" is void under ss. 101 and 102 of the Indian Succession Act, as extending the period beyond the limit allowed by s. 101, whether the point of time referred to is taken to be the attaining of age by the grandsons in existence at the date of the testator's death or such attaining of age by all his grandsons. If the intention of the testator to benefit *all* his grandsons is clear from the will, the latter view ought to be adopted, and a secondary intention to benefit such grandsons at least as should be in existence at his death ought not to be assumed. The rule applicable to such cases in India is that "if the exercise of a power is made contingent on the happening of an event, which, may by possibility happen beyond the limits of the rule, the mere fact that the contingency has happened earlier and has rendered the exercise of the power practicable within the prescribed limit does not validate the power." S. 3, para. 4 of the Hindu Wills Act, has not the effect of making s. 101 of the Succession Act inapplicable to Hindu [illegible]

18. ——— *Privy Council—Practice—Decision on facts—Genuineness of Will—Onus on Appellant—failure to discharge—Statement of reasons by the Judicial Committee.* Where a Division Bench of the High Court after a pro- [illegible] at the con- [illegible] evidence of [illegible] in support [illegible] before the [illegible] was on the [illegible] not heard [illegible] he decision

WILL—*concld.*

12. VALIDITY OF WILL—*concld.*

of Judges who had, to show that the decision was erroneous. That in this case that onus had not been discharged. Having regard to the intricacy of the case and the elaborate arguments presented the Judicial Committee thought it desirable to state in outline the salient features of the evidence and the reasons for their conclusion, although it might have sufficed if they had only said that the appellant had not succeeded in discharging the onus that lay on him. NOGENDRA NATH MITTER *v.* KUMUDINI DASI (1909).
13 C. W. N. 782

WILLS ACT (XXV OF 1838).

——— s. 3—*Application of Act—East Indians domiciled out of the jurisdiction of High Court.* The Wills Act, XXV of 1838, applied to the wills of East Indians, whether domiciled within or beyond the testamentary jurisdiction of the High Court. HOGG *v.* GREENWAY . 2 Hyde 3

Held, on appeal, that the Wills Act only applied where the High Court had an exclusive jurisdiction analogous to that of the Ecclesiastical Court in England. It did not apply in the case of a person who was not entitled by birth or domicile to have [illegible]

of the ordinary civil jurisdiction of the Court. GREENWAY *v.* HOGG. HOGG *v.* GREENWAY.
Bourke A. O. C. 111; Cor. 07

WINDING UP.

See COMPANY—WINDING UP.

See COMPANIES ACT

——— *Companies Act (VI of 1882), s. 125, cl. (c)—"Other reason of a like nature."* When the law requires the fulfilment of one or more of several conditions [illegible]

of the Company is gone it will [illegible] would be just and equitable to [illegible] pany and will make an order for [illegible] winding up. The Court [illegible] in making a winding up order [illegible] that the Company has [illegible] make further losses [illegible] COMPANY, *In re* (1908) [illegible]

WINDOWS OR [illegible]

See [illegible] AND AIR [illegible]

WINDOWS AND DOORS—*concld.*

——— suit to close—

See JURISDICTION OF CIVIL COURT—PRIVACY, INVASION OF.

See RIGHT OF SUIT—PRIVACY.
I. L. R. 18 Mad. 163
5 C. W. N. 147

See TRESPASS—GENERAL CASES.
3 B. L. R. A. C. 411

WITHDRAWAL OF APPEAL.

See APPEAL—OBJECTIONS BY RESPONDENT . . I. L. R 17 All. 518

See APPEAL—OBJECTIONS BY RESPONDENT—WITHDRAWAL OF APPEAL.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT. I. L. R. 15 Bom. 370

See PAUPER SUIT—APPEALS
I. L R. 18 Bom. 464

WITHDRAWAL OF APPLICATION FOR EXECUTION.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT I. L R. 12 All. 179; 392
I. L. R. 17 All. 106
L. R. 22 I. A. 44
I. L. R. 18 Calc. 462; 515; 635
I L. R. 15 Mad. 240

See LIMITATION ACT, 1877, SCH. II 2, ART. 179—STEP IN AID OF EXECUTION
I. L R. 23 Calc. 817

WITHDRAWAL OF CRIMINAL PROCEEDINGS.

See COMMITMENT . 5 C. W. N. 411

See MAGISTRATE, JURISDICTION OF—WITHDRAWAL OF CASES.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS
I. L. R 22 Calc. 898

WITHDRAWAL OF PETITION FOR INSOLVENCY.

See INSOLVENCY ACT (11 and 12 Vict. c. 21), s. 7 . I. L. R. 32 Bom. 321

WITHDRAWAL OF SANCTION TO BUILD.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT (II OF 1888), ss 247, 250, 427
I. L. R. 30 Calc. 317

WITHDRAWAL OF SUIT.

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—PLAINT.
I. L. R. 9 All. 191
L R. 13 I. A. 134

WITHDRAWAL OF SUIT—*contd.*

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—WITHDRAWAL OF SUIT
I. L. R. 3 All. 528

See CIVIL COURTS ACT, ss 22, 23
10 C. W. N. 902

See CIVIL PROCEDURE CODE, 1882, ss 43, 373 . . . 10 C. W. N. 8

See CIVIL PROCEDURE CODE, 1882, s. 373 I. L. R. 35 Calc. 990
I. L. R. 32 Bom. 345
12 C. W. N. 921

See CIVIL PROCEDURE CODE, 1882, ss. 373, 622 I. L R. 33 Bom. 722

See CIVIL PROCEDURE CODE, 1882, ss 411, 412 . I. L. R. 31 Bom. 10

See COMPROMISE—REMEDY ON NON-PERFORMANCE OF COMPROMISE
Agra F. B 1

See DEKKHAN AGRICULTURISTS' RELIEF ACT, s 53 . I. L. R. 12 Bom. 684

See DIVORCE ACT, s 35
9 B. L. R. Ap. 6
I. L. R. 25 Calc. 222

See LETTERS PATENT, HIGH COURTS, 1865, CL. 12 . I. L. R. 24 Mad. 293

See MULTIFARIOUSNESS.
I. L R. 16 All. 279

See PRACTISE—CIVIL CASES—AFFIDAVITS.
3 Bom. O. C 55

See PRACTICE—CIVIL—CASES—WITHDRAWAL OF SUITS OR APPEALS. Cor. 67
I L R. 7 Bom. 287

See RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM
I. L. R. 1 All. 324
I. L R. 10 Mad. 160
I. L R. 17 All. 53

See RES JUDICATA—RELIEF NOT GRANTED
I. L. R. 21 Calc. 265

——— order allowing—

See APPEAL—DECREES.
I. L. R. 8 All. 82
I. L. R. 18 Calc. 322
I. L. R. 15 All. 169
I. L R. 16 All. 19
I. L. R. 17 All. 97

See APPEAL—ORDERS
I. L. R. 6 All. 211

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, 1882, s 622.
I. L. R. 11 Mad. 322
I. L. R. 15 All. 169

——— power to allow—

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT.
I. L. R. 24 Calc. 129

WITHDRAWAL OF SUIT—*contd.*

[It was formerly *held* in some cases that the power to allow withdrawal of suits given by the Civil Procedure Code (s. 97 of Act VIII of 1859) was not applicable to suits under the Rent Act, 1859.]

DOYAL CHUNDER GHOSE *v* DWARKANATH MISSER
Mar. 148 : W. R. F. B. 47
1 Ind. Jur. O. S. 41 : 1 Hay 347

MODHOO SOODUN MULICK *v.* PANCH COWPEE MULICK . . . . . **7 W. R. 302**

BEER CHUNDER JOBRAJ *v* TARINEE CHURN ROY **11 W. R. 46**

RAMANATH DUTT *v* JOYKISHEN MOOKERJEE **11 W. R. 3**

In other cases rent suits were *held* not to be excluded. RAM CHARAN BYSAK *v* HARVEY
2 B. L. R S N. 11 : 10 W. R. 373

WOOMANATH ROY CHOWDHRY *v* SREENATH SING . . . . **15 W. R. 260**

[Since the Bengal Rent Act, 1869, however the procedure in rent suits has been, and is now, the same as in any other suits]

1. ———— **Sanction for fresh suit**—*Act VIII of 1859, s 97* Civil Courts had no power to sanction the bringing of a fresh suit, except under s. 97, Act VIII of 1859 ARGOON SINGH *v* HUREE HUR SINGH . . . **14 W. R. 472**

ANUND MOHUN PAUL CHOWDHRY *v* RAM KISHEN PAUL CHOWDHRY. GOBIND CHUNDER PAUL CHOWDHRY *v* RAMKISHEN PAUL CHOWDHRY
2 W. R. 297

2. ———— **Leave to one of several co-plaintiffs to withdraw**—*Consent of co-plaintiff —Civil Procedure Code, 1877, s 373.* The proviso in the third clause of s. 373 of the Code of Civil Procedure does not deprive the Court of power to

9 C. L. R. 332

3. ———— **Withdrawal with consent of defendant**—*Civil Procedure Code, 1859, s. 97—Right to bring fresh suit* A plaintiff filed a plaint for an account to be taken. The plaintiff

JUGGOBUNDO CHATTERJEE *v* WATSON & CO.
Bourke A. O. C. 162
s. c. in Court below . **Bourke O. C. 250**

WITHDRAWAL OF SUIT—*contd.*

4. ———— **Withdrawal of claim under s. 230, Act VIII of 1859**—*Right to bring subsequent suit.* In a suit to recover the possession of land of which the plaintiff had been dispossessed in

under s. 230 of the Code of Civil Procedure, setting up his title, and it was numbered and registered as a suit under the section Before the claim came on for hearing the plaintiff was allowed by the Court to withdraw the proceeding, with liberty to bring a fresh suit upon the claim set up. The plaintiff sub-

5. ———— **Substitution of assignee of plaintiff's rights and allowing him to withdraw**—*Power of Court—Civil Procedure Code, 1859, s 97* Where the Court allowed the purchaser of the plaintiff's rights to be substituted for him and then permitted him to withdraw the suit:—*Held*, that it was an order not within s 97, and one which the Court had no power to make. JUDOOPUTTEE CHATTERJEE *v* CHUNDER KANT BHUTTACHARJEE
9 W. R. 309

6. ———— **Withdrawal after issue joined**—*Civil Procedure Code, 1859, s 97—Failure to support claim* A plaintiff cannot be permitted to withdraw with liberty to bring a fresh suit after issue has been joined and he has failed to produce evidence to support his claim. MUDDUN RAM DOS *v.* ISRAIL ALI CHOWDHRY
21 W. R. 291

7. ———— *Discretion of Court—Power to interfere with discretion on appeal* Where, after issue joined, the plaintiff was

8. ———— **Withdrawal before final judgment**—*Discretion of Court—Power to interfere with discretion on appeal—Civil Procedure*

before or after the acceptance of evidence upon the issues, at any time before final judgment, to withdraw from the suit with liberty to bring a fresh suit in the same matter. RAM KANYE DUTT *v* HAROO CHUNDER MOJOOMDAR . . **17 W. R. 229**

9. ———— S. 97 of Act VIII of 1859 applied only to cases where a plaintiff before final judgment is permitted by the Court to with-

WITHDRAWAL OF SUIT—*contd.*

draw from his suit, with liberty to sue again. ANUND MOHUN PAUL CHOWDHRY *v.* RAM KISHEN PAUL CHOWDHRY. GOBIND CHUNDER PAUL CHOWDHRY *v.* RAMKISHEN PAUL CHOWDHRY

2 W. R. 297

[illegible]

NUNDUN SINGH . . . . 24 W. R. 25

11. ——————— *Failure to prove case—Dismissal of suit—Procedure.* The power to dismiss a suit, with liberty to bring a fresh one for the same matter, is limited to cases where the suit fails by reason for some point of form: such liberty should not be given where, after issue joined, the plaintiff has failed to make out his case. WATSON *v* COLLECTOR OF RAJSHYE

3 B. L. R. P. C. 48 : 12 W. R. P. C. 43
13 Moo. I. A. 160

See MONA BIBEE *v.* OOMED ALI **16 W. R. 276**

12. ——————— *Civil Procedure Code, 1859, s. 373—Ground for allowing withdrawal. Quære:* Whether, under s 373 of Act X of 1877, the Court ought to permit the plaintiff to withdraw from the suit with liberty to bring a fresh suit on the ground that the defence to the suit was such that *the* suit *must fail if proceeded with* ZAHURUN-NISSA *v.* KHUDA YAR KHAN

I. L. R. 3 All. 528

13. ——————— **Ground for allowing withdrawal**—*Civil Procedure Code, 1859, s 97—Inability to prove claim.* Where a plaintiff asked for permission to withdraw his plaint saying that it would be out of his power to adduce the evidence, [illegible]

14. ——————— *Insufficiency of evidence* In a suit by one of several shares of certain mortgaged property for contribution on account of payments made by the plaintiff to prevent foreclosure, the Court on appeal thought [illegible]

15. ——————— **Compromise of suit on appeal**—*Civil Procedure Code, 1859, s 97—Subsequent suit on compromise* A suit founded on a compromise, which was entered into when special appeal was withdrawn, was not barred by s. 97, Act VIII of 1859, as it was not a suit for the same *matter within the meaning of that section; but if* the compromise was duly made by the parties thereto, and if its terms have been broken, a

WITHDRAWAL OF SUIT—*contd.*

party to it is entitled to maintain a suit to enforce it. GOLAB SINGH *v.* CHEDA SINGH . **3 Agra 135**

16. ——————— Private agreement—*Restora-* [illegible]

17. ——————— **Suit for possession**—*Subsequent suit for rent—Civil Procedure Code, 1859, s. 97.* There was nothing in s 97, Act VIII of 1859, to prevent a suitor from instituting a claim for possession and afterwards bringing one for rent. RAMKESHORE MUNDLE *v.* MOORAD MUNDLE

W. R. 1864, Act X, 67

18. ——————— **Suit for possession after release from attachment in execution in another suit**—*Civil Procedure Code, 1877, s 97.* [illegible] attached property made under Act VIII [illegible] jant, in [illegible] inst the [illegible] section. [illegible] y from [illegible] is suit. [illegible] ir 1878, [illegible] e same [illegible] session decree. *Held,* that a subsequent su[illegible] of the property against the purchaser at the execution sale was not barred under s. 97 of Act VIII of 1859. *Eshen Chunder Singh* v. *Shama Churan Bhutto, 11 Moo. I. A. 7,* cited. MUKHODA SOONDURY DASI *v.* RAM CHURN KARMOKAR

I. L. R. 8 Calc 871

19. ——————— **Suit withdrawn under Regulation law**—*Civil Procedure Code, 1859, s 97.* A plaintiff without leave of the Court withdrew from a suit in 1853. He filed a fresh suit *in* the same cause of action in 1866. *Held,* that he was not debarred from doing so, as the provisions of s 97 of the Code of Civil Procedure did not apply. VINAYAK JOSHI *v.* JANARDAN JOSHI

7 Bom. A. C. 23

20. ——————— **Nature of fresh suit**—*Fresh suit filed upon a different title in existence at date of former suit—Civil Procedure Code (XIV of 1882), s. 373—Practice.* The plaintiffs, who were [illegible] registered under the [illegible] dated 24th February 1881, to recov[illegible] £678-3 In August 1882 the plaintiffs had filed a previous suit against the defendant to recover the said sum of £678-3. That suit was based upon a call order, dated 11th November 1880, which it sought to enforce. By an order made in that suit on 7th April 1883, the plaintiffs were permitted to withdraw it, with liberty to bring a fresh suit for the same cause of action. The

WITHDRAWAL OF SUIT—*contd.*

present suit to enforce a balance order, dated the 24th February 1881, was filed on 11th February 1885 It was contended on behalf of the defendant that the present suit being based upon an order which was in existence at the date of the previous suit, the plaintiffs could not now sue upon it, that the plaintiffs could not abandon the title upon which they claimed in the first suit, and set up a different title in the second *Held*, that the plaintiffs were not precluded from bringing the second suit upon the balance order, and that the suit was properly framed LONDON, BOMBAY, AND MEDITERRANEAN BANK *v* BURJORJI SORABJI LYWALLA . . I. L. R. 9 Bom. 346

21 ——— **Withdrawal of suit by next friend**—*Suit on behalf of a minor—Civil Procedure Code (Act VIII of 1859), s 97—Fraud.* Where a Court has reason to believe that a suit is lawfully brought by a party who has a right to bring it on behalf of a minor, any withdrawal of the suit by that party would have precisely the same effect as the withdrawal of a suit by a person

drawal an absolute statutory prohibition is imposed on the minor from bringing a fresh suit, it is open to the minor to relieve himself

SAFOOI *v.* NUNDAMONI DASSEE
I. L. R. 10 Calc. 357

withdraw it, with liberty to bring a fresh one, such permission should not be granted without the defendant being served with notice to show cause why such permission should not be granted. *L*, claiming as heir to *H*, a deceased Hindu, sued *K*, his widow, and *G*, a minor represented by his mother and guardian *B*, to have the adoption by *K* of *G* set aside and for certain other reliefs. The matters in difference in the suit were

WITHDRAWAL OF SUIT—*contd.*

to the High Court for revision of the order setting aside the award. This application was rejected, on the ground that the order might be impugned on appeal from the decree in the

left by *H*. This permission was granted. The minor defendant applied to the High Court for revision. *Held*, that it might have been a very good ground for allowing the plaintiff to withdraw the suit that *K*, the adoptive mother of the minor defendant, had died *pendente lite*, had no arbitration proceedings taken place in the course of the suit, but when the parties had referred their differences to arbitration, and an award had been made in favour of the defendant and had been set aside, and an application for revision of the order setting it aside had been refused, on the ground that the matter could be made the subject of

amended by the addition of a claim for possession of the property left by *H*. KALIAN SINGH *v.* LEKHRAJ SINGH . . . I. L. R. 6 All. 211

23 ——— *Specific Relief Act (I of 1877), s. 21—Arbitration—Agreement to refer—Order under s 506, Civil Procedure Code, to refer matters in dispute in action then pending—Order under s. 373, pending the reference, granting plaintiff permission to withdraw with liberty to bring fresh suit* The parties to a suit, while it was pending, agreed to refer the matters in difference between them to arbitration, and for this purpose

The application was granted, the suit struck off, and a fresh suit instituted in pursuance of the permission thus given by the Court. In defence to this suit, it was pleaded that the suit was barred by s. 21 of the Specific Relief Act (I of 1877). *Held*, that the Court in the former proceedings had no power to revoke the order of reference prior to award except as provided by s. 510 of the Code; that consequently the Court's order under s. 373 was *ultra vires* if

WITHDRAWAL OF SUIT—*contd.*

involving such revocation, or, if not involving it, left the order of reference still in force, that in either alternative the suit was barred by s. 21 of the Specific Relief Act ; and that it was immaterial that the period within which the award was to be made ex-

its file and treat it as awaiting the Court's decision. SHEOAMBER *v.* DEODAT . **I. L. R. 9 All. 168**

24. ———— Civil Procedure Code, s. 373—*Withdrawal of suit with liberty to bring fresh suit.* On the 5th September 1874 *R*, a Hindu, and his sons borrowed R5, 000 from *V* and mortgaged to him certain land, items, 1, 2, and 3 On the 7th September 1874, *V* borrowed R5,000 from *R N* and mortgaged his rights in items 1 and 2 and land of his own to *R N* In 1877 *R N* bought at a sale in execution of a decree against *R* the share of *R* in the said items 1 and 2 subject to the mortgage created by *R* on 5th September 1874, and to another mortgage created by *R* on 11th January 1875 In 1880 *R N* sued *V* and the sons of for arrears of interest due under his mortgage-bond This suit was withdrawn with liberty to bring a fresh suit for the principal and interest due under the bond In 1885 *R N* sued the sons of *R* and *V* to recover principal and interest due under his mortgage-bond *Held*, that the claim of *R N* was not barred VENKATA *v* RANGA . **I. L. R. 10 Mad. 160**

25. ———— *Withdrawal of suit with permission to bring a fresh suit on the same cause of action—Civil Procedure Code, s 43.* Where a suit is withdrawn with permission under the first paragraph of s 373 of the Code of Civil Procedure, the effect is to leave the parties in the same position as that in which they would have been if the suit had never been brought A plaintiff,

mitted to withdraw *Venkata Chetti* v *Ranga Nayak, I. L. R. 10 Mad. 160*, followed. BEHARI LAL PAL *v* BARAN MAI DASI **I. L. R. 17 All. 53**

26 ———— *Dismissal of suit—Decree containing clause stating that a fresh suit might be instituted as to a part of the subject matter—Res judicata* A suit for possession of immoveable property was wholly dismissed, on the ground that the plaintiff had not made out his title to the whole of the property claimed, though he had proved title to a one-third share of such property. The decree included an order in these terms : "This order will not prevent the plaintiff from instituting a suit for possession of the one-third interest of *M L* in the fields specified in the deed of sale," upon which the suit was based. No appeal was preferred from this decree Subsequently the plaintiff brought another suit upon the same title to recover possession of the one-third share

WITHDRAWAL OF SUIT—*contd.*

referred to in the order just quoted. *Held*, by the Full Bench, that the Court in the former suit had no power to include in its decree of dismissal any such reservation or order ; that the fact that the decree was not appealed against did not give the order contained in it, which was an absolute nullity, any effect. *Kudrat* v. *Dinu, I. L R 9 All. 155* ; *Ganesh Rai* v. *Kalka Prasad, I. L R. 5 All 595* ; *Salig Ram Pathak* v *Tirbhawan Pathak, All Weekly Notes, (1885) 171*, and *Muhammad Salim* v. *Nabian Bibi, I. L. R 8 All 282*, explained. SUKH LAL *v.* BHIKHI **I. L. R. 11 All. 187**

27. ———— *Jurisdiction—Withdrawal of part of claim—Part of property in suit within and part without the jurisdiction of the Court.* Suit for partition and possession of an undivided share of property sold to plaintiff by an aged gosha lady of the class of Canarese Mahomedans called Navayats The property sold was the vendor's share as heiress of her father, brother, and sister, who died in 1856, 1866, and 1871, respectively ; but it appeared that the property of the family had been in the possession of one managing member since 1856. The plaintiff, during the suit, withdrew his claim against that part of the immoveable property in suit which was within the local limits of the jurisdiction of the Court, having compromised with the defendants, who had it in their possession, and pursued his claim against the other immoveable property and obtained a decree. *Held*, that the withdrawal of the claim with regard to the property situated within the local limits of the jurisdiction of the Court (the compromise not having been shown to be otherwise than *bonâ fide*) did not operate to take away the jurisdiction of the Court to adjudicate on the plaintiff's suit KHATIJA *v* ISMAIL . . . **I. L. R. 12 Mad. 380**

28. ———— *Summons not served on defendant—Suit for damages—Civil Procedure Code (Act XIV of 1882), ss 97, 477, 491—Arrest of defendant before judgment under s 477—of Civil Procedure Code (Act XIV of 1882)—Subsequent application by plaintiff under s. 373 of Civil Procedure Code for leave to withdraw suit—Right of defendant to appear at hearing, although summons not served upon him—Compensation for arrest—Rule of Court No 64—Practice—Procedure.* The plaintiff sued the defendant in Bombay for damages for breach of contract The suit was filed on the 13th May 1890. The summons was not served on the defendant, but on the 16th May the plaintiff's agent procured his arrest before judgment. On that day he was brought before a Judge of the High Court and was at once discharged. When the case subsequently came on for hearing, the plaintiff applied, under s. 373 of the Civil Procedure Code, for leave to withdraw the suit, with liberty to file a fresh suit on the same cause of action. The defendant's Counsel objected, and claimed either that the plaintiff should continue his suit to a hearing or that the suit should be dismissed with costs, and that

WITHDRAWAL OF SUIT—*contd.*

compensation for his arrest should be awarded to the defendant under s. 491 of the Civil Procedure Code. The plaintiff contended that, inasmuch as the summons had not been served on him, the defendant was not entitled to appear, and that no compensation could be awarded to him *Held*, (i) that inasmuch as the plaintiff had by a legal process brought the defendant before the Court, the defendant had the right to appear at the hearing of the case, although no summons had been served upon him, and that he was entitled to object to the suit being dismissed under Rule of Court No 64; (ii) that under the circumstances the defendant was entitled to compensation for his arrest under s 491 of the Code of Civil Procedure, (iii) that the plaintiff might withdraw the suit under s 373 of the Civil Procedure Code with liberty to bring a fresh suit on payment of the costs incurred by the defendant in the present suit. SYED ALI *v* ADIB

I. L. R 15 Bom. 160

29. — — — — — *Institution of fresh suit.* Where *A* instituted a suit to establish his right to sell certain property in satisfaction of a decree against *B*, but withdrew the suit without having obtained leave to bring a fresh suit, and

I. L. R. 21 Calc. 265

30. ——— *Withdrawal of suit without permission to bring fresh suit—*

31. ——— *Suit withdrawn*

obtaining leave to sue again. He subsequently obtained a like instrument from the present Zamorin and sued again to eject the defendants. *Held*, that the second suit was not maintainable by reason of Civil Procedure Code, s. 373 ACHUTA MENON *v* ACHUTA NAYAR

I. L. R. 21 Mad. 35

32. ——— *Fresh cause of action—" Subject matter of suit," meaning of* Where a plaintiff brought a suit for partition of joint

WITHDRAWAL OF SUIT—*contd.*

property from which he withdrew with the consent of the defendants, but without leave from Court to bring a fresh suit, and subsequently, being dis-

subject-matter as the former, when the state of facts leading to the two suits and the reliefs claimed under them are different, and s. 373, Civil Procedure Code, does not apply *Kamini Kanto Roy v Ram Nath Chuckerbutty, I L. R 21 Calc 265,* followed *Quære* Whether the mere fact that a plaintiff withdraws with the consent of the defendant, but without leave of the Court, makes s 373, Civil Procedure Code, inapplicable. The observation of NORMAN, J, on this point in *Juggobundo Chatterji v. Watson & Co, Bourke, A O C 102,* doubted GOPAL CHANDRA BANERJEE *v* PURNO CHANDRA BANERJEE

4 C W. N. 110

See JUGGOBUNDO CHATTERJEE *v* WATSON & CO

Bourke A. O. C. 102

33. ——— Costs—*Power to award costs—Withdrawal without leave.* The High Court has no power, under the Civil Procedure Code, to award costs to the defendant when the plaintiff withdraws, not having asked leave to do so with liberty to bring another suit for the same matter. BRASS *v* TIRUVENGADA PILLAI . . . 1 Mad. 247

34. ——— *Power to award Costs—Civil Procedure Code, 1859, s. 97* Where

1 B. L. R. O. C. 45

35. ——— *Form of order—Civil Procedure Code, 1859, s 97* A plaintiff

1 W. R. 322

36. ——— *Payment of costs*

WITHDRAWAL OF SUIT—*contd.*

37. ——— *Small Cause Court.* A Small Cause Court is not bound to allow a plaintiff to withdraw a suit, on the ground that he has received payment from one of the defendants in the suit, that attempt to withdraw having been

trial ordered. In such a case the Court may permit the withdrawal of the suit upon the terms of plaintiff paying the first defendant's costs RAMA CHANDRA SHASTRY *v.* PAPU AIYAN 3 Mad. 27

38. ——— Withdrawal of appeal—

39. ——— *Permission of Court—Notice of withdrawal* An appellant has no

liberty to withdraw the appeal, and the Court ordered that the appeal be set down for hearing. KAREEM BEE *v* BEEGAM BEE . 3 Mad. 368

40. ——— Withdrawal of suit on appeal—*Act XXIII of 1861, s 37—Power of Appellate Court.* Under s 37, Act XXIII of 1861,

withdraw from the suit with liberty to bring a fresh suit GREGORY *v.* DOOLEY CHAND 14 W. R. O. C. 17

41. ——— *Civil Procedure Code, 1859, s 97—Exercise by Appellate Court of powers under s 37, Act XXIII of 1861.* Where application was made for leave to withdraw a suit, with leave to bring a fresh one, it being contended that the fact of a notarial protest on inland bills, and of their being in the hands of the holder without

42. ——— *Civil Procedure Code, 1859, s. 97.* The plaintiff having sued, and the issues having been laid down as though the suit was for separate possession, the decree of the

WITHDRAWAL OF SUIT—*contd.*

43. ——— *Appellate Court, powers of—Discretion, exercise of—Civil Procedure Code, 1882, ss 373, 582.* Where, on appeal from a decree dismissing a suit, the Appellate Court, being of opinion that the plaint was informally drawn and its allegations regarding the cause of action not sufficiently specific, gave the plaintiff

the Appellate Court had power to avail itself of the provisions of s. 373, and therefore had a discretion to make the order allowing the plaintiff to withdraw the suit and institute a fresh one. *Gregory* v. *Dooley Chand, 14 W. R, O. C, 17,* and *Khatoon Koonwar* v. *Hurdoot Narain Singh, 20 W.R 163,* referred to Also *per* STRAIGHT, J., that it could not be said that the Appellate Court in this case had exercised its discretion so unreasonably or erroneously as to compel the interference of the High Court with it in appeal. *Per* TYRRELL, J., that it might be taken that the Appellate Court, though not so stating in express terms, meant to set aside, and did set aside, the decree of the Court of first instance, regarding it as a decree which could not have been rightly made and must be set aside, by reason of the radical defect in the plaint, the basis of the suit and the decree; and that in this view there was no legal objection to the exercise by the Appellate Court of the discretionary power of Ch. XXII of the Code GANGA RAM *v.* DATA RAM I. L. R. 8 All. 82

44. ——— Applications for execution of decree—*Civil Procedure Code, s 374—Withdrawal of application* The rule laid down in s. 374

NATH TRIMBAK . I. L. R. 10 Bom.

45. ——— *Civil Procedure Code, ss 373, 374, 467—Application for execution withdrawn by decree-holder—Act XV of 1877, Sch. II, Art. 179 (4)* S 647 of the Civil Procedure Code makes ss 373 and 374 applicable to proceedings in execution of decree *Kifayat Ali v. Ram Singh, I. L. R 7 All. 359,* and *Pirjade v Pirjade, I. L. R 6 Bom 681,* followed. *Tarachand Megraj v. Kashinath Trimbak, I. L R, 10 Bom. 62,* and

precluded from again applying ... execution;

WITHDRAWAL OF SUIT—*contd.*

but that, even assuming that permission to apply again could be inferred from the action of the Court in returning the application, s. 374 was applicable so as to make a subsequent application presented five years after the decree barred by limitation, with reference to Art 179 of the Limitation Act. SARJU PRASAD *v* SITA RAM

I. L. R. 10 All. 71

46. ——— Revocation of withdrawal—*Civil Procedure Code, 1859, s 97* A plaintiff who has withdrawn from his suit is at liberty to rescind the act of withdrawal at any time before final judgment S 97 of the Civil Procedure Code was *held* to be inapplicable to a case where the plaintiff rescinded after two days a petition he had presented of withdrawal from his claim The last clause of that section contemplated cases in which the withdrawal is not revoked RAMBHUROS LALL *v* GOPEE BEEBEE . . . 6 N. W. 66

47. ——— After award made—*Civil Procedure Code (Act XIV of 1882), s 373 and Ch. XXXVII—Withdrawal of suit after an award is made by an arbitrator.* The powers relating to withdrawal of suits, conferred upon the Court by s 373, Civil Procedure Code, are, when an award of an arbitrator to whom the case is referred for arbitration has once been duly made by the arbitrator, limited by the particular provisions contained in Ch. XXXVII of that Code. So, where, upon an award made by the arbitrator, the plaintiff put in a petition of objection to the award, and subsequently, on his putting in a petition for permission to withdraw the suit with liberty to bring a fresh suit, the Court granted such prayer under s 373, Civil Procedure Code· *Held,* that the order of the Court was without jurisdiction DEBI CHURN MANNA *v* BIPRA PROSAD JANA (1902) . . 7 C W N. 186

48. ——— By Small Cause Court, after granting a new trial—*Presidency Small*

[illegible]

WITHDRAWAL OF SUIT—*concld.*

49. ——— Effect of withdrawal—*Civil Procedure Code, s. 373—Suit for partition—Withdrawal of suit—Joint petition of parties, praying that the suit might be struck off—Subsequent suit for partition of same property barred* The plaintiff and the defendants in a suit for partition, having arrived

[illegible]

I. L. R. 23 All. 219

50. ——— Limitation Act (*XV of 1877*), *Sch II, Art. 120—Alienation by widow—Subsequent suit to set it aside—Withdrawal of suit without permission to bring a fresh suit—*

[illegible]

obtaining leave to sue again. In 1895 the daughters' sons instituted the present suit, for a

[illegible]

I. L. R. 25 Mad. 731

WITNESS—CIVIL CASES.

WITNESS—CIVIL CASES—*contd.*

See APPELLATE COURT.
I. L. R. 36 Calc. 833

See COMMISSION—CIVIL CASES.
7 C. W. N. 806

See COSTS, EVIDENCE
8 C. W. N. 178 ; 241

See DEKKHAN AGRICULTURISTS' RELIEF ACT, s 7 I. L. R. 33 Bom. 249

See DIVORCE ACT, s. 52
3 B. L. R. Ap. 6

See EVIDENCE I. L. R 32 Calc. 84
9 C. W. N. 161

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—DEPOSITIONS.

See EVIDENCE ACT, 1872, s 32.
9 C. W. N. 105

See EVIDENCE ACT, 1872, s. 33.

See MORTGAGE . 9 C. W. N. 1001

See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—WITNESSES.

See TRANSFER OF PROPERTY ACT, s 59.
9 C. W. N. 697

See WILL—ATTESTATION.

———— attestation by—

See DEED—ATTESTATION.
7 C. W N. 384

See STAMP ACT, 1879, s. 3, CL. 4
I. L. R. 22 Calc. 757
I. L. R 17 All. 211

———— competency of—

See DEED—EXECUTION.
5 C. W. N. 454

See LAND ACQUISITION ACT, 1870, s 19
I. L. R. 17 Bom. 299

———— cross-examination of, on commission—

See PRACTICE—CIVIL CASES—COMMISSION
I. L. R. 30 Calc. 625

———— damage by false statement of—

See DEFAMATION 5 C. W. N. 293

See EVIDENCE ACT, s. 132.
I. L. R. 12 Bom. 440

See RIGHT OF SUIT—WITNESS.
I. L. R. 10 All. 425
I. L. R. 10 Mad. 87
I. L. R. 15 Calc. 264

WITNESS—CIVIL CASES—*contd.*

———— deposition of—

See EVIDENCE ACT, s. 33.

See LIMITATION ACT, 1877, s. 19—ACKNOWLEDGMENT OF DEBTS.
I. L. R. 16 Mad. 220

———— enforcing attendance of—

See PRACTICE—CIVIL CASES—COMMISSION . . I. L. R. 23 Calc. 404

———— examination of—

See AMEEN . 1 B L. R. S. N. 1; 2
9 W. R. 83
11 W. R. 423
17 W. R. 282
19 W. R. 14

See COMPANY—WINDING UP—COSTS AND CLAIM ON ASSETS.
I. L. R. 14 Calc. 219

———— impeaching credit of—

See EVIDENCE ACT, s. 155.
I. L. R. 17 Calc. 344

———— legacy to—

See WILL—CONSTRUCTION.
I. L R. 4 Mad. 244

———— non-attendance of—

See CIVIL PROCEDURE CODE, 1882, s. 177 (1859, s. 170).

———— omission to examine—

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL.
I. L. R. 13 Bom. 336

———— order for examination of—

See INSOLVENCY ACT, s. 36.
I. L. R. 11 Bom. 61
I. L. R. 22 Bom. 447

———— privilege of—

See ARREST—CIVIL ARREST.
14 B. L. R. Ap. 13
I. L. R. 1 Calc. 78
4 Mad. 145

See DEFAMATION.

See EVIDENCE ACT, s. 132
I. L. R. 3 Mad. 271

See LIBEL I. L. R. 14 Bom. 97

———— refusal of party to attend as—

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15—CIVIL CASES.
B. L. R. Sup. Vol. 716

———— refusal to summon—

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.
I. L. R. 18 All. 213

WITNESS—CIVIL CASES—*contd.*

1. PERSONS COMPETENT OR NOT TO BE WITNESSES.

1. ———— Arbitrator—*Suit after award is set aside* If an arbitration award is set aside and the matter is tried as a suit before the Court, the arbitrator cannot be examined as a witness as to the grounds of his decision, but only to prove any admission which may have been made before him in the course of the arbitration and which might be material evidence NILMONEE BOSE *v.* MOHIMA CHUNDER DUTT . **17 W. R. 516**

2. ——— Attorney—*Advocate—Competent witness* An attorney who has acted as advocate for one of the parties, and pleaded his case in Court, can be examined as a witness in the case RAMFAL SHAW *v* BISWANATH MANDAL **5 B. L. R. Ap. 28**

3. ———— Magistrate—*Suit for malicious prosecution—Magistrate who held preliminary enquiry into criminal charge* Magistrates are not incapacitated to give evidence of matters which have come before them in the course of a preliminary enquiry into a criminal charge. *Held,* that in a suit for a malicious prosecution the defendant had a right to the evidence of the Subordinate [illegible]

4. ———————— *Magistrate giving evidence before himself* Where a Judge is the sole Judge of law and fact in a case tried before himself, he cannot give evidence before himself or import matters into his judgment not stated on oath before the Court in the presence of the accused QUEEN-EMPRESS *v.* MANIKAM . **I. L. R. 19 Mad. 263**

5 ———— Munsif—*Witness as to facts judicially before him* A Munsif ought not to be called on to depose as to what took place before him in the course of a trial which he was conducting as Munsif, and he is entitled to exemption ANONYMOUS . . **6 Mad. Ap. 42**

6. ———— Person against whom affiliation order is sought—*Criminal Procedure Code, 1882, s. 488—Evidence Act (I of 1872), s 120—Bastardy proceedings—Maintenance, order of Criminal Court as to.* Bastardy proceedings under the provisions of s 488 of the Criminal Procedure Code are in the nature of civil proceedings within the meaning of s 120 of the Evidence Act, and the person sought to be charged is a competent witness on his own behalf. NUR MAHOMED *v* BISMULLA JAN . **I. L. R. 16 Calc. 781**

HIRA LAL *v* SAHEB JAN **I. L. R. 18 All. 107**

7. ———— Mamlatdar as assessor under land acquisition proceedings On a reference to the Collector under the Land Acquisition Act, the Mamlatdar acted as an assessor appointed by the Collector, and was also examined as a witness as to the value of the land. But no objection was taken to his acting as an assessor The District Judge eventually upheld the Collector's award On an application under s 622 of the Civil Procedure Code (Act XIV of 1882) :—*Held,* that a person who is appointed an assessor under s 19 of the Land Acquisition Act (X of 1870) performs quasi-judicial functions, and is therefore incompetent to testify as a witness in the same proceedings. SWAMIRAO *v.* COLLECTOR OF DHARWAR . . . **I L R. 17 Bom. 299**

WITNESS—CIVIL CASES—*contd.*

1. PERSONS COMPETENT OR NOT TO BE WITNESSES—*concld.*

8 ———— Wife—*Evidence of wife to prove non-access—Husband and wife—Presumption of legitimacy — Illegitimacy — Presumption of non-access—Evidence Act (I of 1872), ss 112 and 118.* A wife can be examined as to non access of her husband during her married life, without independent evidence being first offered to prove the illegitimacy of her children. ROZARIO *v* INGLES **I. L R. 18 Bom. 468**

9. ———— Child witness—*Evidence Act (I of 1872), s 118—Witness, competency of—Mode of examination—Competency to be tested before examination as to res gestæ* Before a child of tender years is asked any question bearing on the *res gestæ*, the Court should test his capacity to understand and give rational answers and his capacity to understand the difference between truth and falsehood The Judge must form his opinion as to the competency of a witness before his actual examination commences SHEIKH FAKIR *v* EMPEROR (1906) . **11 C. W. N. 51**

2 SUMMONING AND ATTENDANCE OF WITNESSES.

1. ———— Duty of Court—*Securing attendance of witnesses.* Every Court is bound to render all reasonable assistance to a party to enforce the attendance of his witnesses. NILMONEE BANERJEE *v.* SHURBO MONGOLA DEBEE . **6 W. R. 14**

2 ———————— *Civil Procedure Code, 1882, s 159.* Under s. 159 of the Civil Pro- [illegible]

3. ———————— *Application for summons to cite witnesses.* A party is entitled at any stage of the case before hearing to apply for a [illegible]

3 B. L. R. Ap. 38

WITNESS—CIVIL CASES—*contd.*

2. SUMMONING AND ATTENDANCE OF WITNESSES—*contd.*

s c. ONOOROOP CHUNDER MOOKERJEE *v.* HEERA MONEE DOSSEE 11 W. R. 418

HARI DAS BAISAKH *v* MOAZAM HOSSEIN 8 B. L R. Ap. 16: 15 W. R 447

4. ———— Power to summon witnesses —*Settlement of issues* Act VIII of 1859 conferred no authority upon a Judge to issue summons to witnesses to attend on the settlement of issues. The written statements must be prepared with great care and deliberation, so as to dispense altogether with parol evidence at the settlement of issues ANUND CHUNDER BANERJEE *v.* WOOMESH CHUNDER ROY 1 Ind Jur. O. S. 15 : 1 Hyde 147

[The subsequent Codes, however, expressly provide for the attendance of witnesses at the settlement of issues. *see* s 159, Civil Procedure Code, 1882.]

5. ———— Discretion of Court to summon witnesses. A Judge's discretion in not compelling the attendance of witnesses named by one of the parties must be exercised on reasonable grounds distinctly stated in the judgment OZEER MAHOMED *v.* BYDNATH DOSS CHOWDHRY 5 W. R., Act X, 6

HARA CHAND PORAMANICK *v.* KRISHTO MONEE GIREE 1 W. R. 298

MATUNGUNEE DABEA *v.* KALEE DABEA 2 W. R. 4

See NEEM CHUND DEY *v.* ANUND COOMAR ROY CHOWDHRY 7 W. R. 147

6. ———— *Selection of wit-* [illegible]

object of summoning a large number of witnesses clearly appears to be to impede the adjudication of the case, or otherwise to obstruct the ends of justice RAMDHAN MANDAL *v.* RAJBALLAB PARAMANIK 6 B L. R. Ap. 10

7. ———— *Power to refuse* [illegible]

8. ———— *Refusal to summon witnesses—Reasons for refusing application to enforce attendance.* It is not incumbent on a Court to give detailed legal reasons for its refusal to comply with an application to enforce the attendance of a party to a suit as a witness. SIDDHESSURREE DEBIA *v.* DENOBUNDHOO KOONDOO 6 W. R. 65

9. ———— Preliminaries to summoning witness—*Materiality of evidence.* Before the Court makes an order compelling the attendance of a party to the suit, it must be satisfied that his evidence will be material GOPAL CHUNDER HAZRAH *v.* MOHESH CHUNDER BANERJEE 21 W. R. 44

10. ———— Summoning plaintiff as witness—*Reasons for summons—Duty of Court—Materiality of evidence* A Court is bound, before summoning a plaintiff to give evidence, to record the reasons of its being satisfied that the evidence of the plaintiff is essential to the defendant's case. Where, however, the Court does not give reasons [illegible]

v. SUTTOORGUN ADIT [illegible]

11. ———— Application to summon witnesses—*Witnesses declared unnecessary by Court.* Where on a case coming on for hearing before a Court to which it had been remanded, the Judge observed that the evidence of witnesses would be unnecessary, the declaration was *held* to have sufficiently justified the plaintiffs in making no further application for a summons on their witnesses. RAM JEWUN SINGH *v.* RADHA PERSHAD SINGH 16 W. R. 109

12. ———— *Undertaking to bring witnesses—Practice.* On the 12th October [illegible] subpœnas [illegible] them, [illegible] self origi- [illegible] (The [illegible] the final [illegible] that the [illegible] was no sufficient reason for depriving him (the plaintiff) of his right to have subpœnas issued, if he found himself unable to bring his witnesses or to detain them till they could be examined, although it might possibly be, under certain circumstances, a reason for not waiting for them, if the plaintiff's case had been in other respects finished before they could be examined. PANDURANG ANPAI *v.* KESHAVJI JADHAVJI I. L. R. 6 Bom. 742

13. ———— Time for summoning witnesses—*Duty of Court.* The Civil Procedure Code neither expressly nor impliedly declares that witnesses must be summoned before the day fixed for the first hearing of the suit So long as the hearing merely stands adjourned, and so long as the party who wishes to summon witnesses has not closed his case, the Court is bound to summon them, unless it appears that the application is made so late that the witnesses cannot be reasonably expected to attend in time to be examined before that party's case closes. INDRO CHUNDER BABOO *v.* DUNLOP 9 W. R. 530

14. ———— Ground for refusal to summon witnesses—*Obligation of Court to send*

WITNESS—CIVIL CASE—*contd.*

2. SUMMONING AND ATTENDANCE OF WITNESSES—*contd.*

party—Delay in giving names of intended witnesses Where an appellant delayed to give in the names of his witnesses, but would yet have been within reasonable time to secure their attendance on the day of hearing if summonses had been sent through different peons by the railway —*Held*, that the lower Appellate Court was bound to have directed the issue of the summonses, and to have given every assistance to the party asking for them, all additional expenses being paid by such party PEAREE MOHUN MOOKERJEE *v* MADHUB CHUNDER GHOSAL 9 W. R. 489

15. ———————— *Omission of proper steps to obtain attendance of witnesses.* Where some of the witnesses (defendants) in a suit had been examined, and plaintiff petitioned the Court to have the remaining defendants examined as witnesses, he was *held* not to have taken the necessary steps required by law to enforce their attendance,

KALAN SINGH 12 W. R. 50

16. ———————— *Procedure under Dekkhan Agriculturists' Act (XVII of 1879), s 7 —Right of defendant to call witnesses* The plaintiff sued, under s. 3, cl. (*w*), of Act XVII of 1879

as a witness under s 7 of the Act, admitted the

(defendant) was not entitled to offer the evidence On his referring the case to the High Court :—*Held*, that it was his duty to summon the witnesses named by the defendant. DULICHAND *v* DHONDI I. L. R. 5 Bom. 184

17. ———————— *Civil Procedure Code, 1877, s 137—Summons to produce documents.* In all cases in which parties apply for a summons to compel the attendance of witnesses, or a summons to produce documents, or apply to have a

SURMA I. L. R. 7 Calc. 560

18. ———————— Adjournment for attendance of witnesses—*Civil Procedure Code (Act XIV of 1882), s 156—Discretion, exercise of —Witnesses, Attendance of—Power of High Court*

WITNESS—CIVIL CASES—*contd.*

2. SUMMONING AND ATTENDANCE OF WITNESSES—*contd.*

on second appeal. On the day fixed for the hearing of a suit, the defendant applied for process against

judgment was subsequently delivered in favour of the plaintiffs *Held per* PETHERAM, C J, that the omission to examine the defendants' witnesses on the 31st December was a substantial error in

See TAYLOR *v.* SARAT CHUNDER ROY CHOWDHRY I. L. R, 20 Calc. 745 note.

19. ———————— *Civil Procedure Code, 1882, s. 159—Application to summon witnesses—Duty of Court in respect of such applica-*

Chunder Surma, I. L. R, 7 Calc, 560, and *Bai Kali v. Alarakh Pirbhai, I. L. R. 15 Bom. 86,* approved. BHAGWAT DAS *v* DEBI DIN I. L R. 16 All. 218

20. ———————— Ground for adjournment of suit—*Delay in making application to summon witnesses—Discretion of Court.* If a party applies for summons to witnesses so late that he cannot bring the witnesses on the day of hearing, it still remains in the discretion of the Court to decide whether or no the case should be adjourned. A Munsif is bound under the Procedure Code to issue summonses to witnesses when asked for. ABDOOL KADIR *v.* ABIN MIRDHA 24 W. R. 290

21. ———————— *Civil Procedure Code, 1882, ss. 159 and 167—Summoning witnesses —Delay in serving summonses.* Under s. 159 of the

WITNESS—CIVIL CASES—*contd.*

2. SUMMONING AND ATTENDANCE OF WITNESSES—*contd.*

Code of Civil Procedure (Act XIV of 1882), parties are entitled to summonses for their witnesses at any

adjourn the hearing. KAJI AHMED v KAJI MAHAMAD . . . . . I. L. R. 9 Bom. 308

22. ———— **Power to dismiss suit**—*Dismissal of suit on ground of there not being time after filing of list to summon witnesses—Civil Procedure Code, 1859, s. 149, 1877, s 159.* The 20th of March 1877 having been fixed for the final hearing of a suit, the plaintiff on the 17th of March, and the defendant on the 19th filed their list of witnesses to be summoned Both lists were ordered merely to be put up with the record. When the suits came on for hearing, it was dismissed on the ground that, when the plaintiff filed his list, there was not sufficient time left to summon the witnesses *Held*, that the Judge was not justified in dismissing the suit on this ground, unless he found that it would have been absolutely impossible to secure the attendance of the witnesses had the summonses been granted on the 17th instant S 149 of Act VIII of 1859, and s. 159 of Act X of 1877, discussed RAJENDRO NARAIN NEOGI v. KUMUD NARAIN BHUP 3 C. L. R. 569

23. ———— **Issue of fresh subpœnas to witnesses**—*Re-hearing of ex parte case under s 119, Civil Procedure Code, 1859 Quære* Where, either under s 119, Code of Civil Procedure, or in the exercise of a power of review, a suit is restored to its original position, is the plaintiff bound to obtain and issue fresh subpœnas? BISHEN PERKASH SINGH v RUTTUN GEER CHELA 20 W. R. 3

24. ———— **Service of subpœnas**—*Liability for non-service.* After a list of witnesses has been filed and the tulubana paid, the Court's officers, not the applicant, are responsible for the service and return of notice. MUSSITEE KHANUM v. HOOKOOM BIBEE . . . . 15 W. R. 88

25. ———— **Form of summons**—*Omission to state place of attendance.* A summons should state the place of attendance. ANONYMOUS 7 Mad. Ap. 14

ANONYMOUS . . . . 7 Mad. Ap. 43

See s 163, Civil Procedure Code, 1882

26. ———— **Summoning public officer as a witness** In fixing the time for the attendance of a public officer as a witness, or in granting an adjournment for that purpose, the fullest consideration must be given to the exigencies of the public duties of the officer summoned. ANONYMOUS 6 Mad. Ap. 6

27. ———— **Issue of warrant on non-attendance of witness**—*Warrant of arrest for witnesses not attending—Verbal order to attend.* A verbal order of the Court to witnesses requiring them to attend on a future day would not justify the issuing of a warrant for the apprehension of such witnesses in case they failed to attend in obedience to such verbal order. VENKATAPPAH v. PAPAMMAH . . . . . . 5 Mad. 132

ANONYMOUS . . . . 6 Mad. Ap. 10

See, however, ANONYMOUS . 5 Mad. Ap. 15

28. ———— **Postponement**—*Direction of Court—Adjournment for production of witnesses—Irregularity or error affecting merits—Code of Civil Procedure (Act XIV of 1882), s. 578* The question of the proper exercise of discretion of lower Courts to grant time to parties to produce further evidence, discussed. SURJYAMONI DASI v KALI KANTA DAS (1900) . I. L. R. 28 Calc 37 s.c. 5 C. W. N. 195

29. ———— *Civil Procedure Code (Act XIV of 1882), s 162—Summons forms Nos 125, 126—Summons to witness—Postponement of hearing of case—Necessity for issuing fresh summons—Practice.* When a witness has been summoned to give evidence in a case which is not reached, it is not necessary to issue a fresh summons to the witness He need only be warned that his attendance will be required on the day to which the hearing of the case may be postponed. SUBBARAYADU v. CHENCHURAMAYYA (1900) I. L. R. 24 Mad. 200

3. EXPENSES OF WITNESSES.

1. ———— **Right to be paid expenses**—*Omission to apply for expenses before giving evidence.* A witness is entitled to be paid his expenses by the party at whose instance he has been summoned, although he has not applied for them before giving his evidence. LONDON, BOMBAY, AND MEDITERRANEAN BANK v MAHOMED IBRAHIM PARKAR . I. L. R. 4 Bom. 619

2. ———— *Suitable expenses—Persons of rank and wealth.* People of rank and wealth, when summoned as witnesses to a distance from their place of residence, are entitled to travelling and other expenses suitable to their circumstances. CHUNDER SEKHUR DEB v. JADUB CHUNDER SETT . . . . . 19 W. R. 78

3 ———— **Payment of expenses into Court**—*Civil Procedure Code, 1859, s. 151.* Under s. 151, Act VIII of 1859 (extended to Revenue Courts by s 67, Act X of 1859), the defendant was ... of summoning ... until ... nex ... 128

... nce

4. ———— **Power to order ... to be taken**—*Omission to tender expenses—Evidence of tender of expenses.* Where there was no proof that a defaulting witness's expenses were

WITNESS—CIVIL CASES—*contd.*

3. EXPENSES OF WITNESSES—*concld*

tendered to him by the party at whose instance he was summoned, the Court on appeal declined to order that witness's evidence to be taken or to take it itself ISHEN CHUNDER SEN *v* ONATH NATH DEB COWELL *v* ISHEN CHUNDER SEN . 18 W R 16

5. ———— — **Amount of expenses**—*Compensation for loss of time* Act VIII of 1859 made no provision for compensation to witnesses for loss of time NAWAB NAZIM OF BENGAL *v* PROSONO NARAIN DEB . . . 2 Hyde 236

6. ———— **Provision for expenses**—*Suit for expenses—Cause of action* No action for the expenses of a witness will lie Explanation of the manner of providing for the payment of such expenses DE SARAN *v* HURRISH CHUNDER BISWAS 5 W. R. S. C. C. Ref. 6

7. ———— **Expenses for attendance in Court**—*Application in Chambers—High Court, Rule 195* A witness, who attends the Court on a subpœna, is entitled to demand at any time his reasonable expenses of such attendance from the party issuing the subpœna, even though he only gives evidence as a witness for a party to the suit other than the party summoning him *In re* BULLOCK (1904) I. L. R 28 Bom. 647

4. DEFAULTING WITNESSES

1. ———— **Non-attendance of witnesses on summons**—*Duty of parties—Commission.* When witnesses do not appear after service of summons, it is the duty of the party requiring their evidence, and not of the Court, to move for further measures to be taken to secure their attendance; and when a commission is issued for the examination of witnesses, the Court must be moved to wait for the return NUND MOHUN CHOWDHRY *v* GOLUCK NATH NEOGEE . . 11 W. R. 99

2. ———— *Duty of parties—Issue of attachment—Civil Procedure Code, 1859, s. 168* Where witnesses do not appear on summons, it is for the parties to move the Court, not for the Court to proceed, *suo motu*, to further the [illegible]

[illegible]

3. ———— *Civil Procedure Code, 1882, s 174—Non attendance of witness in obedience to a summons—Warrant of arrest—Non-payment of expenses in accordance with s 160, Civil Procedure Code.* There is no obligation on a Civil Court to issue a warrant for the arrest of a witness who, having been summoned, has failed [illegible]

[illegible] of such witness as specified in s 160 of the Code of Civil Procedure. TODAR MAL *v* SAID MUHAMMAD I. L. R. 17 All. 277

4. ———— **Order for arrest of witness**—*Civil Procedure Code, 1859, s. 168—Proceedings against witnesses absent who have been summoned.* Where a lower Appellate Court, by the terms of its order on a petition for the apprehension of witnesses, under s 168, Code of Civil Procedure, undertook to see that proper orders should be passed, it was bound to pass such orders as might, in its judicial discretion, be necessary under that section MOHADEB SHAHA *v* SHEO SUHOY GEER 9 W. R. 359

5. ———— *Witness making default in appearing—Civil Procedure Code, 1859, s 168—Ground for issue of warrant* S 168 of the Civil Procedure Code required that there should appear to the Court to be satisfactory ground for believing that the default on the part of witnesses summoned to give evidence was without lawful excuse before issuing a warrant for the arrest of such witnesses But it was not necessary for this purpose to institute a formal investigation and come to a determination on the evidence adduced. PERIYANNA CHETTY *v.* GOVINDA GOUNDEN 5 Mad. 104

6. ———— **Issue of proclamation against absent witness**—*Materiality of evidence—Ground for non-attendance* A Court was [illegible]

6 W. R. 235

7. [illegible] process [illegible] *for not* [illegible] *de, 1859,* [illegible] le under [illegible] issue of process against an absconding witness, the Court, if [illegible]

RAJOO SINGH *v.* LALLA BALGOBIND LAL 1 W. R. 26

8. [illegible]

[illegible] of Criminal Procedure, was quashed. QUEEN *v.* HURYNATH CHOWDHRY 7 W. R. Cr. 58

WITNESS—CIVIL CASES—*contd.*

4. DEFAULTING WITNESSES—*contd.*

9. ——— **Discretion of Court to issue of proclamation**—*Proclamation against absent witness—Civil Procedure Code, 1859, s. 159.* S. 159, Code of Civil Procedure, gives a Civil Court a discretion as to the issue of proclamation and subsequent orders for attachment; but such Court is bound to exercise a reasonable discretion. PORAN CHUNDER GHOSE *v.* GOPEE NATH SINGH 8 W. R. 505

10. ——— *Ground for issue of proclamation—Civil Procedure Code, 1859, s. 159* A Court was not authorised to issue the proclamation and attachment mentioned in s 159, Code of Civil Procedure, unless it was proved to its satisfaction that the evidence of the witness was material and that he was avoiding the summons; and after these circumstances have been shown, it was a matter of discretion to issue the proclamation and attachment, and after issue to let the case stand over KALEE DASS CHUCKERBUTTY *v* ESHAN CHUNDER CHATTERJEE 13 W. R. 416

11. ——— **Production of document**—*Civil Procedure Code, 1882, s. 174—Court's jurisdiction to punish a witness for refusing to produce a document—Procedure—Penal Code (Act XLV of 1860), s. 175—Criminal Procedure Code (Act X of 1882), s. 480.* A witness was summoned to produce a document in Court in connection with a certain suit He attended the Court, but did not produce

illegally levied. The jurisdiction of the Court to punish under s 174 of the Civil Procedure Code exists only in the case of a witness who, not having attended on summons, has been arrested and brought before the Court. The case of a witness who having a document will not produce it is provided for by s 175 of the Penal Code and s. 480 of the Code of Criminal Procedure *In re* PREMCHAND DOWLATRAM I. L. R 12 Bom. 63

12. ——— **Service of subpœna**—*Civil Procedure Code (Act XIV of 1882), ss. 80, 174—Failure to attend—Fine* S 174 of the Code of

service under s. 80, Civil Procedure Code. That

WITNESS—CIVIL CASES—*contd.*

4. DEFAULTING WITNESSES—*concld.*

under s 174, Civil Procedure Code, a witness who has failed to appear on his summons can only be fined after he has been arrested and brought before the Court. Where a witness was served as above and he applied for a time to appear:—*Held,* that the fact of his applying for time would not preclude him from saying that there had been no such service of the summons as could warrant s 174, Civil Procedure Code, being put into force against him KALI NARAIN ROY CHOWDHURI *v.* BAJOO 3 C. W. N. 307

13 ——— **Ground for postponement of case**—*Application for process against absent witness made at late stage of case—Civil Procedure Code, 1859, s. 159.* Where an application was made at a very late stage of a case to enforce the provisions of s 159 of the Code of the Civil Procedure, without proffer of any proof that the witness was

DOSS *v.* MISRUN 15 W. R. [illegible]

14. ——— **Fine for avoiding service of summons**—*Act XIX of 1853, s. 28—Act X of 1861.* S 28 of Act XIX of 1853 having been

1 B. L. R A. C. [illegible]

GUJADHUR PERSHAD NARAIN SINGH *v* JOODEO NARAIN 10 W. R. 233

5. SWEARING OR AFFIRMATION OF WITNESSES

1. ——— **Objection to take oath**—*Member of Church of England—Stat. 17 & 18*

MUDALI *v.* SOWERBY

2 ——— Where a Maho-

3. ——— **Refusal to examine witnesses**—*Dismissal of suit by first Court without examining defendant's witnesses—Reversal of decree on appeal—Duty of Appellate Court to direct*

WITNESS—CIVIL CASES—*contd.*

5. SWEARING OR AFFIRMATION OF WITNESSES—*concld*

examination of witnesses before reversing decree Where a Court of first instance, considering it unnecessary to examine certain witnesses for the defence, dismissed the suit, and the lower Appellate Court, disbelieving the evidence of those witnesses for the defence who were examined, allowed the

the testimony of those witnesses whom that Court had declared it unnecessary to hear, and that the case must be regarded as one in which the first Court had refused to examine the witnesses tendered by the defendants The Court directed the first Court to examine the defendants' witnesses, and, having done so, to return their depositions to the lower Appellate Court, which was to replace the appeal upon its file and dispose of it KHUDA BUKHSH *v* IMAM ALI SHAH
I L. R. 9 All 339

6 EXAMINATION OF WITNESSES

(*a*) GENERALLY

1 ———— Selection of witness—*Duty of parties.* It is not the business of a Court to determine what witnesses shall be examined The parties must select their own witnesses, and call upon the Court to examine such of them as they may offer for examination, and it is their own fault if they do not take the necessary steps to have the witnesses examined, or to compel them to be present for examination at the proper time MOHINO MOYEE DEBEE *v* BHEEM KOOMAR CHOWDHRY
6 W R 231

DEEN DYAL SINGH *v.* DANEE ROY
13 W R. 185

2 ———— Right to have witnesses examined—*Ground for refusing to hear witness—Opinion of Court as to materiality of evidence.* Every party to a suit is entitled to have all the

PORAN CHUNDER GHOSE *v.* GOPEENATH SINGH
8 W. R 505

CHOWDHRY KHOORGO ROY *v* SHIB TOHUL ROY
17 W. R 172

3. ———— *Ground of spe-*

But when

Judge below has omitted to examine certain witnesses, it ought to be shown that the evidence of those witnesses would have been material to the case NILKANTH SURMAH *v.* SOOSELA DEBIA
6 W R. 324

CHUNDER NATH SEIN *v.* ANUNDMOYEE DOSSEE
11 W. R. 289

QUEEN *v.* TOTARAM . 11 W. R. Cr. 15

5 ———— Refusal to examine witness—*Ground for refusal—Omission from list*

6. ———— *Refusal of verbal request of vakil—Ground of special appeal* Where

the Judge RAMESSUR BHUTTACHARJEE *v* SHIB NARAIN CHUCKERBUTTY . . 14 W. R. 419

7. ———— *Additional witnesses to facts already in evidence—Tender of large number of witnesses—Ground for remand.* In a suit for possession of zamindari and other estates

having taken the depositions of thirty of these

opinion that the refusal by that Court to permit the examination of the witnesses tendered was irregular, and that no decision could be come to upon the merits under such circumstances. JESWUNT SINGJEE UBBY SINGJEE *v.* JET SINGJEE UBBY SINGJEE . . 2 Moo I. A. 424

8. ———— *Ground for remand.* A lower Court having allowed some of the

WITNESS—CIVIL CASES—*contd.*

6. EXAMINATION OF WITNESSES—*contd.*

(*a*) GENERALLY—*contd.*

witnesses of the plaintiff to depart without taking their evidence, the plaintiff objected to its taking the evidence of more of the defendant's witnesses than of his own. Upon this the Court allowed some of the defendant's witnesses to leave the Court without examining them The case, on coming up to the High Court, was remanded for examination of all the remaining witnesses and a fresh decision. GOPEE OJHA *v.* HUR GOBIND SINGH . . . . 12 W. R. 229

9 ——————— *Application to re-examine after consent to allow evidence in one suit to be evidence in others* Five suits having been brought to recover a balance of accounts from defendants, who were alleged to be partners of a trading concern, and as such liable, certain witnesses were examined in four of the cases in which the plaintiff in one of the suits was not a party, and at his request the evidence taken in those cases was allowed to be used as evidence in his case, ... Two days ... itnesses re- ... application, ... refusal was justified in the absence of any new reason for the re-examination SREENATH ROY *v.* GOLUCK CHUNDER SEIN . . . 15 W. R. 348

10 ——————— **Death before delivering legal judgment**—*Obligation to hear witnesses again—Consent of parties* A suit was dismissed by a Deputy Collector, who dies before recording a legal judgment, whereupon it was made over by the lower Appellate Court for trial to the deceased officer's successor, who decided the case in favour of the plaintiff upon the evidence as it stood on the record without any objection by either party *Held*, that it was not the duty of the second Deputy Collector to remand the witnesses or to take additional evidence unless requested to do so by the parties GOUR CHUNDER SEN *v.* MANICK RAM 13 W. R. 76

11 ——————— **Recall of witness**—*Witness for plaintiff recalled for defendant—Leave of Court* When a witness has been examined on behalf of the plaintiff, he cannot be recalled as a witness for the defendant without leave obtained at the end of the first examination MACKINTOSH *v.* NOBINMONEY DOSSEE . 2 Ind. Jur. N. S 160

12. ——————— **Examination of witness by Appellate Court** Courts should in all cases exercise the powers with which they have been entrusted by the law in the examination of witnesses, if they see that they are not properly ...

WITNESS—CIVIL CASES—*contd.*

6. EXAMINATION OF WITNESSES—*contd.*

(*a*) GENERALLY—*contd.*

take proper means for making the evidence complete. RAMGATI *v.* IMITARI BANEE 1 B L R. S N 20 10 W. R. 280

13. ——————— **Mode of taking evidence.** Observations on the improper manner in which the evidence in cases is generally taken in the subordinate Courts, and in which it was taken in this case. PHUL KUAR *v.* SURJAN PANDEY I. L. R. 4 All. 249

14. ——————— **Irregularity in examination of witness**—*Witness for plaintiff examined* ...

... been an irregularity in the Court below in affirming the judgment, refused to give the costs of the appeal. BOMMARAUZE BAHADUR *v.* RANGASAMY MUDALY . . . 8 Moo. I A. 232

15. ——————— *Evidence given* ...

... should be so used ... 9 W. R 587 NARAIN CHOWDHRY . . .

16. ——————— **Evidence to contradict witness**—*Contradiction of witness to collateral* ... The ... 8 Bom. ... 93 KHAN . . .

17 ——————— **Evidence of experts**—*Proof of signatures* In a suit for arrears of rent for 1273 at an enhanced rate, plaintiff relied upon an agreement said to have been executed by defendant in

WITNESS—CIVIL CASES—*contd.*

6 EXAMINATION OF WITNESSES—*contd.*

(a) GENERALLY—*contd.*

that year. The Assistant Collector found that the agreement had not been executed by defendant.

18 — —— Consent to be bound by particular witness—*Evidence not legally admissible* An *a priori* consent to abide by the testimony of a certain witness cannot bind the consenting party to hersay testimony, but only to such evidence as is legally admissible, i e , evidence as to such facts as the witness can directly speak to LUCKEEMONEE DOSSEE v SHUNKURREE DOSSEE 2 W R. 252

MUNNOO SINGH v. AMRUT LALL . 5 W. R. 234

19 —— —————— *Witness sworn in particular manner* Where the plaintiff rested her

20 — — — — — *Plaintiff agree-*

21 —————— *Subsequent refusal—Duty of Court* Where a defendant, after

the other evidence on the record should also have been considered. JUGDEO SINGH v MOLAZIM HOSSEIN 13 W. R 108

(b) CROSS EXAMINATION.

22. ———— Right to cross examine—*Witness called by the Court* A witness called by the Court is liable to be cross-examined by any of the parties to a suit TARINI CHARAN CHOWDHRY v. SARODA SUNDARI DASI

3 B L. R. A. C 145: 11 W. R. 468

23. ——————— *Witness called by Court* A party summoned by the Court to give

WITNESS—CIVIL CASES—*contd.*

6. EXAMINATION OF WITNESSES—*contd.*

(b) CROSS-EXAMINATION—*contd.*

evidence is not only required to give answers to the questions put to him by the Court, but the opposite party has a right to cross-examine him. The statement of any person examined is not admissible unless the opposite party has had the opportunity of cross-examining him. GOORDOOSS ROY v GREEDHUR SEIN . . 11 W. R. 110

SHURFURAZ MOLLAH v DHUNOO . 16 W. R. 257

24. ———————— *Co-defendant separately represented* One co defendant, whose interests are separately represented, may cross-examine another NARASIMMA v KISTNAMA

1 Mad. 456

25. ———————— *Recall of witnesses*

the defendant had no opportunity to cross-examine, and again gave a decree for the plaintiff. The lower Appellate Court rejected the evidence of plaintiff's witnesses, and reversed the decree *Held*,

26. ———————— *Refusal to allow*

2 B. L. R. Ap. 12

27. ———— Refusal of witness to answer questions on cross-examination—*Civil Procedure Code, 1859, s. 169—"Lawful excuse."* A party to a suit tendering himself as a witness, and declining without lawful excuse to answer

28. ———— Cross-examination to credit—*Opinion formed as to credit of witness by another Judge in another case inadmissible.* Evidence of the particular estimate formed by a Judge in another case of the credit to be attached to the testimony of a witness who is cross-examined in a subsequent trial is inadmissible *In the matter of* PASUMARTY JUGGAPPA . 4 C. W. N. 684

29 ———— Witness proving hostile—*Refusal by Court of permission to cross-*

WITNESS—CIVIL CASES—*contd.*

6. EXAMINATION OF WITNESSES—*contd.*

(a) GENERALLY—*contd.*

Court without examining them The case, on coming up to the High Court, was remanded for examination of all the remaining witnesses and a fresh decision. GOPEE OJHA *v.* HUR GOBIND SINGH . . . . 12 W R. 229

9 ——— *Application to re-examine after consent to allow evidence in one suit to be evidence in others* Five suits having been brought to recover a balance of accounts from defendants, who were alleged to be partners of a trading concern, and as such liable, certain wit-

justified in the absence of any new reason for the re-examination SREENATH ROY *v* GOLUCK CHUNDER SEIN . . . 15 W. R. 348

10 ——— Death before delivering legal judgment—*Obligation to hear witnesses again—Consent of parties* A suit was dismissed by a Deputy Collector, who dies before recording a legal judgment, whereupon it was made over by the lower Appellate Court for trial to the deceased

parties. GOUR CHUNDER SEN *v.* MANICK RAM 13 W. R. 76

11. ——— Recall of witness—*Witness for plaintiff recalled for defendant—Leave of Court* When a witness has been examined on behalf of the plaintiff, he cannot be recalled as a witness for the defendant without leave obtained at the end of the first examination MACKINTOSH *v.* NOBINMONEY DOSSEE . 2 Ind. Jur N. S 160

12. ——— Examination of witness by Appellate Court Courts should in all cases exercise the powers with which they have

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WITNESS—CIVIL CASES—*contd.*

6. EXAMINATION OF WITNESSES—*contd.*

(a) GENERALLY—*contd*

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13. ——— Mode of taking evidence. the subor- taken in this

I. L. R. 4 All. 249

urged during the trial, or until an appeal was interposed, the Judicial Committee *held* that the

been an irregularity in the Court below in ... ing the judgment, refused to give the costs of the appeal. BOMMARAUZE BAHADUR *v.* RANGASAMY MUDALY . . . 8 Moo. I. A. 232

15. ——— *Evidence given ... and without opportunity* a party ... or to ... testi- ... that it ... RAM

should be so used. ... 9 W. R 587 NARAIN CHOWDHRY . . .

16. ——— Evidence to contradict ... *of witness to collateral* ... *contradict.* The ... to contradict ... cludes all evi- ... e of affording dence of facts ... any reasonable presumption or inference as to the principal matter in dispute, the test being whether the fact is one which the party proposing to contradict would have been allowed himself to prove in evidence GULAM ALLI BIN KAZI ISMAIL *v* AGA KHAN . . . . 6 Bom. O. C. 93

17 ——— Evidence of exports—*Proof of signatures.* In a suit for arrears of rent for 1273 at an enhanced rate, plaintiff relied upon an agreement said to have been executed by defendant in

WITNESS—CIVIL CASES—*contd.*

6 EXAMINATION OF WITNESSES—*contd.*

(*a*) GENERALLY—*concl.*

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SINGH . . . 9 W. R. 88

18. ——— **Consent to be bound by particular witness**—*Evidence not legally admissible.* An *a priori* consent to abide by the testimony of a certain witness cannot bind the consenting party to hersay testimony, but only to such evidence as is legally admissible, *i e*, evidence as to such facts as the witness can directly speak to LUCKEEMONEE DOSSEE *v* SHUNKURREE DOSSEE 2 W R. 252

MUNNOO SINGH *v* AMRUT LALL . 5 W. R. 234

19 ——— *Witness sworn in particular manner.* Where the plaintiff rested her claim solely on the deposition of the defendant to be taken by his placing his hand on a particular text of the Koran, and the defendant, not being examined in that way but in the usual way, did not prove the claim —*Held,* that the Court was not right in allowing the plaintiff to examine further witnesses and to re open her case. MAHOMED SALEH *v.* MUBIAMOONISSA . 10 W. R. 284

20 ——— *Plaintiff agreeing to be bound by defendant's evidence—Statements obviously untrue.* Where the defendant on examination makes statements which amount to nothing and are manifestly untrue, the plaintiff cannot be bound by them, even though he had agreed to be bound by what the defendant said. GOOROODOSS ROY *v.* GREEDHUR SEIN . 11 W. R. 110

21 ——— *Subsequent refusal—Duty of Court* Where a defendant, after

HOSSEIN 13 W. R 108

(*b*) CROSS EXAMINATION.

22. ——— **Right to cross examine**—*Witness called by the Court* A witness called by the Court is liable to be cross-examined by any of the parties to a suit TARINI CHARAN CHOWDHRY *v* SARODA SUNDARI DASI

3 B. L. R. A. C 145: 11 W. R. 468

23. ——— *Witness called by Court.* A party summoned by the Court to give evidence is not only required to give answers to the questions put to him by the Court, but the opposite party has a right to cross-examine him. The statement of any person examined is not admissible unless the opposite party has had the opportunity of cross-examining him. GOOROODOSS ROY *v.* GREEDHUR SEIN . . 11 W. R. 110

SHURFURAZ MOLLAH *v.* DHUNOO . 18 W. R. 257

24. ——— *Co defendant separately represented* One co-defendant, whose interests are separately represented, may cross-examine another NARASIMMA *v.* KISTNAMA

1 Mad 456

25. ——— *Recall of witnesses*

the defendant had no opportunity to cross-examine, and again gave a decree for the plaintiff. The lower Appellate Court rejected the evidence of

26. ——— *Refusal to allow*

ant's vakil, who was present, to cross-examine them *Held,* that the Judge ought to have allowed the defendant's vakil to cross-examine the plaintiff's witnesses PAKAKTAR *v.* JAKRIRAM BHAKAT

2 B. L. R. Ap. 12

27. ——— **Refusal of witness to answer questions on cross-examination**—*Civil Procedure Code, 1859, s 169—"Lawful excuse"* A party to a suit tendering himself as a witness, and declining without lawful excuse to answer questions put on cross examination, was liable to be dealt with under s. 169 of the Civil Procedure Code. "Without lawful excuse" means such an excuse as would in law justify the refusal to give evidence LEKH RAJ *v* PALEE RAM

1 N. W. 162: Ed. 1873, 241

28. ——— **Cross-examination to credit**—*Opinion formed as to credit of witness by another Judge in another case inadmissible.* Evidence of the particular estimate formed by a Judge in another case of the credit to be attached to the testimony of a witness who is cross-examined in a subsequent trial is inadmissible *In the matter of* PASUMARTY JUGGAPPA . 4 C. W. N. 684

29 ——— **Witness proving hostile**—*Refusal by Court of permission to cross-*

6. EXAMINATION OF WITNESSES—*concld.*

(b) Cross-examination—*concld.*

examine, effect of. Where one's own witness unexpectedly makes statements adverse to his interest, it is common fairness that the Judge should permit such statements to be tested by cross-examination, if the evidence is to be relied upon; and if cross-examination be disallowed the evidence is of no value. KALAGURLA SURYANARAYANA *v.* YARLAGADDA NAIDOO (P.C., 1902) . 6 C. W. N. 513

7. CONSIDERATION AND WEIGHT OF EVIDENCE.

1. ———— **Credibility of witnesses**—

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... and if these Courts are satisfied that the witnesses are not to be believed, their ...

NATH SURMAH . . . . 10 W. R. 365

2. ———— *Mode of testing credibility—Several witnesses to same facts.* In examining evidence with a view to test whether several witnesses who bear testimony to the same facts are worthy of credit, it is important to see whether they give their evidence in the same words, or whether they subtantially agree, not, indeed, concurring in all the minute particulars of what passed, but with that agreement in substance, and that variation in unimportant details, which are usually found in witnesses intending to speak the truth, and not tutored to tell a particular story. NANA NARAIN RAO *v* HARREE PUNTH BHAO

Marsh. 436 : 9 Moo I. A. 96

3. ———— *Witnesses called to support case giving evidence contrary to it.* A party who calls a witness to give evidence on his behalf is not necessarily bound by his evidence; but if the ...

4. ———— *Credit on other matters of witnesses supporting a false case.* Al...

... case he has spoken to, yet where witnesses who were not merely giving an opinion upon an isolated fact in the case, but came into Court to prove the whole case made by the plaintiffs, and that a very

7. CONSIDERATION AND WEIGHT OF EVIDENCE—*contd.*

special case and it is shown to be a case false in its material features, much reliance cannot be placed on their evidence as to any particular questions in the case. HABEEBOOLLAH *v.* GOUHUR ALLY KHAN . . . . 18 W. R. P. C. 523

5. ———— **Ground for refusal to consider evidence**—*Non-production of best evidence.* The principle that a plaintiff is bound to produce the best evidence in his power was *held* not to justify a Judge in omitting to consider the weight and legal effect of the ...

6. ———— **Mode of weighing evidence**

7. ———— **Estimating value of evidence**—*Witness swearing affirmatively to fact* In estimating the value of evidence, the testimony of a person who swears positively that a certain conversation took place, is of more value than that of one who says that it did not. CHOWDHRY DEBY PERSAD *v.* CHOWDHRY DOWLUT SINGH

6 W. R. P. C. 55 : 3 Moo. I. A. 347

8. ———— *Credit of witness, a servant or dependent of plaintiff* The circum...

9. ———— *Rejection of evidence unnecessarily and unjustifiably Held*, by NORMAN, J., that the Judge was not at liberty to reject, as matters which he could wholly leave out of consideration, any of the evidence before him in a case where the witnesses were unimpeached in their general character and uncontradicted by any testimony on the other side, and where there was no improbability in the facts which they related, and that the probative force arising from concurrent testimony was the compound ratio of the probabilities of the testimonies taken singly RADHA KANT DEB *v.* KHEMA DOSSEE 7 W. R. 105

10. ———— *Evidence of wit-* ... A Judge

charge of breach of trust against the same ... ant in a criminal case. LALL CHAND ROY *v* BRINDABUN CHUNDER ROY . 13 W. R. 226

11. ———— *Evidence, weight of—Witness, evidence of, part of which*

WITNESS—CIVIL CASES—*contd.*

7. CONSIDERATION AND WEIGHT OF EVIDENCE—*contd*

disbelieved, value of If a part of the evidence of a

12. ——————— *Evidence of person who has been convicted of perjury or other offence.* The evidence of a person who has been punished for perjury or of a person who has been convicted of a criminal offence can hardly be entitled to the credit that would be given to the testimony of a person against whom no such imputation can be brought DOONGUN RAI v. DOORGA RAI 2 N. W. 97

13. ——————— *Evidence of truth of witness* The observation that the evidence of a witness proves too much is not rebutted by the suggestion that it cannot be supposed that the witness was suborned, for, if he was possessed of common shrewdness, he would not have overdone the thing and then have given rise to such an objection. SOORIAH ROW v COTAGHERY BOOCHIAH 5 W R. P. C. 127: 2 Moo. I. A. 113

14. ——————— *Credibility of witnesses—Professional witness—Witnesses in former cases* The Privy Council, referring to the generality of the Principal Sudder Ameen's observations as to certain witnesses having given evidence in other cases, observed that, though it was a legitimate objection to a man's credit that he was a professional witness, yet to state broadly and generally that a witness has given evidence in other cases, and therefore became unworthy of credit, could only tend to increase the indisposition of respectable persons to come into Court as witnesses, which was one of the social evils of India. LALL BEHAREE LALL v GOPEE BEEBEE 18 W. R. P. C. 285

15. ——————— *Discrepancies in statements of witnesses.* Discrepancies in an account of what took place in a conversation are not a sufficient ground for disbelieving statements made by different witnesses BHAJU SING v. KAIFNATH TEWARI . . . . 3 B. L. R. A. C. 332

16. ——————— *Ground for dis-*

17. ——————— *Findings of fact by first Court, upset by Appellate Court—Credibility of witnesses—Witness proving hostile; refusal by*

WITNESS—CIVIL CASES—*contd.*

7. CONSIDERATION AND WEIGHT OF EVIDENCE—*concld.*

ity of witnesses relied upon the Court of first instance, and upset the findings of fact of such Court upon the evidence on record. When one's own witness unexpectedly makes statements ad-

of no solvency, had obtained goods from *Y*, a trader in Madras, and dishonoured all his *hundies* except one, and transferred the goods to one *K*. *Y*, unable to obtain payment from *J*, sent down his *gomasta B* to realize the amount, and the latter,

to that effect, *J* was declared an insolvent Later on, *B* on behalf of *Y* presented a further petition for a declaration that the transfer of goods to *K* was fraudulent and void as against the Official Assignee, and praying that *K* be ordered to return the goods to him or pay the proceeds *K*, who had hitherto not been a party, set up the *bonâ fides* of the transfer and the alleged payment by *J* to *B* in full settlement of *Y's* claim Further evidence was given in support of the plea, and amongst other evidence documentary evidence, such as receipts, account books and promissory notes was produced to show the transfer, receipt and endorsement and cashing of certain currency notes of large value to prove the alleged payment by *J* and settlement with *B* *Held*, on evidence, that *K's* plea failed,

... *J* and ... carried ... with *B*, ... eedings ... writing, ... ndorse- ... o have ... story ... GURLA SURYANARAYANA v YARLAGADDA NAIDOO 1902) . . . . . 6 C. W. N. 513

8. PRIVILEGES OF WITNESSES.

1. ——— **Exemption from appearance in Court**—*Natives of rank, prejudices of, to appear in Court.* The prejudices of natives of rank to appear as witnesses in a Court of justice will not be

NURSINO DEB v. RAM MOHUN MOOKERJEE. Marsh. 176; 1 Hay 379

See MANICKRAM v. RAMYAD RAM. 2 W. R. 63

WITNESS—CIVIL CASES—*contd.*

8. PRIVILEGES OF WITNESSES—*contd.*

RADHA KISTO SINGH DEO *v* GUDADHUR BANERJEE . . . . . . **8 W. R. 453**

KALEE CHUNDER CHOWDHRY *v.* SURUT SOONDUREE DEBIA . . . . **18 W. R. 45**

2. ———— **Exemption from suit in respect of evidence**—*Action for damages—False evidence.* Witnesses cannot be sued for damages in respect of evidence given by them in a judicial proceeding If their evidence be false, they should be proceeded against by an indictment for perjury. GUNESH DUTT SINGH *v* MUGNEERAM CHOWDHRY. **11 B. L. R. P. C. 321 17 W. R. 283**

3. ———— **Right of suit**— *Slander—Slander uttered by witness whilst under examination in a judicial proceeding* A witness in a Court of justice is absolutely privileged as to anything he may say as a witness having reference to the enquiry on which he is called as a witness. The plaintiff sued to recover damages for slander, the statement complained of being alleged in the plaint to have been made by the defendant while

Court as relevant to the case The plaintiff alleged that the statement was made maliciously, that the defendant bore him a grudge, and that it was to give vent to that grudge and to injure his reputation that the statement was made *Held*, that the plaint disclosed no cause of action, and that the suit has been properly dismissed BHIKUMBER SINGH *v.* BECHARAM SIRCAR. BHIKUMBER SINGH *v* GOTI KRISTO DAS . **I. L. R. 15 Calc. 264**

See CHIDAMBARA *v.* THIRUMANI. **I. L. R. 10 Mad. 87**

4. ———— **Defamation**—*Penal Code, s. 500—Statement by witness.* *M S* was convicted under s 500 of the Penal Code of defaming *S S* by making a certain statement when under cross-examination as a witness before a Court of Criminal jurisdiction *Held*, that the conviction was bad The statements of witnesses are pirvileged; if false, the remedy is by indictment for perjury, and not for defamation MANJAYA *v* SESHA SHETTI **I. L. R. 11 Md. 477**

5. ———— *Cause of action—Verbal abuse—Special damage* The plaintiff was cited as a witness by one *S* in a suit instituted by him against defendant. After plaintiff's evidence had been concluded, in which he stated that there was no enmity between him and defendant. The defendant was examined by the Court, and stated that there was enmity between him and the plaintiff, and on the Court inquiring to

WITNESS—CIVIL CASES—*concld.*

8. PRIVILEGES OF WITNESSES—*concld.*

privileged. *Per* MAHMOOD, *J. (contra)*, that the question whether or not the statement complained of was made by defendant in course of his deposition, or after it was finished, and when he was no

such drawing somewhat arbitrary distinctions between words actionable *per se* and words requiring proof of special or actual damage, is not applicable to this country, either by reason of any statutory provision or by any uniform course of decision sufficient to establish such distinctions as part of the common law of British India; that whilst the English law of defamation recognizes no distinction between defamation as such and personal insult in civil liability, the law of British India recognizes personal insult conveyed by abusive language as actionable *per se* without proof of special or actual damage; that such abusive and insulting language, unless excused or protected by any other rule of law, is in itself a substantive cause of action and a civil injury, apart from defamation, and that malice is an element of liability for abusive and insulting language, and that ... be presumed or inferred, unless the ...fendant is ...ason of the ...loyed such language, he renders himself subject to a civil liability for damage, irrespective of any plea of justification based upon proving the truth of the statements contained in the abusive and insulting language complained of; that the rule of English law as to the privilege or protection of a witness in regard to defamatory statements made in the witness-box is based upon a public policy which is equally applicable to insulting and abusive ... and such state-

... absence ...good faith ... MUNIR ... I. L. R. ... All. 425

SINGH

6. ———— *Prosecution of witness—Defamation.* A prosecution for defamation under s 499 of the Indian Penal Code will not lie against a witness in respect of any statement made by him in the course of giving evidence even if such statement may be not relevant to the matter under inquiry. *Baboo Gunnesh Dutt Singh v. Mugneeram Chowdhry, 11 B. L. R. 321*, followed. *Dawkins v. Lord Rokeby, L. R. 7 H. L. 744; Abdul Hakim v. Tej Chunder Mukerji, I. L. R. 3 All. 815*; and *Isuri Prasad Singh v. Umrao Singh, I. L. R. 22 All. 234*, referred to. EMPEROR *v.* GANGA PRASAD (1907) **I. L. R. 29 All. 685**

WITNESS—CRIMINAL CASES.

See Accomplice

See Approvers

See Commission—Criminal Cases.

See Complainant.
I. L. R. 13 Bom. 600

See Criminal Procedure Codes, ss 288, 289

See Defamation I. L. R 29 All. 685

See Evidence Act, 1872, s. 33.

See False Evidence.

See Holiday . 8 B. L. R. Ap. 12

See Judge—Duty of Judge
L. R. 3 I. A. 259

See Judge—Qualifications and Disqualifications. 7 W. R. 189
9 W. R. 252
20 W. R. Cr 76
25 W. R. 121
6 B. L. R. A. Cr. 7
I. L. R. 2 Calc. 23

See Magistrate, Duty of.
I L. R. 8 All. 672

See Magistrate, Jurisdiction of—General Jurisdiction.
I. L. R. 24 Calc. 499
I. L. R. 19 All. 302
3 C. W. N. 607

See Penal Code, ss 191, 193, cl. (2)
9 C. W. N. 127; 438; 911

See Possession, Order of Criminal Court as to—Evidence, Mode of Taking, etc.

See Registration Act, 1877, s. 74
I. L. R. 24 Calc. 755

See Sanction for Prosecution—Power to grant Sanction.
I. L. R. 18 Bom. 581
I. L. R. 16 All. 80
11 C. W. N. 909

WITNESS—CRIMINAL CASES—*contd.*

——— classification of—

See Murder. 11 C. W. N. 1085

——— compelling to answer—

See Evidence Act, s 132
I. L. R. 21 Calc. 392
I L. R. 16 All. 88

——— competency of—

See Oaths Acts, ss. 6 and 13
I L R 10 All. 207
I. L. R. 11 All. 183
14 B. L, 54; 294; 295 note
I. L. R. 16 Bom. 359
I L. R. 16 Mad. 105

——— cross-examination of—

See Recognizance to keep peace—Forfeiture of Recognizances
I. L. R. 4 Calc 865

——— deposition of—

See Evidence—Criminal Cases—Depositions.

——— evidence of witness partly against and partly in favour of accused—

See Criminal Procedure Code, s. 436
5 C. W. N. 574

——— examination of—

See Complaint—Dismissal of Complaint—Power of and Preliminaries to, Dismissal.
I. L. R. 20 Mad. 388

See Criminal Procedure Code, s. 540.
I. L. R 14 All. 242

See Criminal Proceedings.
I. L. R. 20 Mad. 445

See Evidence—Criminal Cases—Dying Declaration . . 6 C. W. N. 72

See Evidence Act, s 132
I L. R 21 Calc. 392

——— examination of, in absence of accused—

See Accused Person.
5 C W. N. 110

——— examination of; opportunity to accused to cross-examine—

See Witness—Criminal Cases—Examination of Witnesses—Examination by Court . I. L. R. 29 Calc. 387

——— not producing document.

See Contempt of Court—Penal Code, s. 175 . . I. L. R. 13 Mad. 24
I. L. R. 12 Bom. 63

——— person appearing as, statement of—

See Criminal Procedure Code, s. 164, (1872, s. 122). I. L. R. 2 Bom. 643
I. L. R. 4 Bom. 15

WITNESS—CIVIL CASES—*contd.*

8. PRIVILEGES OF WITNESSES—*contd.*

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3. ——— Right of suit—*Slander—Slander uttered by witness whilst under examination in a judicial proceeding.* A witness in a Court of justice is absolutely privileged as to anything he may say as a witness having reference to the enquiry on which he is called as a witness. The plaintiff sued to recover damages for slander, the statement complained of being alleged in the plaint to have been made by the defendant while being examined as a witness during the hearing of a case before a Magistrate. It was found that the statement was made in answer to questions put to the defendant as a witness and allowed by the Court as relevant to the case. The plaintiff alleged

[illegible]

suit has been properly dismissed. BHIKUMBER SINGH *v.* BECHARAM SIRCAR. BHIKUMBER SINGH *v.* GOTI KRISTO DAS . I. L. R. 15 Calc. 264

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5. ——— Cause of action—*Verbal abuse—Special damage.* The plaint-

[illegible]

ant. The defendant was examined by the Court, and stated that there was enmity between him and the plaintiff, and on the Court inquiring to

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WITNESS—CIVIL CASES—*concld.*

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[illegible]

ing proof of special or actual damage, is not applicable to this country, either by reason of any statutory provision or by any uniform course of decision sufficient to establish such distinctions as part of the common law of British India; that whilst the English law of defamation recognizes no distinction between defamation as such and personal insult in civil liability, the law of British India recognizes personal insult conveyed by abusive language as actionable *per se* without proof of special or actual damage; that such abusive and insulting language, unless excused or protected by any other rule of law, is in itself a substantive cause of action and a civil injury, apart from defamation, and that malice is an element of liability for abusive and insulting language, and that such malice will be presumed or inferred, unless the contrary is shown; that when the defendant is absolutely privileged and protected by reason of the office or occasion on which he employed such language, he renders himself subject to a civil liability for damage, irrespective of any plea of justification based upon proving the truth of the statements [illegible] insulting language [illegible] law as to [illegible] in regard [illegible] witness-box is based upon a public policy [illegible] is equally applicable to insulting and abusive language used by such witness; and such statements are privileged

[illegible]

absence [illegible] od faith [illegible] MAHIP SINGH [illegible] I. L. R. [illegible] All. 425

6. ——— Prosecution of witness—*Defamation.* A prosecution for defamation under s 499 of the Indian Penal Code will not lie against a witness in respect of any statement [illegible] the course of giving evidence [illegible] levant to the [illegible] *h Dutt Singh* [illegible] *21*, followed [illegible] *H L 744;* [illegible] *rji, I. L. R.* [illegible] *Abdul Hakim v.* [illegible] *3 All. 815:* and *Isuri Prasad Singh v. Umrao Singh, I. L. R. 22 All 234,* referred to. EMPEROR *v.* GANGA PRASAD (1907) I. L. R. 29 All. 685

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I. L. R. 13 Bom. 600

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See Judge—Duty of Judge
L. R. 3 I. A. 259

See Judge—Qualifications and Disqualifications.
7 W. R. 189
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20 W. R. Cr 76
25 W. R. 121
6 B L. R. A. Cr. 7
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3 C. W. N. 607

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See Possession, Order of Criminal Court as to—Evidence, Mode of Taking, etc.

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WITNESS—CRIMINAL CASES—*contd.*

——— classification of—

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I. L. R. 16 All 88

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I L R 10 All. 207
I. L. R. 11 All. 183
14 B. L., 54; 294; 295 note
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——— evidence of witness partly against and partly in favour of accused—

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I. L. R. 20 Mad. 388

See Criminal Procedure Code, s. 540.
I. L. R 14 All. 242

See Criminal Proceedings
I. L. R. 20 Mad. 445

See Evidence—Criminal Cases—Dying Declaration . . 6 C. W. N. 72

See Evidence Act, s. 132
I L. R. 21 Calc 392

——— examination of, in absence of accused—

See Accused Person
5 C. W. N. 110

——— examination of; opportunity to accused to cross-examine—

See Witness—Criminal Cases—Examination of Witnesses—Examination by Court . I. L. R. 29 Calc. 397

——— not producing document.

See Contempt of Court—Penal Code, s. 175 . . I. L R. 13 Mad. 24
I. L. R. 12 Bom. 63

——— person appearing as, statement of—

See Criminal Procedure Code, s. 164, (1872, s. 122). I. L. R. 2 Bom. 643
I. L. R. 4 Bom. 15

WITNESS—CRIMINAL CASES—*contd.*

——— privilege of—

See DEFAMATION.

See PARDANASHIN WOMEN.

See WITNESS, CIVIL CASES

——— refusal to answer—

See PENAL CODE, s 172
I. L. R. 10 Bom. 165
I. L. R. 13 Bom. 600
I. L. R. 23 Mad. 544

——— refusal to examine—

See JURISDICTION I. L. R. 31 Calc. 685

——— refusal to re-summon—

See CRIMINAL PROCEEDINGS
I. L. R. 25 Calc. 63

——— right to cross-examine witness called by Court—

See SECURITY FOR GOOD BEHAVIOUR.
I. L. R. 35 Calc. 243

1. PERSONS COMPETENT OR NOT TO BE WITNESSES

1. ——— Judge—*Competent witness* A Judge is a competent witness, and can give evidence in a case being tried before himself, even though he laid the complaint, acting as a public officer, provided that he has no personal or pecuniary interest in the subject of the charge and he is not precluded thereby from dealing judicially with the evidence of which his own forms a part. QUEEN *v* MUKTA SING
4 B L R. A. Cr. 15 : 13 W. R. Cr. 60

See ROUSSEAU *v* PINTO 7 W. R. 190

2. ——— Magistrate— *Evidence Act, s. 121—Power of Sessions Judge to compel Magistrate to give evidence—Privilege of witness* A Sessions Judge finding, in the course of a trial, as regards the examination of the accused person taken by the committing Subordinate Magistrate, [illegible]

STUART, *C. J.*, PEARSON, *J*, OLDFIELD, *J.*, and STRAIGHT, *J.* That the privilege given by s. 121 [illegible]

the reference, the objection not having been taken by the Subordinate Magistrate, but the Magistrate of the District, should be answered accordingly.

WITNESS—CRIMINAL CASES—*contd.*

1. PERSONS COMPETENT OR NOT TO BE WITNESSES—*contd.*

Per SPANKIE, *J.*—That a Sessions Judge, while trying a case, cannot compel a committing Magistrate to answer questions as to his own conduct in Court as such Magistrate. EMPRESS OF INDIA *v.* CHIDDA KHAN . . . I. L. R. 3 All. 573

3. ——— *Judge trying case —Magistrate witness of facts.* In a case in which a Deputy Magistrate took an active part in [illegible]

and the prisoner in such situation had a right, if he thought it desirable, to cross examine the Judge, whose evidence should be recorded, and form part of the record in the case. The proper course, however, for the Deputy Magistrate to have taken in this case would have been to decline to try the case, and to ask that it should be undertaken by some other Judge. *In the matter of the petition of* HURRO CHUNDER PAUL
20 W. R. Cr. 76

4 ——— *Conviction, illegality of.* A Magistrate cannot himself be a witness in a case in which he is the sole judge of law and fact. *Per* MARKBY *J.*—Where in such a case he has given his evidence and convicted the accused his having so acted makes the conviction bad. *Per* PRINSEP, *J.*—The conviction is not absolutely bad. It is open to the Court to uphold the conviction, if it is of opinion that, after rejecting the Magistrate's evidence, there is other evidence sufficient, if believed to support the conviction EMPRESS *v.* DONNELLY . I. L. R. 2 Calc. 405

5. ——— *Magistrate sitting on Bench in Appellate Court—Liability to be* [illegible] that Magis-

[illegible]

the Magistrate on oath or solemn affirmation. [illegible] the same manner as an ordinary witness. REG *v* KASHINATH DINKAR . . 8 Bom. Cr. 126

6. ——— *Examination of Magistrate trying case.* Case in which the High Court permitted a Deputy Magistrate to be examined on behalf of a petitioner whose case was investigated by the Deputy Magistrate QUEEN *v.* MUDHOOSOODUN ROY . . 16 W. R. Cr. 49

See s 121 OF THE EVIDENCE ACT, 1872.

7. ——— Prisoner—*Tendering pardon to prisoner.* Procedure as to tendering a pardon to a

WITNESS—CRIMINAL CASES—*contd.*

1 PERSONS COMPETENT OR NOT TO BE WITNESSES—*contd*

prisoner before examining him as a witness, discussed QUEEN *v* GAGALU
6 B. L. R Ap. 50 12 W. R. Cr. 80

8 ———— *Co-defendants, Examination of, as witnesses* Where there is no community of interest, any one of a number of prisoners jointly indicted may be called as a witness either for or against his co-defendants QUEEN *v* ASHRUFF SHEIK . 6 W. R Cr 91

9. ———— *Prisoners tried together jointly—Examination of one as witness against another* Where two prisoners are tried together for different offences committed in the same transaction, it is improper and illegal to examine one prisoner as a witness against the other *In the matter of* DAVID . 5 C. L R. 574

10 —— **Person brought up with accused and not discharged.** A person apprehended by the Police and brought before the Magistrate with the accused is, though not discharged by the Magistrate a competent witness against the accused, provided he be not charged along with the accused REG *v.* NARAYAN SUNDAR.
5 Bom. Cr. 1

11. ———— **Evidence of woman on charge of adultery.** A person may call the woman with whom he is accused of having had sexual intercourse as a witness on his behalf *In re* BECHOO . . . . 6 W. R Cr. 92

12 ———— **Person against whom affiliation order is sought**—*Criminal Procedure Code, 1882, s 488—Order for maintenance.* A per-

See NUR MAHOMED *v* BISMULLA JAN.
I. L. R 16 Calc. 781

13. ———— **Competency of persons of tender years**—*Evidence Act s 118* The

QUEEN-EMPRESS *v.* LAL SAHAI
I. L. R. 11 All. 183

WITNESS—CRIMINAL CASES—*contd.*

1. PERSONS COMPETENT OR NOT TO BE WITNESSES—*contd.*

14. ———— **Evidence of a witness illegally pardoned by the police**—*Evidence Act (I of 1872), s 118—Meaning of "accused" in s 342 of the Code of Criminal Procedure (Act X of 1882)* During the course of a police investigation into a case of house-breaking and theft,

H was admissible under s 118 of the Evidence Act, though he had been illegally discharged by the police. *Held*, also, that by the word "accused" in s 342 of the Code of Criminal Procedure (Act X of 1882) is meant a person over whom the Magistrate or other Court is exercising jurisdiction QUEEN-EMPRESS *v* MONA PUNA . I. L. R. 16 Bom. 661

15. ———— **Accused persons, under trial separately for a substantive offence and for abetment of that offence, competent witnesses on each other's behalf**—*Criminal Procedure Code, 1882, s 342.* Prisoner *A* was tried for an offence under s. 403 of the Indian Penal Code and was convicted, but was sent to a Magistrate of higher powers than the convicting Magistrate to be sentenced. Whilst his case was pending before the second Magistrate, prisoner *B*, being on his trial separately for abetment of the offence for which *A* had been tried, applied for *A* to be summoned as a witness on his behalf. *B's* application was refused *Held*, that s 342 of the Code of Criminal Procedure was no bar under the circumstances to *A's* giving evidence for *B*, and that *B's* application ought to have been granted. QUEEN-EMPRESS *v* TIRBENI SAHAI . . I. L. R. 20 All. 420

16 ———— **Accused persons who have been discharged**—*Criminal Procedure Code (Act V 1898), ss 337 and 494—Withdrawal of prosecution—Discharge—Acquittal—Evidence—Discharged persons called as witnesses—Competent witness—Practice.* Where the Public Prosecutor, with the consent of the Court, withdrew from the prosecution of two out of several accused persons tried jointly for an offence under s. 4 of the Gambling Act (Bombay Act IV of 1887), and the two accused were thereupon discharged under s. 494 of the Criminal Procedure Code (Act V of 1898), and then examined as witnesses for the prosecution :—*Held* (WHITWORTH, J., dissenting), that the persons so discharged were competent witnesses. QUEEN EMPRESS *v.* HUSSEIN HAJI (1900).
I. L. R. 25 Bom. 422

17. ———— **Child**—*Evidence Act (I of 1872), s. 118—Evidence—Competency of witness of tender years.* In this case a Sessions Judge purposely, refrained from examining a small

WITNESS—CRIMINAL CASES—*contd.*

1. PERSONS COMPETENT OR NOT TO BE WITNESSES—*contd.*

boy, who must, under the circumstances, have been an eye-witness to a murder On appeal the High Court observed:—"In our opinion the learned Judge, especially considering the importance of the witness, ought not to have refrained from examining him, unless, under the words of s 118 of the Indian Evidence Act, he considered that the boy was prevented from understanding the questions put to him, or from giving rational answers to those questions, by reason of tender years" QUEEN-EMPRESS v. RAM SEWAK (1900) I. L. R. 23 All. 90

18. ——— *Child witness Evidence Act (I of 1872), s. 118—Witness—Competency of—Child witness—Mode of examination—Competency to be tested before examination as to res gestæ* Before a child of tender years is asked any question bearing on the *res gestæ*, the Court should test his capacity to understand and give rational answers and his capacity to understand the difference between truth and falsehood. The Judge must form his opinion as to the competency of a witness before his actual examination commences SHEIKH FAKIR v. EMPEROR (1906) 11 C. W.N 15.

2. SUMMONING WITNESSES.

1. ——— **Dispensing with personal attendance of witnesses**—*Deposition—Trial before Sessions Court.* It is only in extreme cases of delay or expense that the personal attendance of *a witness before the Court of Session should* be dispensed with, and the evidence given by him before the committing Magistrate referred to. EMPRESS v MULU . . I L. R. 2 All. 646

2. ——— **Application to enforce attendance of witnesses**—*Witnesses for defence—Examination of accused.* In a case under Ch XV, Code of Criminal Procedure, 1861, it was incumbent on the accused either to produce their witnesses or to apply beforehand for a summons to enforce the attendance of any witness who was not likely to appear without a summons; it was not necessary in such cases to record the examination of the accused with the same formalities as in cases under Chs. XII and XIV. QUEEN v. CHEDEE KOONJRA . . . 14 W. R. Cr. 76

3 ——— **Discharge of witness from attendance**—It is incumbent upon a Court when it discharges a witness from a duty of attendance before the trial is ended to ascertain from the accused whether he has, or is likely to have, any

[illegible]

4. ——— **Discretion of Court as to summoning witnesses**—*Criminal Procedure*

WITNESS—CRIMINAL CASES—*contd.*

2. SUMMONING WITNESSES—*contd.*

Code, 1872, s. 192—Discretion of Magistrate as to examining witnesses It is entirely within the discretion of a Magistrate conducting a trial in a warrant case to admit evidence on behalf of either side at any stage of the trial, s 192, Act X of 1872, applying to such a case; but the Magistrate, in exercising the discretion conferred on him by this section, ought to have good reason for allowing witnesses on the part of the prosecution to be interposed in the midst of the case of the accused. QUEEN v. KASSY SINGH. QUEEN v HULKOREE SINGH . . . . 21 W. R Cr. 61

5. ——— **Duty of Court as to summoning witnesses**—*Criminal Procedure Code, 1872, s. 359—Adjournment for appearance of witnesses for defence* Certain persons were charged before the Magistrate with rioting, and being called upon for their defence, named several witnesses, and summonses on the following morning were issued for their appearance, but they were not found. The accused then applied for further time for the appearance of the witnesses. This the Magistrate refused to grant, and convicted the accused *Held per* JACKSON, *J.*, that this being a warrant case, it was the duty of the Magistrate to summon the witnesses that might be offered by the accused, and that he might at his discretion have adjourned the case. *Held*, further, *per* JACKSON, *J.*, that the meaning of s. 359 of the Criminal Procedure Code is, that if among the persons named by the accused as witnesses, the Magistrate considers that any witness is included for the purpose of vexation and delay, he is to exercise *his judgment* and enquire whether such witness is material; but that the section is not intended to enable the Magistrate to enquire into what the defence of the accused person is to be and to consider whether, on learning the nature of the defence, he is absolutely to abstain from summoning the whole of the witnesses cited by the accused; and further, that in the present case there was not any purpose of vexation or delay, and that by the refusal to grant further time the accused had been probably prejudiced in their defence EMPRESS v. RAJCOOMAR SINGH I. L. R 3 Calc. 573

s c *In the matter of the petition of* RAJCOOMAR SINGH . . . . 2 C. L. R. 63

6. ——— *Obligation to* [illegible] *... Procedure Code, 1861,* [illegible] provisions of [illegible] ocedure, the [illegible] tnesses sum- [illegible] to refuse to [illegible] ry. [illegible] R. Cr. 55

7. ——— *Discretion of Magistrate—Criminal Procedure Code, 1861, s 262. Held*, by BAYLEY, *J.* (MARKBY, *J.*, *dubitante*), that a Magistrate had a discretion, under s. 262 of the Code of Criminal Procedure, to summon a

WITNESS—CRIMINAL CASES—*contd*

2. SUMMONING WITNESSES—*contd.*

witness when he was likely to give material evidence on behalf of the accused *In the matter of the petition of* AMEER CHAND NOHATTA QUEEN *v* AMEER CHAND NOHATTA . 13 W. R. Cr. 63

8. ——— *Forcibly rescuing cattle—Act III of 1857, s 13—Criminal Procedure Code, 1861, s 262—Summoning witnesses.* In a case of forcibly rescuing cattle under s. 13, Act III of 1857, in which the accused did not summon any witness, it was *held* that, even if the accused wanted them summoned, the Magistrate, under s. 262 of the Code of Criminal Procedure, need not have summoned them, unless persuaded that they were likely to give material evidence, and that they would not attend voluntarily. AKBAR TAGUDGEER *v* PUNCHOO BISWAS

10 W. R Cr. 42

9. ——— *Duty of parties —Criminal Procedure Code, 1861, ss 261, 262—Attendance of witnesses* In a case under Ch XV of the Code of Criminal Procedure it was expected that parties would bring their own witnesses with them. If they required the attendance of any

10. ——— *Criminal Procedure Code, 1861, s 186* In the case of a charge of an offence triable by the Court of Session alone, the Magistrate was bound, under s 186 of the Criminal Procedure Code, to summon the complainant's witnesses QUEEN *v* ZAKIR ALLY

8 W. R. Cr. 4

11. ——— *Criminal Procedure Code, 1861, s. 375—Accused person, right of* An accused person is entitled to have examined as a witness any person named in his list of witnesses delivered to the Magistrate, and the Magistrate should take measures to enforce the attendance of such person. QUEEN *v.* ISHAN DUTT . 6 B. L. R. Ap. 88 : 15 W. R. Cr. 34

12. ——— *Right of accused to have witness summoned in his defence when he has refused to give in a list in the Magistrate's Court—Criminal Procedure Code, 1882, s 211.* If an accused person on being called upon under s. 211 of the Code of Criminal Procedure to give orally or in writing a list of the persons whom he wishes to be summoned to give evidence on his trial, declines to give in such list, he cannot compel the Magistrate after committal to issue any summonses for witnesses on his behalf. Neither under such circumstances will the Sessions Judge be obliged to issue summnoses for the attendance of such witnesses unless he is satisfied that their evidence may be material. *Queen-*

Empress v. *Hargobind Singh, I. L R 14 All 242,* referred to QUEEN-EMPRESS *v.* SHAKIR ALI I. L. R. 19 All. 502

13. ——— *Criminal Procedure Code (Act XXV of 1861), ss 188, 207, 227*

give evidence before the Court of Session *In the matter of* MAHESH CHANDRA BANERJEE. QUEEN *v* PURNA CHANDRA BANERJEE QUEEN *v* KALI SARKAR . 4 B. L R. Ap. 1 : 13 W. R. Cr. 1

14. ——— *Credibility of witnesses* It is the Magistrate's duty to summon witnesses for the accused who can speak to the facts of the case, and he ought not to determine beforehand what credit he will give to their evidence *In the matter of the petition of* MAHIMA CHANDRA SHAH.

4 B. L R Ap. 78 : 15 W. R. Cr. 15

15 ——— *Criminal*

16. ——— *Right of accused to have witnesses summoned—Criminal*

17. ——— *Criminal Procedure Code, 1861, s 253.* Under s. 253 of the Criminal Procedure Code, 1861, it was imperative on the Magistrate to summon the witnesses named by the prisoner. QUEEN *v.* MUDSOODDEEN.

2 N. W. 148

18. ——— *Summoning witnesses for accused—Criminal Procedure Code (Act XXV of 1861), s 253* *Per* AINSLIE, *J.*—In a trial under Ch XIV of the Criminal Procedure Code, the Magistrate was not bound, under s. 253, to summon any witness whom the accused might require. It was only discretionary with

affirmed, by s. 253; the Magistrate was bound to

WITNESS—CRIMINAL CASES—*contd.*

2. SUMMONING WITNESSES—*contd.*

summon the witnesses, though it was discretionary with him to adjourn the trial In the present case, treating it as a matter of discretion only, the Magistrate was wrong in refusing to summon the witnesses required. QUEEN *v.* BHOLANATH MOOKERJEE 7 B. L. R. 564 : 16 W. R. Cr 28

19. ———— *Discretion of Magistrate—Criminal Procedure Code, 1861, ss. 253, 262, 263* S. 253 of the Criminal Procedure Code did not apply to cases triable under Ch. XV of that Code, and ss 262 and 263 were applicable when the offence was not punishable with more than six months' imprisonment; and it was in the discretion of the Magistrate to summon the witnesses for the defence, if he considered their evidence essential to the just decision of the case, and incumbent on him to summon them only if it appeared to him that they were likely to give material evidence on behalf of either party, and that they would not voluntarily appear for the purpose of being examined at the time and place appointed for the hearing of the complaint QUEEN *v.* MOHUREE . . 2. N. W. 393

20. ———— *Discretion of Magistrate—Criminal Procedure Code, 1861,* [illegible]

[illegible]

the purpose of delay, he should proceed under s. 228 of the Code. QUEEN *v.* RAJCOOMAR MOOKERJEE . . . . . 16 W. R. Cr. 14

21.———— *Discretion of Magistrate—Criminal Procedure Code, 1872, ss. 215, 362.* It was not incumbent on a Magistrate to summon every person named as a witness by the complaint. S. 215, expl 3 of the Criminal Procedure Code, 1872, must be read with s. 362 which vested a discretionary power in the Magistrate JELDHARI SINGH *v.* SHUNKUR DOYAL. 23 W. R. Cr. 9

See, however, EMPRESS *v.* HEMATULLA. I L. R. 3 Calc. 389

EMPRESS OF INDIA *v.* KASHI I. L. R. 2 All 447

QUEEN *v.* PURASURAMA NAIKAR I. L. R 4 Mad. 329

ANONYMOUS . . . . 8 Mad. Ap. 5

22. ———— *Criminal Procedure Code, 1861, Ch XIV.* In a case of an offence (such as hurt, under s 323, Penal Code) [illegible] six [illegible] the [illegible] was [illegible] the [illegible] r. 81

WITNESS—CRIMINAL CASES—*contd.*

2. SUMMONING WITNESSES—*contd.*

23. ———— *Criminal Procedure Code, 1869, s. 131—Claims to stolen property.* Petitioner was charged with the theft of certain money found in his house and acquitted. Proclamation having been made for claimants to come in and claim the property, no one appeared, whereupon petitioner preferred his claim, and asked the Assistant Magistrate to summon certain witnesses, but the Assistant Magistrate refused to do so, and disallowed his claim, the Magistrate on appeal declining to interfere. On reference by the Judge, the High Court *held* that the Assistant Magistrate was bound to summon the witnesses named by the petitioner, set aside that officer's order, and directed him to dispose of the case after taking due steps for securing the attendance of the witnesses in question. SOOKHAN SAHOO *v.* GOVERNMENT . . . . . 18 W. R. Cr. 5

24. ———— *Issue of summons —Criminal Procedure Code (Act XXV of 1861), s. 318.* Although there was no mention in Ch. XXII of Act XXV of 1861 of any particular provisions under which witnesses might be summoned, yet it was the duty of the Court, if parties [illegible] of their witness, [illegible] the [illegible] 15

SHAMASUNKUR MOZOOMDAR *v.* ANUNDMOYEE DASSYA . . . . 18 W. R. Cr. 64

25.———— *Ground for postponement of case.* A Magistrate was *held* to be right, under the circumstances, in not postponing the case for the purpose of summoning witnesses for one of the parties *In the matter of the petition of* GOVINDA CHANDRA GHOSE 9 B. L. R. Ap 39

26. ———— *Non-attendance of witnesses—Criminal Procedure Code, 1861, s 269—Ground for adjournment of trial* In a trial held under Ch. XV of the Criminal Procedure Code it was not an irregularity to adjourn the trial, under s. 269, for the purpose of allowing the accused to secure the attendance of his witnesses. As a general rule, a prisoner should have his witnesses present on the day of trial QUEEN *v* DINOO ROY . . . . . 18 W. R. Cr. 21

27. ———— *Refusal of a Magistrate to summon prisoner's witnesses—Criminal Procedure Code (Act X of 1872), s. 359* A Magistrate was not at liberty to refuse to summon a witness tendered by an accused person, except on the grounds specified in s 359 of the Criminal [illegible] he was bound [illegible] hat the [illegible] reason [illegible] vidence [illegible] closed. [illegible]

In the matter of the [illegible] SHEO DAYAL KOERI I. L. R. [illegible] lc. 714

WITNESS—CRIMINAL CASES—*contd.*

2. SUMMONING WITNESSES—*contd.*

s c. *In the matter of* DEELA MAHTON
8 C. L. R. 70

28. ———— *Criminal Procedure Code, 1872, s. 359—Witness for the defence—Failure to attend—Refusal to re-summon.* On the 30th March 1881 an accused person on his trial before a Magistrate asked that a certain witness might be summoned on his behalf. The Magistrate ordered a summons to be issued for the attendance of such witness on the 18th April, to which day the further hearing of the case was adjourned. There was some delay in the service of the summons, and such witness did not attend on that day. The Magistrate refused an application by the accused for the issue of a second

to have been nominal merely—to secure the attendance of the absent witness. EMPRESS *v.* RUKN-UD-DIN . . . I. L. R. 4 All. 5

29. ———— *Witness for defence—Refusal by Magistrate to summon witness under Criminal Procedure Code, 1882, s 216—Witness summoned by Sessions Court—Criminal Procedure Code, 1882, ss. 291, 540.* Under the committal of certain persons for trial before the Sessions Court for offences under the Penal Code, each of the prisoners, under s 211 of the Criminal Procedure Code, gave in a written list of the persons whom he wished to be summoned to give evidence at the trial. On each of these lists the name of a particular person was entered, who

order, and before the trial in the Sessions Court

WITNESS—CRIMINAL CASES—*contd.*

2. SUMMONING WITNESSES—*contd*

Magistrate refuses, under s. 216 of the Criminal Procedure Code, to summon a witness included in the list of the accused, he must record his reasons

that the evidence was not material; that the

summoning of witnesses by an accused through

I. L. R. 5 All. 000

30. ———— *Refusal to summon witnesses not declared material unless expenses are paid.* A prisoner who was about to be committed to the Sessions Court presented to the Magistrate a list of witnesses whom he desired to have summoned to give evidence on his behalf, at the trial, and on being asked by the Magistrate why he desired to summon the witnesses, the

but the Magistrate ought to have fixed the amount which he considered necessary to defray the cost of the attendance of the persons named, and intimated to the prisoner his readiness to issue summonses on that amount being deposited. The High Court called for the record for the purpose of seeing whether any of the persons named in the list were likely to be able to give material evidence. SUBBARAYA MUDALI *v* QUEEN . 4 Mad. 81

31. ———— *Omission to take steps to summon witnesses.* A complainant in a case who mentioned the names of several witnesses on his behalf was requested to produce them on a certain date. Instead of doing that, he produced only two witnesses, who were examined. *Held*, that, as the complainant did not apply to the

32. ———— *Refusal to summon witness for accused—Participation in charge—Illegal conviction.* A refusal to summon

WITNESS—CRIMINAL CASES—*contd.*

2 SUMMONING WITNESSES—*contd.*

witnesses cited by an accused, on the ground of *their being implicated in the charge*, vitiates the trial and conviction. RAM SHAHAI CHOWDHRY *v.* SANKER BAHADUR.

6 B. L. R. Ap. 65. 15 W. R. Cr. 7

33. ———— *Refusal to summon witnesses named for the defence.* Where the Subordinate Magistrate convicted certain persons without allowing them a proper opportunity ...

34. ———— *Criminal Procedure Code, 1872, s. 362—Warrant case—Refusal of Magistrate to summon witness named by accused—Error or defect in proceedings.* Where the Magistrate trying an offence rejected an application by the accused person that a certain person might be examined on his behalf either in Court or by Commission, without recording his reasons for refusing to summon such person, as required by s. 362 of the Criminal Procedure Code,—*Held*, that the conviction of the accused person must be set aside, and the case be re-opened by such Magistrate, and the application by the accused for the examination of such person be disposed of according to law. *In the matter of the petition of* SAT NARAIN SINGH . I. L. R. 3 All. 392

35. ———— *Criminal Procedure Code, 1882, ss. 256, 257—Right of accused to call witness upon charge being framed in a warrant case.* The accused was charged with having committed an offence under s. 420 of the Indian Penal Code. On the last day that the case was taken up, certain witnesses for the prosecution, who had been examined in-chief, were cross-examined by the accused, and upon the conclusion of such cross-examination a charge was framed. The accused then stated that he could produce witnesses if the case were postponed, but the Magistrate refused postponement on the ground that at the outset the accused had stated that he had no witnesses. The accused moved the High Court and stated in his affidavit that what he had meant was that he had no witnesses *present in* Court. *Held*, that under s. 256 and 257 of the Criminal Procedure Code, the accused was, as of right, entitled to an adjournment for the purpose of adducing evidence in defence. EMTAZ ALI *v.* JAGAT CHANDRA BANERJEE . 1 C. W. N. 313

36 ———— *Right of accused to have witnesses re-summoned and re-heard—Criminal Procedure Code (Act X of 1882), s 350 (a) s. 537—Commencement of proceedings—Interlocutory orders—Trial, meaning of—Right to have witnesses summoned and re-heard—Irregularity—* ...

application for enforcing the attendance of certain witnesses has been made and granted not at the trial, but before the trial and with a view to the trial. The proper time for making such application is when the trial commences before the Magistrate. The expression "trial" means the proceedings which commences when the case is called on with the Magistrate on the Bench, the accused ...

Magistrate's refusal to re-summon and re hear the witnesses in contravention of prov. (*a*), s. 350. GOMER-SIRDA *v.* QUEEN-EMPRESS.

I. L. R. 25 Calc. 863
2 C. W. N. 465

37. ———— *Right of accused—Compelling attendance of witnesses—Evidence—Criminal Procedure Code (Act X of 1882), s 257.* Certain witnesses who had been summoned for the accused failed to appear on the day of trial, and the Deputy Magistrate refused to adjourn the hearing, or to issue fresh processes for the attendance of the defendant's witnesses, on the ground that they were all friends of the accused who would come to Court if the accused desired it. The prisoners were convicted. *Held*, that the conviction must be set aside: the Magistrate having ... to assist the ...

I. L. R. 10 Calc.

38. ———— *Non-attendance of witness, enquiry into reasons for—Criminal Procedure Code, 1861, s. 221.* It was *held* that an enquiry should be made into the excuse given by ... attendance as a witness before ... in order ... ty, might ... m by s. ... QUEEN *v.*

... W. 113

39. ———— *Mode of summoning witnesses—Recognizances to appear.* A Subordinate Magistrate cannot bind over witnesses by recognizances to appear before himself. The proper course to enforce attendance is by summons and, if that fails, by warrant. ANONYMOUS. 4 Mad. Ap 6

See ANONYMOUS . 4 Mad. Ap. 17

VENKATAPPAH *v.* PAPAMMAH . 5 Mad. 183

40. ———— *Criminal Procedure Code, 1861, s. 191—Warrant to enforce attendance of witnesses.* A Magistrate was not bound, under s 191 of the Code of Criminal Procedure, to enforce the attendance of witnesses by warrant except upon proof of due service of summons. *In the matter of the petition of* ABDOOR RUHMAN . 7 W. R. Cr 37

WITNESS—CRIMINAL CASES—*contd*

2. SUMMONING WITNESSES—*contd.*

QUEEN v. SUTHERLAND· QUEEN v NARAIN SINGH . . . . . 14 W. R. Cr. 20

41. ———— *Criminal Procedure Code, ss 76, 81, and 160—Investigation by police—Power of Magistrate to issue warrant for arrest and production of witness—Penal Code, s 174* Where a District Magistrate issued a

cedure Code, the proper course was for the Sub-

42. ———— *Issuing summons to witnesses out of jurisdiction* Magistrates may, under the Criminal Procedure Code, issue summonses for service upon witnesses beyond the limits of their districts (COLLET, J., dissenting). ANONYMOUS . 3 Mad. Ap. 5

43. ———— *Service of summons—Affixing summons to door of house*

44. ———— *Service of summons.* The mere showing to a witness of a sum-

45. ———— Obligation to summon—*Duty of Cr*

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Procedure

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cited by the petitioners on the 7th October, 1901, notwithstanding the reasons given by him for refusing to do so. MADHAB CHANDRA TANTI v. MARTIN (1901) . . . . I. L. R. 30 Calc. 508

WITNESS—CRIMINAL CASES—*contd.*

2. SUMMONING WITNESSES—*contd.*

46 ———— Under s. 540 of the Code of Criminal Procedure, a Court is bound to summon and examine any witness whose evidence may seem to be essential to a proper and just decision of the case. RAM SARUP RAI v. EMPEROR (1901) . . . 6 C. W. N. 98

47. ———— *Process to compel attendance of witness, issue of—Refusal to compel attendance of such witness—Magistrate, discretionary power of—Summons case—Criminal Procedure Code (Act V of 1898), s. 244.* There is no discretionary power given in summons cases to a Magistrate by s. 244 of the Criminal Procedure Code to refuse to compel the attendance of a witness upon whom the Court has already issued process DAULAT SINGH v. BRINDA BELDER (1902) . I. L R 30 Calc. 121

48 ———— *Duty of Court as to summoning witnesses—Jurisdiction—Criminal Procedure Code (Act V of 1898), ss 145, 355, 356—Witness, attendance of—Process, refusal to issue—Magistrate, discretion of—High Court, power of interference by—Charter Act (24 & 25 Vict. c. 104), s. 15—Proceedings under Ch. XII of the Criminal Procedure Code.* Where the refusal by a

the Magistrate in refusing process acted without jurisdiction *Madhab Chandra Tanti v. Martin, I. L. R. 30 Calc. 508*, referred to. The High Court, in the exercise of general powers of supervision vested under 24 & 25 Vict., c. 104, s 15, has power to interfere in a case like this, even if it cannot, in strictness, be said that the Magistrate acted without jurisdiction. A mere refusal, however, to summon or examine a particular

procedure, as summons cases *Surendro Narain Singh Chowdhry v. Bhobani Prea Baruani, I L. R. 11 Calc. 762*, and *Ram Chandra Das v. Monohar Roy, I. L. R. 21 Calc. 29*, explained. SURJYA KANTA ACHARJEE v. HEM CHUNDER CHOWDHRY (1902) . I. L. R 30 Calc 508 s c. 7 C W. N. 404

49. ———— *Party's right to compel attendance of a defaulting witness—Order, Magistrate's, upon application—Irregularity—Criminal Procedure Code (Act V of 1898),*

had been summoned and had neglected to attend. So, when, in a proceeding under s. 133 of Code of Criminal Procedure, on defendant applying for

137 of that Code, the order so passed was set aside as bad, and the case was remanded for re-trial after taking the evidence of such witness. BHOMAR MUNSHI *v.* DIGAMBAR DAS (1902).

6 C. W. N. 548

50. - *Witness for defence, attendance, Judge's duty to enforce.* It is

not refuse to enforce the attendance of witnesses whom the accused has cited to prove that a witness for the prosecution was his enemy, on the ground that there was already in the opinion of the Judge, ample evidence on the record about the matter BROJENDRA LALL SIRKAR *v* KING-EMPEROR (1902) . . **7 C. W N. 188**

51 ——— *Criminal Proce*

application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice: such ground, however, must be recorded by him in writing. The discretionary power of refusing to summon any particular witness is vested in the Magistrate, but the order of refusal must be such as to show *in writing the ground of refusal as applied to* each individual. EMPEROR *v.* PURSHOTTAM KARA (1902) . . . **I. L R 26 Bom. 418**

52 ——— **Plea that applicant wishes**

with the case. It was *held*, that, inasmuch as the Magistrate was bound under s. 257 of the Code of

53. ——— **Procedure**—*Witnesses—Duty of Magistrate inquiring into a case triable by the Court of Session to summon and examine witnesses asked for by the accused.* The accused, against whom an inquiry with regard to an

and that the order of commitment was bad in law. *Queen-Empress* v. *Ahmadi, I. L. R. 20 All 264,* followed. EMPEROR *v.* MUHAMMAD HADI (1904)

I. L R. 26 All. 177

54 ——— *Process—*

... *of the High* ... *(Act* ... *Vict.* ... rate ... 15 of

the Criminal Procedure Code in producing their witnesses, and they cannot claim as a matter of right that process should be issued by the Court to enable them to bring forward their evidence. *Harendra Narain Singh* v. *Bhobani Prea Baruani, I. L. R 11 Calc. 762; Ram Chandra Das* v. *Monohar Roy, I. L. R. 21 Calc. 29, Madhab Chandra Tanti* v. *Martin, I. L. R. 30 Calc. 508 note; Surja Kanta Acharjee* v. *Hem Chandra Chowdhry, I. L R. 30 Calc. 508,* and *Radha Nath Singh* v. *Mangal Gareri, 2 C. L. J. 286 note,* dissented from *Manmatha Nath Mitter* v. *Barada Prasad Roy, I. L. R. 31 Calc 685,* referred to. The powers of superintendence under s. 15 of the Charter Act should,

refused, and where it was further ... had refused to allow a witness to prove certain ... nothing to show

55. ——— *Magistrate— ... attendance of witnesses*

WITNESS—CRIMINAL CASES—*contd*

2. SUMMONING WITNESSES—*concld.*

to bind down the accused—Criminal Procedure Code (Act V of 1898), ss. 257, 349. Where a Magistrate has once issued summonses for the attendance of witnesses, he is bound to have the

HOWLADAR *v.* EMPEROR (1908)
I. L. R. 35 Calc. 1093

3. AVOIDING SERVICE

——— **Warrant for apprehension of witness**—*Committal of witness in default of appearance—Criminal Procedure Code, 1861, s. 188.* S. 188 only empowers a Magistrate to issue a warrant for the apprehension of a witness when he has reason to believe that the witness will not attend to give evidence without being compelled to do so, and it does not empower a Magistrate to commit a witness. *In the matter of* MAHESH CHANDRA BANERJEE. QUEEN *v.* PURNA CHANDRA BANERJEE. QUEEN *v.* KALI SIRKAR.
4 B. L. R. Ap. 1: 13 W. R. Cr. 1

4. SWEARING OR AFFIRMATION OF WITNESSES

——— **Oath or affirmation**—*Criminal Procedure Code, 1861, s. 199—Memorandum of deposition.* A witness may be examined either on oath or on solemn affirmation, but he cannot both be sworn and put on solemn affirmation at the same time. The memorandum required by s. 199 of the Code of Criminal Procedure should always be appended to the depositions. QUEEN *v.* HOSSEIN SIRDAR 13 W. R. Cr. 17

5. EXAMINATION OF WITNESSES.

(*a*) GENERALLY.

1. ——— **Power of Court to dispense with examination of witnesses**—*Criminal Procedure Code, 1872, s. 362.* S. 362 of the Code of Criminal Procedure did not give a Magistrate discretion to dispense with the examination of witnesses summoned by the prosecution. QUEEN *v.* PARASURAMA NAIKAR I. L. R. 4 Mad. 329

examining the witnesses for the prosecution:—*Held*, that the commitment was illegal. QUEEN *v.* CHINNA VEDAGIRI CHETTI I. L. R. 4 Mad. 227

QUEEN *v.* SREENATH MOOKHOPADHYA.
7 W. R. Cr. 45

WITNESS—CRIMINAL CASES—*contd*

5. EXAMINATION OF WITNESSES—*contd.*

(*a*) GENERALLY—*contd.*

DINONATH GOPE *v.* SARODA MOOKHOPADHYA.
7 W. R. Cr. 47

3. ——— *Power of interference of High Court—Criminal Procedure Code, 1861, s. 363.* Where it was not shown that there were any witnesses forthcoming for examination other than those whom the Sessions Judge did examine, the Court refused, with reference to s. 363, Code of Criminal Procedure, to interfere with the Sessions Judge's proceedings. QUEEN *v.* JUMDEM SINGH . . 12 W. R. Cr. 73

4. ——— **Duty of defence as to calling witnesses**—*Inference from failure to call witnesses.* A prisoner or his counsel is at liberty to offer evidence or not as he thinks proper, and no inference unfavourable to him can be drawn because he takes one course rather than another. HURRY CHURN CHUCKERBUTTY *v.* EMPRESS
I. L. R. 10 Calc. 140: 13 C. L. R. 358

5. ——— **Duty of prosecution as to calling witnesses**—*Inferences to be drawn on failure to call witnesses—Misdirection.* It is *primâ facie* the duty of the prosecution to call all the witnesses who prove their connection with the transactions connected with the prosecution, and who must be able to give important information. If such witnesses are not called without sufficient reason being shown, the Court may properly draw an inference adverse to the prosecution. The only thing that can relieve the prosecutor from calling such witnesses is the reasonable belief that, if called, they would not speak the truth. No such corresponding inference can be drawn against an accused. *In the matter of the petition of* DHUNNO KAZI. EMPRESS *v.* DHUNNO KAZI.
I. L. R. 8 Calc. 121

s. c. DHUNNO KAZI *v.* EMPRESS.
10 C. L. R. 151

6. ——— *Obligation to call witnesses examined before Magistrate.* Where

ground for the non-production of the witnesses in the Sessions Court. In conducting a case for the prosecution, all the persons who are alleged or known to have knowledge of the facts ought to be brought before the Court and examined. QUEEN-EMPRESS *v.* RAM SAHAI LALL
I. L. R. 10 Calc. 1070

7. ——— *Trial in Sessions Court—Non-production of material witnesses for Crown—Duty of public prosecutor.* It is the duty of the public prosecutor at a trial before the Court of Session to call and examine all material witnesses sent up to the Court on behalf of the

WITNESS—CRIMINAL CASES—*contd.*

5. EXAMINATION OF WITNESSES—*contd.*

(a) GENERALLY—*contd.*

prosecution, and the Judge is bound to hear all the evidence upon the charge. The Public Prosecutor is not bound to call any witnesses who will not, in his opinion, speak the truth or support the points he desires to establish by their evidence; but in such circumstances he should explain to the Court that this is his reason for not calling those witnesses, and he should offer to put them in the box for cross examination by the accused at their discretion. In the absence of any such explanation, or of other reasonable grounds apparent on the face of the proceedings, inferences unfavourable to the prosecution must be drawn from the non-production of its witnesses. QUEEN-EMPRESS *v.* TULLA . . . I. L. R. 7 All. 904

8. ——— *Discretion of Public Prosecutor as to calling witnesses whose names are returned in the Calendar—Practice.* In a trial before a Court of Session or a High Court, it is entirely in the discretion of the Public Prosecutor conducting the case for the Crown to call or not to call any witness or witnesses whose names appear in the calendar as witnesses for the Crown. QUEEN-EMPRESS *v.* DURGA

I. L. R. 16 All. 84

9. ——— *Witness for Crown tendered at Sessions trial who had not been examined by committing Magistrate.* At a trial before the High Court or the Court of Session, the Crown cannot demand as of right that any witness [illegible]

it considers it necessary in the interests of justice. QUEEN-EMPRESS *v.* HAYFIELD.

I. L. R. 14 All. 212

10. ——— *Witness for Crown "not called" at Sessions trial, though examined before the committing Magistrate—Duty of the prosecution with regard to the production of such witness.* At a trial before the High Court in the exercise of its original criminal jurisdiction it is not the duty either of the prosecution or of the Court to examine any witness merely because he was examined as a witness for the Crown before the committing Magistrate, if the prosecution is of opinion that no reliance can be placed on such witness" testimony. All that the prosecution is bound to do is to have the witnesses who were examined before the committing Magistrate present as the trial so as to give the Court or Counsel for the defence, as the case may be, an opportunity of examining them. *In the matter of the petition* [illegible]

from. QUEEN-EMPRESS *v.* STANTON.

I. L. R. 14 All. 521

WITNESS—CRIMINAL CASES—*contd.*

5. EXAMINATION OF WITNESSES—*contd.*

(a) GENERALLY—*contd.*

11. ——— *Obligation of Court of Session to examine all witnesses sent up by the committing Magistrate.* It is the duty of a Sessions Court to examine all the witnesses sent [illegible]

QUEEN-EMPRESS *v.* BANKHANDI.

I. L. R. 15 All. 6

12. ——— *Revival of prosecution—Presidency Magistrates Act (IV of 1877), s. 87, expl. 12.* A "revival of a prosecution" as mentioned in expl. 2 of s. 87 of Act IV of 1877, is not a continuation of the original prosecution from which the accused has been discharged. On the revival of the prosecution, all the witnesses on whose evidence the prosecution intend to rely must be examined before the Magistrate; and if any of them were examined at the time of the original prosecution, they must be examined *de novo.* EMPRESS *v.* CHUNDER NATH DUTT.

I. L. R. 5 Calc. 121 . 4 C. L. R. 305

13. ——— Witnesses for prosecution —*Witness examined by prosecution after defence.* It is irregular to allow a witness to be examined on behalf of the prosecution after the prisoner has made his defence, when the witness is not one to contradict any new case set up by the prisoner. QUEEN *v.* CHOTEY LAL . 3 N. W. 271

Where, however, the prisoner had full notice of the evidence which was to be given by such witness, and made his defence, in allusion to the evidence of the witness, the High Court refused to set aside the conviction, having regard to s. 439 of the Code of Criminal Procedure. QUEEN *v.* SHAM KISHORE HOLDAR . 13 W. R. Cr. 36

14. ——— *Criminal Procedure Code, 1861, s. 372—Recalling witness for prosecution.* Under s. 372 of the Code of Criminal Procedure, an accused should be called upon to enter upon his defence and to produce his evidence when the case for the prosecution has been brought to a close. Where, therefore, one witness for the prosecution was recalled after the prisoner has made his defence, and the prisoner had no opportunity of calling evidence with reference to the evidence of that witness, the High Court quashed the conviction and ordered a new trial. QUEEN *v.* ASSANOOLLAH . 13 W. R. Cr. 15

15. ——— Witnesses for defence—*Criminal Procedure Code, 1861, s. 372—Duty of Court as to witnesses for defence.* Under s. 372 of the Code of Criminal Procedure, the accused should be asked, at the end of the case for the prosecution, to produce his evidence, and it is at that point the duty of the Court of Session to ascertain who the

WITNESS—CRIMINAL CASES—*contd.*

5. EXAMINATION OF WITNESSES—*contd.*

(*a*) GENERALLY—*contd.*

witnesses are whom the prisoner desires to examine in his defence QUEEN *v.* MOOKUN.
12 W. R. Cr. 22

16. ———— *Omission to examine witnesses for accused.* The Court quashed the sentence which was passed upon a prisoner who had not been asked if he had any witness to call, although he was tried at the same time with others who had been so asked BHOWAN *v* DOYAL GOPE . . **10 W. R. Cr. 7**

17. ———— *Criminal Procedure Code (Act XXV of 1861), s 266—Witnesses attending voluntarily* In cases coming under Ch. XXV of Act XXV of 1861, to which s 266 applied, and not s 252, the Magistrate was not obliged to call on the accused to produce his witnesses, but he was bound to hear them if they attended voluntarily, as by s 266 read with s 262, they were supposed to do *In re* BHIKA ROY.
7 B L R 568 note

S C BHIKA ROY *v* DHOTUN ROY
10 W. R. Cr. 36

18. ———— *Obligation of Magistrate to hear witnesses—Criminal Procedure Code, 1861, s 266* S 266 of the Code of Criminal Procedure only required the Magistrate to hear such witnesses as the accused shall produce in his defence ANONYMOUS . . . **4 Mad. Ap. 29**

QUEEN *v* AMEER CHAND NOHATTA
13 W R. Cr. 63

19. ———— *Refusal of Court to allow witness for defence to be examined—Illegal conviction—Criminal Procedure Code (Act* [illegible]

accused. QUEEN *v* MAHIMA CHANDRA CHUCKERBUTTY . **4 B L R. Ap. 77: 12 W. R Cr. 77**

20. ———— *Criminal Procedure Code, 1882, ss. 210 and 212—Sessions case —Defence reserved—Power of Magistrate to examine witnesses named for the defence* The fact that [illegible]

In the matter of the petition of RUDRA SINGH.
I. L R. 18 All. 380

21. ———— *Criminal Procedure Code, 1882, ss 202 and 540—Summons case.* Where a Magistrate before whom a complaint was made held an inquiry under s. 202 of the Criminal Procedure Code for the purpose of ascertaining the truth or falsehood of the complaint before issuing process, and, after holding such inquiry, summoned the accused, examined witnesses on both sides, and, after a short adjournment, examined a witness called by himself, and found the accused guilty under s 341 of the Penal Code —*Held*, that the Magistrate was strictly [illegible]

MUDH . . **I. L. R. 24 Calc. 167**

22. ———— *Witnesses, under examination—Threatening of witnesses by Court* It is illegal on the part of a Court to threaten witnesses with the penalties of the law unless they are evidently giving wilfully false evidence or persistently refusing to give evidence of facts which must be within their knowledge. QUEEN-EMPRESS *v.* HARGOBIND SINGH.
I. L R. 14 All. 242

23 ———— **Recording evidence of witness**—*Obligation to record evidence of witnesses.* If a person is before the Court as a witness, his evidence must be recorded as the law directs; [illegible]

THOLEEL AHIR . . [illegible]

24 ———— *Note of deposition—Criminal Procedure Code, 1861, s. 195.* A separate note of each witness's deposition was [illegible]

25 ———— **Mode of examination**—*Examination in absence of accused* It is illegal to examine the witnesses for the defence and to pass sentence in the absence of the accused. BHOORAM *v.* ALLAHO KOLITA . . **1 B L R. S. N. 8**

QUEEN *v.* RAMNATH . . **7 W. R Cr. 45**

26. ———— *Examination in absence of accused.* Where witnesses are not examined in the presence of the accused, the conviction will be quashed. QUEEN *v.* LALLA CHOWBY
2 N. W. 49

QUEEN *v* RAMNATH . . **7 W. R Cr. 45**

ANONYMOUS . . . **3 Mad. Ap. 34**

QUEEN *v* RAJCOOMAR SINGH **8 W. R. Cr. 17**

QUEEN *v.* RAMDHUN SINGH **11 W. R. Cr. 22**

QUEEN *v* RAM DASS BOISTUB
11 W. R. Cr. 35

QUEEN *v* RUSSICK DOSS **24 W. R. Cr. 78**

(a) GENERALLY—*concld*

grounds on which the Magistrate refused to grant an adjournment were wrong, and that the accused should be re-tried, and given an opportunity to examine such witnesses as they might wish to produce on their behalf. EMPEROR *v.* KESO SINGH (1903) . . **7 C. W. N. 714**

(b) EXAMINATION BY COURT.

43 ——— **Examination of witness by Judge**—*Evidence Act, s. 138—Duty of Court in examining witnesses.* At a trial before a Sessions [illegible]

examination would certainly and properly be directed. *Held*, that such a course of procedure [illegible]

question or questions; and the Court should, as a general rule, leave the witnesses to the pleaders to be dealt with as laid down in s. 138 of the Act. NOOR BUX KAZI *v* EMPRESS

I. L. R. 6 Calc. 279: 7 C. L. R. 385

44. ——— *Witness examined by Court—Opportunity to accused to cross-examine—Dishonestly receiving stolen property—Criminal Procedure Code (Act V of 1898), ss 233 and 540.* During the trial of a case, the accused obtained a process for the attendance of a witness Before the witness appeared, the accused asked the Court to countermand the order for his attendance, but the Court refused to do so. When the witness attended, the accused declined to examine him. He was thereupon examined by the Court; and, upon the accused claiming the right to cross-examine the witness, the Court refused to allow him to do so. *Held*, that, under the circumstances, the witness could not be regarded as a witness for the defence, and that the accused should have been given an opportunity to cross-examine him. MOHENDRO NATH DAS GUPTA *v.* EMPEROR, (1902).

I. L R. 29 Calc. 387
s.c. 6 C. W. N. 550

(c) CROSS-EXAMINATION

45 ——— **Duty of Court as to allowing cross-examination**—*Cross-examination of witnesses by accused.* The Judge ought, if requested, to allow the accused an opportunity of cross-examining all witnesses whose depositions have been taken for the prosecution by the committing Magistrate, but whose evidene is dispensed with by the prosecutor at the trial. His refusal to do so is, however, not an error in law REG. *v.* FATECHAND VASTACHAND . **5 Bom. Cr. 85**

(c) CROSS-EXAMINATION—*contd.*

46. ——— *Right of accused to cross-examine witnesses, for the prosecution before commitment—Criminal Procedure Code, 1861, s. 194; (Act X of 1872) s. 191; (Act X of 1882) ss. 210, 256, 257 and 288.* An accused person has the right to cross-examine the witnesses for the [illegible]

[illegible]

the subject. S. 256, moreover, does not prohibit cross-examination before a charge is framed; it permits a further cross-examination expressly directed to the case found and embodied in the [illegible]

previous to commitment were taken without any cross-examination by the accused being allowed, it was *held* that such depositions were improperly treated as evidence in the Sessions Court, as they had not been "duly taken" in the presence of the accused within the meaning of s. 288 of the Code QUEEN-EMPRESS *v.* SAGAL SAMBA SAJAO

I. L. R. 21 Calc. 642

47. ——— *Further cross-examination by accused—Criminal Procedure Code, 1882, ss 256, 257.* *D* was put upon his trial for having caused grievous hurt to *M.* The Magistrate, after hearing the evidence for the prosecution framed a charge under s. 325 of the Penal Code, and on the 6th June 1896 refused an application by the accused to re-summon the prosecution [illegible] On 19th

upon the accused declining to examine [illegible] witnesses, convicted him on the evidence on the record. *Held*, that the Court was wrong in refusing permission to the accused to cross-examine the witnesses present in Court on 29th June. *Held*, further, that the accused was not deprived [illegible] examining [illegible] 257 of [illegible] they were [illegible] that the [illegible]

summoned as his [illegible]

WITNESS—CRIMINAL CASES—*contd*

5. EXAMINATION OF WITNESSES—*contd.*

(c) CROSS-EXAMINATION—*contd.*

application of the 6th June being under s 257, and not under s. 256 the order of the Deputy Magistrate of that date was wrong MOWLA BUX BISWAS *v.* DERASUTULLA SARKAR . **1 C. W. N. 19**

48 ——— **Right to cross-examine**—*Right of accused to cross-examine witnesses* The right of an accused party to cross-examine witnesses is limited to a right to cross-examine the witnesses for the prosecution called against him. If he wishes to avail himself of evidence which has been given, or which can be given by a witness called for another of the parties accused, he must call him as his own witness QUEEN *v* SURROOPCHUNDER PAUL . . . **12 W. R. Cr. 75**

49. ——— *Evidence Act, s. 165—Witness called by the Court.* Witnesses summoned on behalf of the prosecution, and not called, ought to be placed in the box for cross-examination, in order that the defence may have the opportunity of exercising this right, and *a fortiori*, if such a witness is called and examined by the Court under s. 165 of the Evidence Act, the prisoner should be allowed to cross-examine. EMPRESS *v* GRISH CHUNDER TALUKHDAR.
I L. R. 5 Calc. 614 : 5 C. L R. 364

50. ——— *Witness called by Court—Tendering witnesses for cross-examination —Criminal Procedure Code (Act X of 1882), s 540* In a trial before the Sessions Court the prosecution is not bound to tender for cross-examination all witnesses called before the committing Magistrate The Court should not call a witness on whose evidence it could not put implicit reliance. QUEEN-EMPRESS *v* KALIPROSONNO DOSS
I. L. R. 14 Calc. 245

51. ——— *Cross-examination of witness called by the Court—Evidence Act (I of 1872), s 165—Criminal Procedure Code, 1882, s 540* Where in the course of a criminal proceeding a Magistrate himself summoned a witness and examined her under s 165 of the Evidence Act, but refused to allow the attorney who appeared for the complainant to cross examine the witness:—*Held*, that, the Magistrate was wrong in not allowing the complainant's attorney to cross-examine the witness when she was summoned.

52. ——— *Hostile witness —Evidence Act, s. 154* The mere fact that at a Sessions trial a witness tells a different story from that told by him before the Magistrate does not necessarily make him hostile. The proper inference to be drawn from contradictions going to the whole texture of the story is not that the witness is hostile to this side or to that, but that the witness is one who ought not to be believed unless supported by other satisfactory evidence. KALACHAND SIRKAR *v.* QUEEN-EMPRESS.
I. L. R. 13 Calc. 53

53. ——— *Medical witness.* As to cross-examination by accused of medical witness called in a professional capacity, *see* QUEEN *v.* ISHUN DUTT.
6 B L R. Ap. 88 : 15 W. R Cr. 34

54. ——— *Evidence Act*

55. ——— *Evidence Act 1855, s 23—Cross-examination on previous state-*

W. R. Cr. 18

56 ——— *Prosecution*

I. L. R. 20 All. 155

57. ——— **Right of witness on cross-**

W. R. Cr. 57

58. ——— **Right to recall witnesses for cross-examination**—*Cross-examination of,*

WITNESS—CRIMINAL CASES—*contd.*

5. EXAMINATION OF WITNESSES—*contd.*

(a) GENERALLY—*concld.*

grounds on which the Magistrate refused to grant an adjournment were wrong, and that the accused should be re-tried, and given an opportunity to examine such witnesses as they might wish to produce on their behalf. EMPEROR *v.* KESO SINGH (1903) . . **7 C. W. N. 714**

(b) EXAMINATION BY COURT.

43. ——— **Examination of witness by Judge**—*Evidence Act, s. 138—Duty of Court in examining witnesses* At a trial before a Sessions Court, the Judge on the examination-in-chief of the witnesses for the prosecution being finished, questioned the witnesses at considerable length upon the points to which he must have known that the cross-examination would certainly and properly be directed. *Held,* that such a course of procedure was irregular and opposed to the provisions of s 138 of the Evidence Act It is not the province of the Court to examine the witnesses, unless the pleaders on either side have omitted to put some material question or questions; and the Court should, as a general rule, leave the witnesses to the pleaders to be dealt with as laid down in s. 138 of the Act NOOR BUX KAZI *v.* EMPRESS.

I. L. R. 6 Calc. 279 : 7 C. L. R. 385

44 ——— *Witness examined by Court—Opportunity to accused to cross-examine—Dishonestly receiving stolen property—Criminal Procedure Code (Act V of 1898), ss 233 and 540.* During the trial of a case, the accused obtained a process for the attendance of a witness Before the witness appeared, the accused asked

and, upon the accused claiming the right to cross-examine the witness, the Court refused to allow him to do so. *Held,* that, under the circumstances, the witness could not be regarded as a witness for the defence, and that the accused should have been given an opportunity to cross-examine him. MOHENDRO NATH DAS GUPTA *v.* EMPEROR, (1902).

I. L. R. 29 Calc. 387
s c 6 C. W. N. 550

(c) CROSS-EXAMINATION.

45 ——— **Duty of Court as to allowing**

witne.

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have been taken for the prosecution by the committing Magistrate, but whose evidene is dispensed with by the prosecutor at the trial. His refusal to do so is, however, not an error in law. REG. *v* FATECHAND VASTACHAND . **5 Bom. Cr. 85**

WITNESS—CRIMINAL CASES—*contd.*

5. EXAMINATION OF WITNESSES—*contd.*

(c) CROSS-EXAMINATION—*contd.*

46. ——— *Right of accused to cross-examine witnesses, for the prosecution before commitment—Criminal Procedure Code, 1861, s. 194; (Act X of 1872) s. 191; (Act X of 1882) ss. 210, 256, 257 and 288.* An accused person has the right to cross-examine the witnesses for the

Code, must not be taken to show an intention on the part of the Legislature to deprive an accused of that right. The express provision in the Code

the subject. S. 256, moreover, does not prohibit cross-examination before a charge is framed; it permits a further cross-examination expressly directed to the case found and embodied in the

previous to commitment were taken without any cross-examination by the accused being allowed, it was *held* that such depositions were improperly treated as evidence in the Sessions Court, as they had not been "duly taken" in the presence of the accused within the meaning of s. 288 of the Code. QUEEN-EMPRESS *v.* SAGAL SAMBA SAJAO.

I. L R. 21 Calc. 642

47. ——— *Further cross-examination by accused—Criminal Procedure Code, 1882, ss. 256, 257. D* was put upon his trial for having caused grievous hurt to *M.* The Magistrate, after hearing the evidence for the prosecution framed a charge under s. 325 of the Penal Code, and on the 6th June 1896 refused an application by the accused to re-summon the prosecution ... On 19th ... ting some ... the Magis- ... , when the ... refused to ... hem, and, upon the accused declining to examine them as his witnesses, convicted him on the evidence on the record. *Held,* that the Court was wrong in refusing permission to the accused to cross-examine the witnesses present in Court on 29th June *Held,* further, that the accused was not deprived of the right which he had by law of cross-examining the witnesses for the prosecution under s. 257 of the Criminal Procedure Code, although they were summoned as his witnesses. *Held,* also, that the

WITNESS—CRIMINAL CASES—*contd*

5. EXAMINATION OF WITNESSES—*contd.*

(c) CROSS-EXAMINATION—*contd.*

application of the 6th June being under s 257, and not under s. 256 the order of the Deputy Magistrate of that date was wrong Mowla Bux Biswas v. Derasutulla Sarkar . 1 C. W. N. 19

48. ——— Right to cross-examine—*Right of accused to cross-examine witnesses* The [illegible]

If he wishes to avail himself of evidence which has been given, or which can be given by a witness called for another of the parties accused, he must *call him as his own witness.* QUEEN *v.* SURROOP-CHUNDER PAUL . . 12 W. R. Cr. 75

49. ——— *Evidence Act, s 165—Witness called by the Court.* Witnesses *summoned on behalf of the prosecution, and not* called, ought to be placed in the box for cross-examination, in order that the defence may have the opportunity of exercising this right, and *a fortiori*, if such a witness is called and examined by the Court under s 165 of the Evidence Act, the prisoner should be allowed to cross-examine. EMPRESS *v* GRISH CHUNDER TALUKHDAR.

I L. R. 5 Calc. 614 : 5 C. L. R. 364

50. ——— *Witness called by Court—Tendering witnesses for cross-examination —Criminal Procedure Code (Act X of 1882), s 540.* In a trial before the Sessions Court the prosecution is not bound to tender for cross-examination all witnesses called before the com- [illegible]

51. ——— *Cross-examin-* [illegible]

but refused to allow the attorney [illegible] for the complainant to cross-examine the witness —*Held*, that, the Magistrate was wrong in not allowing the complainant's attorney to cross-examine the witness when she was summoned. [illegible]

[illegible]

52. ——— *Hostile witness —Evidence Act, s. 154* The mere fact that at a Sessions trial a witness tells a different story from that told by him before the Magistrate does not necessarily make him hostile. The proper inference to be drawn from contradictions going to the whole texture of the story is not that the witness is hostile to this side or to that, but that the witness is one who ought not to be believed unless supported by other satisfactory evidence. KALACHAND SIRKAR *v* QUEEN-EMPRESS.

I. L. R. 13 Calc. 53

53. ——— *Medical witness* As to cross-examination by accused of medical witness called in a professional capacity, *see* QUEEN *v* ISHUN DUTT.

6 B. L. R. Ap. 88 : 15 W. R. Cr. 34

54. ——— *Evidence Act (II of 1855), s. 34—Cross-examination on previous statements reduced to writing* The complainant's pleader was *held* to be at liberty before the Deputy Magistrate to cross-examine the witnesses for the defence on points respecting which they had made statements before the Joint Magistrate, and he [illegible]

55. ——— *Evidence Act 1855, s 23—Cross-examination on previous statements reduced to writing* A witness, when under [illegible]

[illegible] W. R. Cr. 18

56. ——— *Prosecution* [illegible]

QUEEN-EMPRESS *v.* ZAWAR HUSEN

I L. R. 20 All. 155

57. ——— Right of witness on cross-examination—*Right to qualify statements.* A [illegible]

[illegible] W. R. Cr.

58. ——— Right to recall witn[illegible] for cross-examination—*Cross-examination* [illegible]

WITNESS—CRIMINAL CASES—*contd.*

5. EXAMINATION OF WITNESSES—*contd.*

(c) Cross-examination—*contd.*

by accused—Witnesses for defence—Record of evidence. The charge having been read to the accused person, he stated his defence to the same upon which the Magistrate, the witnesses for the prosecution being in attendance, called upon the accused to cross-examine them. The accused refused to do so until he had examined the witnesses for the defence who were not in attendance. The Magistrate then discharged the witnesses for the prosecution and adjourned the trial for the production of the witnesses for the defence. *Held, per* Spankie, *J*, that the accused was not entitled to have the witnesses for the prosecution summoned, in order that they might be cross-examined by the accused on the date fixed for the examination of the witnesses for the defence. *Held*, also, *per* Spankie, *J.*, that the Magistrate was empowered to record both oral and documentary evidence after the witnesses for the defence had been examined. Empress of India *v.* Baldeo Sahai **I. L. R. 2 All. 253**

59. ——— Cross-examination after reading depositions—*Irregularity in examination—Criminal Procedure Code, ss. 286, 288.* At a trial before a Sessions Court, the attorney who appeared for the prisoner suggested to the Court that, to expedite the trial, certain depositions of witnesses for the prosecution, taken before the Magistrate, should be read, and that he should be allowed to cross-examine the witnesses thereupon; to this course the Government Prosecutor and the Court consented. *Held*, that the procedure was illegal, but that, inasmuch as it had not occasioned a failure of justice, a new trial should not be granted. Subba *v.* Queen-Empress.

I. L. R. 9 Mad. 83

60. ——— Cross-examination of witness after his examination by the Court—*Evidence Act (I of 1872), s. 155.* The principle that parties cannot, without the leave of the Court [illegible]

[illegible] intended to direct the cross-examination to the witness's statements of fact, or to circumstances touching his credibility, for any question meant to impair his credit tends (or is designed) to get rid of the effect of each and every answer, just as much as one that may bring out an inconsistency or contradiction, s. 155 of Act I of 1872. Reg *v.* Sakharam Mukundji . . . . **11 Bom. 166**

61. ——— Recalling witnesses for [illegible]

the prosecutor's witnesses recalled for the purpose of cross-examination. The claim to recall the witnesses for the prosecution was very different from the request made by the accused person to summon a witness under s. 362, Act X of 1872. *In the matter of the petition of* Belilios. Belilios *v.* Queen . . . . **19 W. R. Cr. 53**

62. ——— *Criminal* [illegible]

his defence, under s. 252 of the Code of Criminal Procedure, treating them as witnesses for the prosecution. *In the matter of* Thakoor Dyal Sen **17 W. R. Cr 51**

In the matter of the petition of Nobin Chand Banerjee . . . . **25 W. R. Cr. 32**

63. ——— *Warrant cases—Criminal Procedure Code, 1872, Ch. XVII.* In the trial of warrant cases the accused may, after the charge is drawn up and the witnesses for the defence have been examined, recall and cross-examine the witnesses for the prosecution. Talluri Venkayya *v.* Queen . *I. L. R.* **4 Mad. 130**

64. ——— *Right of accused to cross-examine witness—Criminal Procedure Code, 1872, s. 218.* An accused person had, under s. 218 of Act X of 1872, the right to recall and cross-examine the witnesses for the prosecution at any time while he was engaged on his defence and before his trial was concluded. He is not precluded from asserting and exercising the right, by reason of his having cross-examined them before he was put on his defence, or by reason of his not having *suo motu*, expressed his wish to do so, at the time he was called upon to enter on his defence, and when the witnesses were in attendance in the Court and did not require to be re-summoned. Queen *v.* Lall Singh . . . . **6 N. W. 270.**

65. ——— *Criminal Procedure Code, 1872, s. 218—Recall of witnesses for prosecution.* Under s. 218 of the Code of Criminal Procedure, a Magistrate is not competent to refuse to recall the witnesses for the prosecution to be cross-examined by the accused, and it is not necessary for the accused to show that he has reasonable grounds for his application. Queen *v.* Amiruddin Fakeer . **21 W. R. Cr. 29**

66. ——— *Cross-examination—Recalling witnesses for further cross-examination, after charge—Criminal Procedure Code (Act X of 1882), s. 257.* There is, under s. 257 of the Criminal Procedure Code, no absolute right of cross-examination which would enable the accused to recall and cross-examine the witnesses for the prosecution, no matter how completely and fully they have already been cross-examined. Where the witnesses for the prosecution were fully cross-examined and a charge framed against the accused, and after an adjournment for ten days the witnesses for the defence were examined and cross-examined, and on the day on which the judgment

WITNESS—CRIMINAL CASES—*contd.*

5. EXAMINATION OF WITNESSES—*contd.*

(c) CROSS-EXAMINATION—*contd.*

was to be delivered and application under s 257 of the Code of Criminal Procedure was made on behalf of the accused, asking that process should issue for the witnesses for the prosecution to be recalled and further cross-examined —*Held*, that, if the Magistrate was of opinion that the application was made with the intention and for the purpose of vexation or delay or for defeating the ends of justice, he was right in refusing the application It lies upon the party who thinks himself aggrieved to show that the ends of justice have been in some way frustrated in consequence of the refusal to recall the witnesses It is necessary to be very careful that persons on their trial should not be

67 ——————— *Cross-examination—Right of co-accused to cros examine witness called by another co-accused for defence where their cases are adverse—Evidence Act (I of 1872), s 137* One accused person may cross-examine a witness called by another co-accused for his defence when the case of the second accused is adverse to that of the first RAM CHAND CHATTERJEE v. HANIF SHEIKH

I L R. 21 Calc. 401

68. ——————— *Cross-examination of prosecution witnesses before charge —Right of accused to have prosecution witnesses recalled after charge drawn up for purposes of cross-examination—Discretion of Magistrate—Criminal Procedure Code (Act V of 1898), ss 254, 256, and 257—Penal Code (Act XLV of 1860), s 342*

been already some cross examination beofre the charge has been drawn up does not affect this privilege It is only after the accused has entered upon his defence that the Magistrate is given a discretion to refuse such an application, on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. ZAMUNIA v. RAM TAHAL I. L. R. 27 Calc 370

4 C W. N. 469

69. ——————— *Summoning witnesses for prosecution for further cross-examination—Refusal of such application for inadequate reason—Criminal Procedure Code, 1898, s 257.* The mere fact that the witnesses for the prosecution had already been cross-examined is not a

Procedure Code for the purpose of vexation or delay or for defeating the ends of justice. An order refusing to re-summon witnesses without assigning any such reasons is not a proper order.

application SREENATH BARAI v. EMPRESS

4 C. W. N. 241

70. ——————— *Criminal Procedure Code (Act V of 1898), ss. 256, 257—Cross-examination of witness for prosecution, right of.* When after the charge was drawn the accused claimed the right to have the medical officer re-summoned for the purpose of cross-examination,

71 ——————— *Cross examination previous to framing of charge—Criminal*

WITNESS—CRIMINAL CASES—*contd*

5. EXAMINATION OF WITNESSES—*contd*

(c) Cross-examination—*contd.*

consented to the discharge of the witnesses for the prosecution, it was *held* that the accused was entitled to have the witnesses, whom he desired to cross-examine at the further hearing re-summoned. *Quære:* If the Magistrate before granting an adjournment called upon the accused to exercise [illegible]

[illegible]

72. ——— *Right of accused to cross-examine witnesses—Examination of accused—Discretion of Magistrate.* An accused should be allowed at preliminary inquiries before a Magistrate to cross-examine the witnesses; but whether the [illegible]

against the prisoner. QUEEN *v.* SHAMA SUNKUR BISWAS . . . **10 W. R. Cr. 25**

73. ——— *Right of accused to recall witnesses for prosecution—Criminal Procedure Code (Act X of 1872), ss. 217, 218.* Reading ss 217 and 218 of the Criminal Procedure Code together, it appears that, if an accused person desires to recall and cross examine the witnesses for the prosecution, the time at which he should [illegible]

trate to recall the witnesses at a subsequent stage of the case, the accused has no right to insist upon the witnesses being recalled. FAIZ ALI *v.* KOROMDI **I. L. R. 7 Calc. 28**

s. c. *In the matter of* FAIZ ALI . **8 C. L. R. 325**

74 ——— *Cross-examination of witnesses for the prosecution.* As a rule, the proper and convenient time for the purpose of cross-examination of the witnesses for the prosecution is at the commencement of the accused person's defence; but it is in the discretion of the Criminal Court to allow the accused to recall and cross-examine the witnesses for the prosecution at any period of the defence when the Court may think such a step right and proper. KHURRUCKDHAREE SINGH *v.* PERSHADEE MUNDUL. **22 W. R. Cr. 44**

75. ——— *Refusal to allow accused to recall witnesses for prosecution—Waiver of right by accused.* Where certain accused persons, who were convicted of using criminal force, had not been allowed to recall and cross-examine the witnesses for the prosecution, because the trying officer believed that such witnesses [illegible]

attendance of the witnesses; and that the conviction must be set aside because the accused had not enjoyed the protection provided by the law. QUEEN *v.* RAM KISHAN HALWAI. **25 W. R. Cr. 48**

76. ——— *Accused—Defence—Evidence Act (I of 1872), s. 154—Code of* [illegible]

[illegible] The application [illegible]

witnesses were summoned, and, when Counsel for the accused proceeded to cross-examine them, he [illegible]

although the accused were compelled to [illegible] they were [illegible]

to allow their cross-examination. [illegible] SINGH *v.* RAWLINS (1901) **I. L. R. 28 Calc 594**

77. ——— *Criminal Procedure Code (Act V of 1898)—Cross-examination of prosecution witnesses—Expenses of recalling witnesses.* Where the witnesses for the prosecution were cross-examined before the framing of the charge, on the understanding that the accused would not require the witnesses to be recalled for further cross-examination after the charge:—*Held*, that it was not open to the Magistrate to refuse the application of the accused that the witnesses might be recalled after the charge had been framed [illegible] expenses of [illegible] fered to pay [illegible] 1902). [illegible] **W. N. 424**

78. ——— *Accused, right of, to cross-examine prosecution witness before charge—Warrant case.* In a case under s. 380 of the Penal Code:—*Held*, that opportunity should be given to an accused, if he so desires, to cross-examine the prosecution witnesses, even

WITNESS—CRIMINAL CASES—*contd*

5. EXAMINATION OF WITNESSES—*concld*

(c) CROSS-EXAMINATION—*concld*

though a charge may not be framed ASHIR BAD MUCHI v. MAJEE MUCHINI (1904)
8 C. W. N. 838

6. CONSIDERATION AND WEIGHT OF EVIDENCE

1. ———— Weight of evidence— *Single witness—Evidence of fact* The evidence of one witness, if reliable, is sufficient to prove a fact. ZALEM MISSER v KUNDUN KOOER
11 W. R. 184

BALINDUR NARAIN v KALLA MESSOO KOOS
18 W. R. 341

PROSONNO NARAIN DEB v ROMONEE DOSSEE
10 W. R. 236

2. — — Discrepancies in evidence of witnesses—*Effect of discrepancies.* Discrepancies in the evidence of witnesses are not the less destructive of their testimony because a greater sagacity on the part of the witnesses would have avoided them REG v KALU PATIL
11 Bom. Cr. 146

3. ———— Consideration of evidence —*Assumption of bad character of prisoner.* A ... which starts ... character of ...

... R. Cr. 103

4. —— — Value of evidence—*Value* ...

way to try a case to rely on mere theories of medical men or skilled witnesses of any sort against facts positively proved QUEEN v AHMED ALLY
11 W. R. Cr. 25

5. ——— Evidence disbelieved in ...

evidence of those witnesses in other parts and to convict the prisoner thereon JASPATH SINGH v. QUEEN-EMPRESS . I. L. R. 14 Calc. 164

7. STATEMENTS OF WITNESSES.

1. ———— *Witnesses, statements of—Police investigation—Power of Ma-* ...

WITNESS—CRIMINAL CASES—*contd.*

7. STATEMENTS OF WITNESSES—*concld.*

tigation was renewed, and three days after the release of the accused the police officer sent a number of witnesses to an Honorary Magistrate, not having jurisdiction to try the case, to have their statements recorded under s 164 of the Criminal Procedure Code, on the ground that there was every chance of their being gained over. Their statements as also that of the accused, were ...

exercising third-class powers, could not, unless he was specially authorised, act independently, that is to say, when not sitting on the Bench. *Held*, further, that the object of s. 162 of the Criminal Procedure Code would be defeated if, while a police-officer cannot himself record any statement made to him by a person under examination, he ...

I. L. R. 29 Calc. 463
6 C. W. N. 596

2. ———— *Statement of* ...

8 PROSECUTION OF WITNESS.

———— *Prosecution of witness—Defamation.* A prosecution for defamation

WITNESS—CRIMINAL CASES—*concld.*

8. PROSECUTION OF WITNESS—*concld.*

tion under s. 499 of the Indian Penal Code will not lie against a witness in respect of any statement made by him in the course of giving evidence, even if such statement may be not relevant to the matter under inquiry *Baboo Gunnesh Dutt Singh* v. *Mugneeram Chowdhry, 11 B. L. R. 321,* followed. *Dawkins* v *Lord Rokeby, L. R. 7 H. L. 744, Abdul Hakim* v *Tej Chunder Mukerji, I. L R. 3 All 815;* and *Isuri Prasad Singh* v. *Umrao singh, I. L. R 22 All. 234,* referred to. EMPEROR v. GANGA PRASAD (1907) . **I. L. R. 29 All. 685**

WOMAN.

See DAUGHTER.

See DAUGHTER-IN-LAW.

See MARRIED WOMAN

See PARDANASHIN WOMAN.

See WIDOW

See WIFE.

WORDS AND PHRASES

See CONSTRUCTION.
I. L R 32 Bom. 386

See WILL . **I. L R. 31 Mad 283**

———— "abatement of rent," in Act XII of 1881, Ch. II—

BENI PRASAD KUARI *v.* DUKHI RAI
I L. R. 23 All. 270

———— "absence"—

See post, "in the absence of a contract to the contrary."

See post, "in the event . . of his absence, etc."

———— "abstain from a certain act," in Act V of 1898, s. 144—

QUEEN-EMPRESS *v* ABDULLA SAHEB
I. L. R. 24 Mad. 262

RAMANANDHAN CHETTI *v* MURI JAPPA CHETTI
I. L. R. 24 Mad. 45

———— "abwab"—

See post, "all impositions upon tenants under the denomination of abwab."

———— "accepting"—

See STAMP ACT, 1879, s. 61
I. L. R. 7 Mad. 71

———— "access"—

See post, "place to which the public have access."

———— "accordance"—

See post, "in accordance with law."

WORDS AND PHRASES—*contd.*

———— "accused person," in Act V of 1898, s. 437—

IMAN MANDAL *v.* EMPRESS
6 C. W. N. 163

———— "act"—

See ante, "abstain from a certain act."

———— "actionable claim," in Act IV of 1882, s. 135—

MATHURA DAS *v* MURLIDHAR
I. L. R. 24 All. 517

———— "actual possession"—

BATUL BEGAM *v.* MANSUR ALI KHAN
I. L R. 24 All. 17
s.c **L. R. 28 I. A. 248**
5 C. W. N. 888

———— "add"—

See post, "shall add to any existing embankment."

———— "adjusted"—

See post, "if a suit be adjusted."

———— "adjacent"—

See ENHANCEMENT OF RENT.
1 Agra Rev. 64; 21 W. R. 157

———— "adjustment of suit"—

See CIVIL PROCEDURE CODE, 1882, s. 375 . . **I. L. R. 33 Bom. 89**

———— "administration"—

See post, "whenever the direction of the Court is deemed necessary for the administration of such trust."

———— "adult"—

See PUBLIC DEMANDS RECOVERY ACT (BENG 1 of 1895), ss 10, 31.
I. L. R. 34 Calc. 787

———— "adultery"—

See MAINTENANCE ORDER OF CRIMINAL COURT **I. L. R. 17 Mad. 260**

———— "affecting the decision of the case," in Act XIV of 1882, s. 591—

GULAB KUNWAR *v.* THAKUR DAS
I. L. R. 24 All 464

TASADDUQ HUSAIN *v* HAYAT-UN-NISSA
I. L. R. 25 All. 280

———— "agricultural purposes"—

See post, "solely for agricultural purposes."

———— "agriculturist"—

See DEKKHAN AGRICULTURISTS' RELIEF ACT . . **I. L. R. 33 Bom. 376**

WORDS AND PHRASES—*contd.*

——— "aggrieved"—

See post, "person aggrieved."

——— "alienate"—

See post, "no power to alienate."

——— "all impositions upon tenants under the denomination of abwab," in Act VIII of 1885, s 74—

JOTINDRA MOHAN TAGORE *v* CHANDRA NATH SAPUI . 6 C. W. N. 360

——— "all proceedings under this Act between party and party," in Act IV of 1869, s. 45—

RAMSAY *v* BOYL I. L. R 30 Calc. 489

——— "all stipulations and reservations for the payment of such," in Act VIII of 1885, s. 74—

JOTINDRA MOHAN TAGORE *v* CHANDRA NATH SAPUI . . . 6 C W. N 360

——— "all the parties to a suit," in Act XIV of 1882, s. 506—

PITAM MAL *v* SADIQ ALI (1898)
I. L. R. 24 All. 229

——— "alter"—

See post, "materially alter the structure of any house."

——— "always and for ever"—

AZIZ UN-NISSA *v* TASSADUQ HUSAIN (1901)
I. L R. 23 All. 324
s.c 5 C. W. N. 569
L. R 28 I. A. 65

——— "and it shall be also lawful for the Court, on those or any other occasions," in 11 & 12 Vict., c. 21, s. 36—

In the matter of CHUNI LAL OSWAL
I. L R. 29 Calc. 503

——— "annual value"—

See CESS, ASSESSMENT OF
I. L R. 35 Calc. 82;
11 C. W. N. 1053

——— "any dispute shall arise respecting the right of succession," in Act XX of 1863, s. 5—

GOPALA AYYAR *v* ARUNACHALLAM CHETTY
I. L R. 26 Mad. 85

——— "any interest"—

See post, "devolution of any interest."

——— "any other animal"—

See PENAL CODE, s. 429.
I. L. R. 22 Calc. 457.

——— "any other reasonable cause," in Act XVIII of 1879, s 13 (*f*)—

In the matter of JOGENDRA NARAYAN BOSE
5 C. W. N. 48

LEMESURIER *v* WAJID HOSSAIN
I. L. R. 29 Calc 890
s.c. 6 C. W. N. 556

——— "any person having any interest in, or charge upon, the property," in Act IV of 1882, s. 91 (*a*)—

GIRISH CHUNDER DEY *v* JURAMONI DE
5 C. W. N. 83

——— "any person whose immoveable property has been sold," in Act XIV of 1882, s. 310A—

KEDAR NATH SEN *v* UMA CHURN
6 C. W. N. 57

——— "any such offence," in Act XLV of 1860, s. 224—

DEO SAHAY LAL *v.* QUEEN-EMPRESS
I. L. R. 28 Calc. 253
s.c. 5 C. W. N. 289

——— "any sufficient cause"—

See post, "prevented by any sufficient cause."

——— "anything which the landlord is, under this Act, required or authorised to do," in Act VIII of 1885, s. 188—

SHER BAHADUR SAHU *v* MACKENZIE
7 C. W. N. 400

——— "appeal"—

See post, "Court to which appeals ordinarily lie.";
See post, "order made on appeal."

———, in Act XV of 1877, s 5—

SARAT CHANDRA DEY *v* BROJESHWARI DASSI
I. L. R. 30 Calc. 790

——— "appear"—

See BOMBAY MUNICIPAL ACT, 1888, s. 354
I. L. R. 33 Bom. 334

——— "application"—

See post, "person entitled to institute suit or make an application."

——— "apprehension"—

See post, "assisting a person in any way to evade apprehension."

——— "area"—

See post, "the area for which rent has been previously paid."

——— "armed"—

See post, "goes armed."

WORDS AND PHRASES—*contd.*

——— "common carriers"—

EAST INDIAN RAILWAY COMPANY *v.* KALIDA MUKERJI . . I. L. R. 28 Calc. 401
s.c. 5 C. W. N. 449
L. R. 28 I. A. 144

——— "community"—

See post, "member of the village community"

See post, "village community."

——— "compartment"—

See RAILWAYS ACT, 1890, s. 110.
I. L. R. 24 Bom. 293

——— "compass map"—

"Compass map" generally means the revenue survey's map BETTS *v.* MAHOMED ISMAIL CHOWDHRY 25 W. R. 521

——— "competent jurisdiction"—

See post, "court of competent jurisdiction."

——— "complaint"—

——— in Act V of 1898, s. 4 (*h*)—

LALJI GOPE *v.* GIRIDHARI CHAUDHURI
5 C. W. N. 106

——— in Act V of 1898, s. 199—

TARA PROSAD LAHA *v.* EMPEROR
I. L. R. 30 Calc. 910

——— "completion"—

See BOMBAY MUNICIPAL ACT (III OF 1888) s. 353 I. L. R. 19 Bom. 372

——— "continuing wrong," in Act XV of 1877, s. 23—

RAJAH OF VANKATAGIRI *v.* ISAKAPALLI SUBBIAH
I. L. R. 26 Mad. 410

——— "contract"—

See post, "in the absence of a contract to the contrary"

——— "contract in writing, registered," in Act XV of 1877, Sch II, Art. 116—

KOTAPPA *v.* VALLUR ZAMINDAR
I. L. R. 25 Mad. 50

SESHACHALA NAICKAR *v.* VARADA CHARIAR (1901)
I. L. R. 25 Mad. 55

——— "contrary"

See post, "in the absence of a contract to the contrary."

——— "convenient and fitting," in Mad. Act I. of 1884, s. 392—

MUHAMMAD MOHIDIN SAIT *v.* MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS
I. L. R. 25 Mad. 118

——— "corpus delicti"—

See THEFT . . 7 Mad. Ap. 19

——— "costs in the cause"—

TEMPLETON *v.* LAURIE I. L. R. 25 Bom. 230

——— "Court"—

HARI PANDURANG *v.* SECRETARY OF STATE FOR INDIA . . I. L. R. 27 Bom 424

See, also, *post,* "whenever the direction of the Court, etc"

——— in Act I of 1894—

EZRA *v.* SECRETARY OF STATE
I. L. R. 30 Calc. 36
s.c. 7 C. W. N. 249

——— "Court"—

See COMMISSIONER FOR EXAMINING WITNESS . . . 11 C. W. N. 909

See CONFESSION . I. L. R. 4 Calc. 483

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 476.
I. L. R. 34 Calc. 551

——— "Court," interpretation of.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 476. I. L. R. 32 Bom. 184

——— "Court of competent jurisdiction," in Act V of 1898, s. 537—

KING-EMPEROR *v.* TIRUMAL REDDI
I. L. R. 24 Mad. 523

——— "Court to which appeals ordinarily lie," in Act V of 1898, s. 195 (7)—

EROMA VARIAR *v.* EMPEROR
I. L. R. 26 Mad. 656

SADHU LALL *v.* RAM CHURN PASI
I. L. R. 30 Calc 394
s.c. 7 C. W. N. 114

——— "Court which passed the decree."

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s 132 12 C. W. N. 859

——— "cow"—

See PENAL CODE, s 429
I. L. R. 22 Calc. 457

——— "credible information"

See GAMBLING ACT, 1867, ss. 5, 6
I. L. R. 28 All. 210

——— "creditor"—

ISHVAR TIMAPPA HEGDE *v.* DEVER VENKAPPA SHANBOG . . . I. L R. 27 Bom 146

See also, *post,* "joint-creditors"

See, also, *post,* "mere forbearance on the part of the creditor."

WORDS AND PHRASES—*contd*

———— "criminal case"—

———— in Act V of 1898—

ARUMUGA KOUNDAN . I. L. R. 26 Mad. 188

In re PANDURANG GOVIND PUJARI
I. L. R. 25 Bom. 179

LOLIT MOHUN MOITRA *v* SURJA KANT ACHARJEE
I. L. R. 28 Calc. 709
s.c. 5 C. W. N. 749

———— in Letters Patent, High Courts, 1865, cl. 29—

LOLIT MOHAN MOITRA *v* SURJA KANT ACHARJEE
I. L. R. 28 Calc. 709
s.c. 5 C. W. N. 749

———— "criminal case"

See TRANSFER OF CRIMINAL CASES
I. L. R. 28 Calc. 709

———— "criminal force," in Act V of 1898, s. 522—

SRIHARI SHOME *v.* LAL KHAN . 5 C. W. N 250

———— "crops or other produce of land," in Act V of 1898, s. 145 (2)—

RAMZAN ALI *v* JANARDHAN SINGH
I. L. R 30 Calc. 110
s.c. 6 C. W. N. 881

———— "cross-examination"—

See post, "for the purpose of cross-examination."

———— "cruelty"—

See CRIMINAL PROCEDURE CODE, s. 488
I. L. R. 11 All 480

See MAINTENANCE, ORDERS OF CRIMINAL COURT AS TO . I. L. R 11 All 480

———— "current year," meaning of—

See SALE FOR ARREARS OF REVENUE
I. L. R. 34 Calc. 381

———— "current year," in Act XI of 1859, s. 5—

JAHNNOVI CHOWDHARANI *v* SECRETARY OF STATE FOR INDIA . . 7 C. W. N. 377

———— "danger"—

See BOMBAY MUNICIPAL ACT, s 354.
I. L. R. 33 Bom. 334

———— "date"—

See post, "the date of issuing a notice."

———— "date of payment"—

MANOO LAL *v.* DURGA PRASAD SINGH
5 C. W. N. 653

WORDS AND PHRASES—*contd.*

———— "date of sale"—

———— in Act XIV of 1882, s. 310A

CHOWDHRY KESRI SAHAY *v* GIANI ROY
I. L. R. 29 Calc. 626
s.c 6 C. W. N. 776

———— in Act VIII of 1885, s. 169 (*1*) (*c*)—

MATANGINI CHAUDHURANI *v.* SREENATH DAS
7 C. W. N 552

———— "daughter-in-law"—

See post, "dependent daughter-in-law"

———— "debt"—

See CERTIFICATE ACT, s 4.
13 C. W. N. 966

See INSOLVENCY ACT, s. 26.
1 C. W. N. 328

———— "debt," in Act VII of 1889, s. 4—

ARUMUGAM PILLAI *v* VALURA KOUNDAN
I. L. R. 24 Mad. 22

———— "debtor"—

See post, "right, title and interest of the debtors"

See post, "same judgment-debtor."

———— "decision"—

See ante, "affecting the decision of the case."

———— "decree"—

See APPEAL. . I. L. R. 34 Calc. 584

See PRIVY COUNCIL
I. L. R. 32 Bom. 108

See post, "execution or satisfaction of the decree."

———— in Act XIV of 1882, s. 2—

LALNARAIN SINGH *v* MAHOMED RAFIUDDIN
I. L. R. 28 Calc. 81

RADHA NATH SINGH *v* CHANDI CHARAN SINGH
I. L. R. 30 Calc 660
s.c. 7 C. W. N. 486

TEJ SINGH *v* CHABELI RAM
I. L. R. 24 All.

VEERASWAMI *v* MANAGER, PITTAPUR ESTATE
I. L. R. 26 Mad. 518

———— in Act XIV of 1882, s. 273—

VASUDEVA RAVI VARMAN *v.* NARAYANA PATTAR . . . . I. L. R. 24 Mad. 341

———— in Act XIV of 1882, s. 594—

BOMBAY BURMA TRADING CORPORATION, LD. *v.* DORABJI CURSETJI SHROFF
I. L. R. 27 Bom 415

WORDS AND PHRASES—*contd.*

——— "decree"—*concld.*

——— in Agency Rules for Ganjam and Vizagapatam—

VIKRAMADEO MUHARAJULUM GARU *v.* NELADEVI PATTAMADHADEVI GARU I. L. R. 26 Mad. 266

——— "decree for money against several persons"—

See CIVIL PROCEDURE CODE, 1882, s. 232 . I. L. R. 31 Bom. 308

——— "decree-holder"—

See post, "for payment to the decree-holder."

——— "in Act XIV of 1882, s. 311—

BEJOY SINGH DUDHURIA *v.* HUKUM CHAND I. L. R. 29 Calc 548

——— "defaulter"—

See post, "movable and immovable property of a defaulter"

——— "dependent daughter-in law"—

SIDDESSURY DASSEE *v.* JONARDAN SARKAR I L. R. 29 Calc. 557 s.c. 6 C. W. N. 530

——— "dependent member"—

SIDDESSURY DASSEE *v* JONARDAN SARKAR I. L. R. 29 Calc. 557 s.c. 6 C. W. N 530

——— "descendants"—

See GHATWALI TENURE I. L. R. 22 Calc. 156

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—REMOTENESS 1 Mad. 400

——— "description"—

See post, "stamp of improper description"

——— "desertion"

See DIVORCE ACT, 1869, s. 3. I. L R. 4 Calc. 260

——— "determination"—

See post, "judicial determination."

——— "determined"—

See post, "in which the rent payable by the tenant has been a matter in issue and has been determined"

See STATUTES, CONSTRUCTION OF. 3 N. W. 51

——— "devolution of any interest," in Act XIV of 1882, s. 372—

SOURINDRA MOHUN TAGORE *v* SIROMONI DEBI I. L. R. 28 Calc 171 s.c. 5 C. W. N. 307

WORDS AND PHRASES—*contd.*

——— "dharmam"—

See HINDU LAW—WILL. I. L. R. 30 Mad. 340

——— "diligence"—

See post, "prosecuting with due diligence."

——— direction—

See post, "whenever the direction of the court," etc.

——— "discharge"—

in Act V of 1898, s. 209—

KRISHNA REDDI *v.* SUBBAMMA I. L. R. 24 Mad. 136

——— in Act V of 1898, s. 437—

IMAN MANDAL *v.* EMPRESS 6 C. W. N. 163

——— "discloses himself," construction of—

See CONTRACT ACT (IX OF 1872), s. 231. I. L. R. 32 Bom. 356

——— "dishonestly," in Act XLV of 1860—

EMPEROR *v.* MAHABIR SINGH I. L. R. 25 All. 31

KEDAR NATH CHATTERJEE *v* KING-EMPEROR 5 C. W. N. 897

SUBUDHI RANATHO *v.* BALARAMA PUDI (1902) I. L. R. 26 Mad. 481

——— "dispute"—

See ante, "any dispute shall arise"

See post, "parties concerned in such dispute"

See post, "subject of dispute."

See post, "subjects in dispute."

——— "distant kindred"—

ABDUL SERANG *v.* PUTEE BIBI I. L. R. 29 Calc. 738

——— "distinct matters"—

See post, "instrument comprising or relating to several distinct matters."

See post, "several distinct matters."

——— distinct subjects—

See COURT FEES ACT, 1870, s. 17. I. L. R. 1 All. 552

——— "distrainer"—

See post, "with the distrainer."

WORDS AND PHRASES—*contd.*

——— "district"—

See CALCUTTA MUNICIPAL ACT, s 557
I L R 33 Calc. 396

——— "District Court"—

See INVENTIONS AND DESIGNS ACT, s. 29.
12 C. W. N. 446

——— "disturbance"—

See EASEMENTS ACT, s 28
I L R 30 Bom. 319

——— "disturbance," in Act XLV of 1860, s. 296—

VIJIARAGHAVA CHARIAR *v* EMPEROR
I. L. R. 26 Mad. 554

——— "document"—

See post, "false document"

——— "domestic purposes."

See MUNICIPALITY
I. L. R. 32 Bom. 460

——— "done"—

See post, "such thing to be done"

——— "done or intended to be done."

See EPIDEMIC DISEASES ACT, s 4.
I. L. R. 31 Calc. 829

——— "drug"—

See post, "intoxicating drug"

——— "due care and attention"—

See PENAL CODE, s 499, EXCEP 9
13 C W. N. 340

——— "due diligence"—

See post, "prosecuting with due diligence"

——— "duly stamped"—

See STAMP ACT, 1879, s 3.
I. L. R. 8 Calc. 284

——— "duties"—

See post, "in the event of his being incapacitated . . . for the performance of his duties, etc."

See post, "rendering such force efficient in the discharge of all its duties."

——— "dwell"—

FERNANDEZ *v* WRAY . I. L. R. 25 Bom. 176

——— "earns his livelihood"

See DEKKHAN AGRICULTURISTS' RELIEF ACT, s. 2 . I. L. R. 33 Bom. 376

——— "easements"—

See EASEMENT . I. L. R. 23 Calc. 55

WORDS AND PHRASES—*contd.*

——— "efficient"—

See post, "rendering such force efficient in the discharge of all its duties"

——— "efficiently represented."

See LIMITATION ACT XV OF 1877, SCH II, ART 11. . I. L. R. 32 Bom. 404

——— "ekjaddi"—

CHATAR SINGH *v* KALYAN SINGH
I. L. R. 23 All. 32

——— "eldest son to be born"—

HARRISS *v* BROWN . I. L. R 28 Calc. 621
s c. 5 C. W. N. 729
L. R. 28 I. A. 159

——— "election"—

See BOMBAY MUNICIPAL ACT
I. L. R. 31 Bom. 604

——— "embankment"—

See post, "shall add to any existing embankment"

——— in Bengal Act II of 1882, s. 3—

BISSUMBHUR SINGH *v* QUEEN-EMPRESS
5 C. W. N. 108

——— "end"—

See post, "for that end."

——— "engaged"—

See post, "lawfully engaged."

——— "English mortgage," in Act IV of 1882, s. 58 (*e*)—

NARAYANA AYYAR *v*. VENKATARAMANA AYYAR
I L. R. 25 Mad. 220

——— "enhance the sentence," in Act V of 1898, s. 423 (*b*)—

VEMURI SESHANNA . I. L. R. 26 Mad. 421

——— "enticing away," in Act XLV of 1860, s. 498—

In re BALAMBAL I. L. R. 26 Mad. 463

——— "entire estate," in Madras Regulation XXVI of 1802, s. 3—

NARAYANA RAJA *v* RAMACHANDRA RAJA
I L. R. 26 Mad. 521

——— "entitled"—

See post, "person entitled to institute a suit or make an application"

——— "equitable"—

See post, "fair and equitable."

——— "estate"—

See ante, "entire estates."
See post, "interest in the estate of the deceased."

WORDS AND PHRASES—*contd.*

——— "Europeans."

See CRIMINAL PROCEDURE CODE, s. 451. I. L. R. 16 All. 88

——— "evade"—

See ante, "assisting a person in any way to evade apprehension."

——— "execution"—

See post, "stamped at the time of execution"

——— in Act XIV of 1882, s. 545—

BRIJ COOMAREE *v.* RAMRICK DASS 5 C. W. N. 781

——— "execution or satisfaction of the decree," in Act XIV of 1882, s 244—

KASINATHA AYYAR *v.* UTHUMANSA ROWTHAN . . . . I. L. R. 25 Mad. 529

——— "exercised a jurisdiction not vested in it by law," in Act XIV of 1882, s. 622—

KEDAR NATH SEN *v.* UMA CHARAN 6 C. W. N. 57

——— "express trust"—

See LIMITATION ACT (XV OF 1877), s. 10. I. L. R. 32 Bom. 394

——— "failure of justice"—

See post, "occasioned a failure of justice"

——— "fair and equitable," in Act VIII of 1885—

HEM CHANDRA CHOWDHRY *v.* KALI PROSANNA BHADURI . . . I. L. R 30 Calc. 1033 s.c. L. R. 30 I. A. 177

——— "false charge," in Act XLV of 1860, s. 211—

RAYAN KUTTI *v.* EMPEROR I. L R 26 Mad. 640

——— "false document," in Act XLV of 1860, s. 464—

KEDAR NATH CHATTERJEE *v* KING-EMPEROR 5 C. W. N. 897

——— "family"—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS . 4 C. W. N. 671 note

See LUNATIC . I. L. R. 23 Calc. 512

——— "final"—

See SALE FOR ARREARS OF REVENUE . . I. L. R. 34 Calc. 677

MANTANGINI DEBI *v.* GIRISH CHUNDER CHONGDAR . . . I. L. R. 30 Calc. 619 s.c. 7 C. W. N. 433

WORDS AND PHRASES—*contd.*

——— "final decree passed on appeal."

See PRIVY COUNCIL. I. L. R. 32 Bom. 108

——— "finding"—

See post, "reverse the finding and sentence."

——— "fitting"—

See ante, "convenient and fitting"

——— "forbearance"—

See post, "mere forbearance"

——— "force"—

See ante, "criminal force."

——— "foreigner"—

KASSIM MAMOOJEE *v.* ISUF MAHOMED SULLIMAN I. L. R. 29 Calc 509 s.c. 6 C. W. N. 829

——— "for ever"—

See ante, "always and for ever."

——— "forfeit"—

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS — COMPANIES ACT I. L. R. 20 Calc. 676

——— "for payment to the decree-holder," in Act XIV of 1882, s. 310A (*b*)—

ROSHUN LALL *v* RAM LALL MULLICK I. L. R. 30 Calc. 262 s c. 7 C. W. N 341

——— "for that end," in Act XLV of 1860, s. 390—

OTARUDDI MANJHI *v.* KAFILUDDI MANJHI 5 C. W. N. 372

——— "for the benefit of the inmates of the hospital"—

FANINDRA KUMAR MITTER *v.* ADMINISTRATOR-GENERAL OF BENGAL . 6 C. W. N. 321

——— "for the purpose of cross-examination," in Act V of 1898, s. 257—

SHEOPRAKASH SINGH *v* RAWLINS I. L. R. 28 Calc. 594

"forthwith"

See SEQUESTRATION 8 Bom. O. C. 135

——— "found therein" in Bom. Act IV of 1887, s. 8—

EMPEROR *v.* WALLI MUSSAJI I. L. R. 26 Bom. 641

——— "fraud, surprise, or mistake, or such other special ground"—

ROYAL INSURANCE COMPANY *v.* AKHOY COOMAR DUTT I. L. R. 28 Calc. 272 s.c. 5 C. W. N. 337

WORDS AND PHRASES—*contd*

——— "fraudulently," in Act XLV of 1860—

EMPEROR *v* MAHABIR SINGH I. L. R. 25 All. 31

KEDAR NATH CHATTERJEE *v* KING-EMPEROR (1901) . 5 C. W. N. 897

——— "fraudulently"—

See FORGERY I. L. R. 19 Calc. 380
I. L. R. 15 All. 210
I. L. R. 25 Calc. 512

——— "frivolous," in Act V of 1898, s. 250—

BENI MADHAB KURMI *v* KUMUD KUMAR BISWAS I. L. R. 30 Calc. 123
s c. 6 C. W. N. 799

——— "further or other relief"

See CHARITABLE TRUSTS I. L. R. 33 Bom. 9

See CIVIL PROCEDURE CODE, 1882, s. 539 I. L. R. 33 Bom. 509

See DECLARATORY DECREE, SUIT FOR. I. L. R. 14 Calc. 586

——— "gaming"—

See post, "instruments of gaming."

——— "Gaontia."

See CENTRAL PROVINCES LAND REVENUE ACT . . 12 C. W. N. 1036

——— "goes armed," in Act XI of 1878, s. 19—

EMPEROR *v* HARPAL RAI I. L. R. 24 All. 454

——— "good cause"—

KARUPPANA SERVAGARAN *v* SINNA GOUNDEN I. L. R. 26 Mad 480

——— "goods and chattels," in 11 & 12 Vict c 21, s. 23—

PUNINTHAVELU MUDALIAR *v* BHASHYAM AYYANGAR I. L. R. 25 Mad. 406

——— "ground"—

See ante, "fraud, surprise or mistake

See

Se

——— "guarantee"—

See post, "sum he has rightly paid under the guarantee."

——— "guardian"—

See DISTRICT JUDGE, JURISDICTION OF. I. L. R. 17 Bom. 566

See post, "lawful guardian."

WORDS AND PHRASES—*contd.*

——— "having first recorded grounds of his belief"—

See TRESPASS . I. L. R. 36 Calc. 433

——— "harbour," in Act XLV of 1860, 216 B—

EMPEROR *v* HUSAIN BAKSH I. L. R. 25 All. 261

——— "having only an imperfect title," in Act I of 1877, s. 18—

SARJU PRASAD SINGH *v* WAZIR ALI I. L. R. 23 All. 119

——— "heir as such"—

See CIVIL PROCEDURE CODE, 1882, s. 44, r. (*b*) . I. L. R. 31 Bom. 105

——— "hereby," in Act V of 1881, s. 86—

UMA CHARAN DAS *v* MUKTAKISHI DASI I. L. R. 28 Calc. 149
s.c. 5 C. W. N. 443

——— "High Court," in Act V of 1881, s. 87—

In the goods of MOHENDRA NARAIN ROY 5 C. W. N. 377

——— "Hindu"—

BHAGWAN KAUR *v.* BOSE 7 C. W. N. 895
s. c. I. L. R. 30 I. A. 249

——— "hissadaran shikmi," in wajib-ul-arz—

ABDUL SHAKUR *v.* MENDAI I. L. R. 23 All. 260

——— "homestead"—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—BUILDING AND HOUSE MATERIALS I. L. R 21 Bom. 588

——— "honoured"—

NATIONAL BANK OF INDIA *v.* SALEH MAHAMED BALAXA I. L. R. 25 Bom. 706

——— "hospital"—

See ante, "for the benefit of the inmates of the hospital."

——— "house"—

See post, "materially alter the structure of any house."

——— "houses," in Act VII of 1870—

DURGA SINGH *v.* BISHESHAR DAYAL I. L. R. 24 All. 218

——— "if a suit be adjusted," in Act XIV of 1882, s. 375—

FAKIR CHAND DEY *v.* TINCOWRI DEY 7 C. W. N. 180

WORDS AND PHRASES—*contd.*

——— "ijmalee"—

See HINDU LAW—JOINT FAMILY. 18 W. R. 93

——— "immediately"—

See LAND ACQUISITION ACT, 1894, ss. 12, 18 I. L. R. 30 Bom. 275

——— "immoveable"—

See CIVIL PROCEDURE CODE, s. 44A.

——— "immoveable property"—

See JURISDICTION I. L. R. 33 Bom. 373

See ante, "any person whose immovable property has been sold."

See post, "movable and immovable property of a defaulter"

See post, "person whose immovable property has been sold."

See post, "suits for land or other immovable property."

——— in Act I of 1877, s. 9—

FUZLUR RAHMAN *v.* KRISHNA PRASAD I. L. R. 29 Calc. 614

——— "imperfect title"—

See ante, "having only an imperfect title"

——— "import"—

See BOMBAY ABKARI ACT, 1878, ss. 3(10), 9, 43 . I. L. R. 33 Bom. 380

——— "imposition"—

See ante, "all impositions upon tenants under the denomination of abwab."

——— "imprisonment"—

MAHAMMAD YUSUFUDDIN *v.* SECRETARY OF STATE FOR INDIA I. L. R. 30 Calc. 872 s.c. 7 C. W. N. 729 L. R. 30 I. A. 154

——— "improper description"—

See post, "stamp of improper description."

——— "in accordance with law," in Act XV of 1877, Sch. II, Art. 179—

MURARI LAL *v.* UMRAO SINGH I. L. R. 23 All. 499

SUBRAMANIA CHETTIAR *v.* RAMCHANDRA AYYAR . I. L. R. 28 Mad. 197

——— "in accordance with law"—

See EXECUTION 13 C. W. N. 533

WORDS AND PHRASES—*contd.*

——— "incapacitated"—

See ante, "in the event incapacitated, etc."

——— "include," in Act XLV of 1860, s. 361, Expln.—

JAGANNADHA RAO *v.* KAMARAJU I. L. R. 24 Mad. 284

——— "information given to a Magistrate," in Act V of 1898, s. 250—

KING-EMPEROR *v.* THAMMANA REDDI I. L. R. 25 Mad. 667

——— "in issue," in Act VI of 1899, s. 4—

SANKARANARAYANA VADHYAR *v.* SANKARANARAYANA AYYAR (1901) I. L. R. 25 Mad. 343

——— "injury"—

in Act XLV of 1860, s. 44—

JOWAHIR PATTAK *v.* PARBHOO AHIR I. L. R. 30 Calc. 418 s.c. 7 C. W. N. 116

in Act XIV of 1882, s. 311—

SOSHI BHUSAN SADHU *v.* AHMED HOSSEIN 7 C. W. N. 439

See PENAL CODE, s. 285. 5 Bom. Cr. 67

——— "inmates"—

See ante, "for the benefit of the inmates of the hospital"

——— "inoperative"—

See ante, "become useless and inoperative."

——— "inquiry," in Act I of 1894—

EZRA *v.* SECRETARY OF STATE I. L. R. 30 Calc. 36 s.c. 7 C. W. N. 249

——— "in respect of the same matter"—

See CIVIL PROCEDURE CODE, 1882, s. 28 I. L. R. 31 Bom. 516

——— "instrument"—

See GUARDIANS AND WARDS ACT, s. 39 I. L. R. 18 Bom. 375

——— "instrument comprising or relating to several distinct matters" in Act I of 1879, s. 7—

REFERENCE UNDER STAMP ACT, s. 61 (1) I. L. R. 26 Mad. 473

——— "instrument of mischief"—

THE TELENA I. L. R. 29 Calc. 402 s.c. 6 C. W. N. 773

WORDS AND PHRASES—*contd*

——— "instruments of gaming," in Ben. Act II of 1867, s. 1—

AMRIT SINGH v. KING-EMPEROR
5 C. W. N. 503

——— "insurance"—

See post, "policy of sea insurance"

——— "intangible thing," in Act IV of 1882, s. 54—

RAMASAMI PATTAR v. CHINNAN ASARI
I. L. R. 24 Mad. 449

——— "interest"—

See ante, "any person having any interest in, or charge upon, the property

See ante, "devolution of any interest"

See post, "protected interest"

See post, "right, title and interest of the debtors"

See post, "some interest in"

——— "interested"—

See post, "person interested"

——— "interest in the state of the deceased," in Act V of 1881, s. 69—

KISHEN DAI v. SATYENDRA NATH DUTT
I. L. R. 28 Calc. 441

——— "interruption"—

See post, "without interruption."

——— "in the absence of a contract to the contrary," in Act IV of 1882, s. 82—

RAMABHADRACHAR v. SRINIVASA AYYANGAR
I. L. R. 24 Mad. 85

——— "in the case," in Act V of 1898, s. 337 (2)—

KING-EMPEROR v. BALA
I. L. R. 25 Bom. 675

QUEEN-EMPRESS v. RAMASAMI
I. L. R. 24 Mad. 321

——— "in the event of the death, re- [illegible]

[illegible]

GAPPU LAL v. MATHURA DAS
I. L. R. 25 All. 183

——— "in the exercise of his official functions"—

See PENAL CODE, s. 161.
I. L. R. 31 Bom. 335

WORDS AND PHRASES—*contd.*

——— "in the ordinary course of business"—

See EVIDENCE ACT, s. 32 (2)
13 C. W. N. 71

——— "in the presence of"—

See WILL—ATTESTATION.
I. L. R. 16 Calc. 19

——— "intoxicating drug," in Bom. Act V of 1878, s. 3 (9)—

EMPEROR v. JAMSETJI CAWASJI CAMA
I. L. R. 27 Bom. 551

——— "involve some substantial question of law," in Act XIV of 1882, s. 596—

BANKE LAL v. JAGAT NARAIN
I. L. R. 23 All. 94

——— "in which the rent payable by the tenant has been a matter in issue and has been determined," in Act XII of 1881, s 189—

BENI PRASAD KUARI v. BATULAN BIBI
I. L. R. 23 All. 283

——— "irregularity," in Act V of 1898, s. 537—

RAMAKRISHNA REDDI v. EMPEROR
I. L. R. 26 Mad. 598

——— "issue"—

See ante, "in issue."

See ante, "in which the rent payable by the tenant has been a matter in issue"

——— "issue of notice"—

See LIMITATION ACT (XV OF 1877), ART. 179 (5), SCH. II
I. L. R. 30 Mad. 30

——— "istemrari mokurari"—

See post, "mokurari istemrari."

——— "joint ancestral family property"—

See HINDU LAW I. L. R. 32 Bom. 479

——— "joint-creditors," in Act XV of 1887, s. 8—

PERIASAMI v. KRISHNA AYYAN
I. L. R. 25 Mad. 431

——— "joint family property"—

See HINDU LAW I. L. R. 32 Bom. 479

See LIMITATION ACT, 1877, SCH. II, ART. 127 . . I. L. R. 15 Mad. 57
I. L. R. 13 All. 282

——— "joint property"—

See HINDU LAW I. L. R. 32 Bom. 479

WORDS AND PHRASES—*contd.*

——— "judgment"—

See LETTERS PATENT, 1865, CL. 15
I. L. R. 30 Mad. 311

——— "judgment"—

in Act XIV of 1882, s. 206—

RAMESHWAR PROSAD NARAIN SINGH *v.* CHANDRESHWAR PROSAD NARAIN SINGH
7 C. W. N. 880

——— in Letters Patent, High Courts, 1865, cl. 15—

APPASAMI PILLAI *v.* SOMASUNDRA MUDALIAR . I. L. R. 26 Mad. 437

BRIJ COOMAREE *v* RAMRICK DASS
5 C. W. N. 781

COMMERCIAL BANK OF INDIA *v.* SABJU SAHEB . I. L. R. 24 Mad. 252

DURGA PRASADA NAYAUDU *v.* MALLIKARJUNA PRASADA NAYADU
I. L. R. 24 Mad. 358

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I. L. R. 29 Calc. 286
s.c. 6 C. W. N. 254

KUPPUSAMI CHETTI *v.* RATHNAVELU CHETTI . I. L. R. 24 Mad. 511

NARAYANASAMI REDDI *v.* OSURU REDDI
I. L. R. 25 Mad. 548

PUNINTHAVELU MUDALIAR *v* BHASHYAM AYYANGAR . I. L. R. 25 Mad. 406

SABAPATHI CHETTI *v.* NARAYANASAMI CHETTI . I. L. R. 25 Mad. 555

SESHAGIRI ROW *v* ASKUR JUNG AFTAB DOWLA . I L. R. 26 Mad. 502

VYASACHARY *v.* KESHAVACHARYA
I. L. R. 25 Mad. 654

——— in Mad. Act VIII of 1885, s. 69—

VENKATA PAPAYYA RAO *v.* VENKATA SUBBAYYA . I. L. R. 25 Mad. 453

——— "judgment-debtor"—

See post, "same judgment-debtor."

——— judicial determination"—

SAHIRAM AGARWALLA *v.* JIBUN KAMAR
5 C. W. N. 254

——— "judicial officer"—

See DISTRICT JUDGE, JURISDICTION OF
I. L. R. 15 Calc. 327

——— "judicial proceedings," in Act V of 1898, s. 476—

SANGILIA PILLAI *v.* DISTRICT MAGISTRATE OF TRICHINOPOLY
I. L. R. 25 Mad. 659

WORDS AND PHRASES—*contd.*

——— "jurisdiction"—

See ante, "Court of competent jurisdiction."

See ante, "exercised a jurisdiction not vested in it by law."

——— in Act XIV of 1882, s. 578—

MOHESH CHANDRA DAS *v.* JAMIRUDDIN MOLLAH . I. L. R. 28 Calc. 324
s.c. 5 C. W. N. 509

——— "jury"—

See post, "where the trial was by jury."

——— "justice"—

See post, "occasioned a failure of justice."

——— "kaimi"—

FAZEL SHEIKH *v.* KERAMUDDI SHEIKH
6 C. W. N. 916

——— "kindred"—

See ante, "distant kindred."

——— "knowledge of the nature of the Act"—

See INSANITY I. L. R. 34 Calc. 686

——— "labham."

See WILL—CONSTRUCTION.
I. L. R. 29 Mad. 155

——— "land"—

See ante, "crops or other produce of land."

See post, "suits for land or other immovable property."

——— in Act X of 1859, s. 23 (4)—

ROOKE *v.* BENGAL COAL COMPANY, LTD.
I. L. R. 28 Calc. 485
s c. 5 C. W. N. 840

——— in Act VII of 1870—

DURGA SINGH *v.* BISHESHAR DAYAL
I. L. R. 24 All. 218

——— in Ben. Act IX of 1879, s. 10—

MUKUND KOERI *v.* DEPUTY COMMISSIONER OF CHOTA NAGPUR
I. L. R. 29 Calc. 638
s.c. 7 C. W. N. 20

——— "landlord"—

See ante, "anything which the landlord is, under this Act, required or authorised to do."

——— "last resided together"—

See DIVORCE I. L. R. 36 Calc. 964

WORDS AND PHRASES—*contd.*

——— "law"—

See ante, "bound by law to pay"

See ante, "exercised a jurisdiction not vested in it by law."

See ante, "in accordance with law"

See ante, "involve some substantial question of law."

——— "lawful"—

See ante, "and it shall be also lawful"

——— "lawful guardian," in Act XLV of 1860, s. 361, Expln.—

JAGANNADHA RAO *v.* KAMARAJU
I. L. R 24 Mad. 284

———"lawfully engaged," in Act XLV of 1860, s. 296—

VIJIARAGHAVA CHARIAR *v.* EMPEROR
I. L. R. 26 Mad. 554

——— "lease"—

See post, "Mulgeni lease."

See post, "the sub-lease shall not be valid"

——— "legally recoverable"—

See CIVIL PROCEDURE CODE, 1882, s. 111.
I. L. R. 30 Bom. 173

——— "license"—

See EASEMENT . I. L. R. 23 Bom. 397

——— "like"—

See post, "open square or the like."

See post, "or the like."

——— "living in adultery"—

See ADULTERY I. L. R. 30 Mad. 332

——— "lower class"—

See ante, "but of a lower class."

——— "mafee birt tenure"—

See GRANT . 19 W. R. P. C. 211

——— "Magistrate"—

See ante, "information given to a Magistrate"

——— "Magistrate of the first class"—

See EMIGRATION ACT, s 111.
I. L. R. 31 Bom. 611

——— "malice"—

BHIM SEN *v.* SITA RAM
I. L. R. 24 All. 363

WORDS AND PHRASES—*contd.*

——— "malik"—

See HINDU LAW —WILL—CONSTRUCTION OF WILLS—ESTATES ABSOLUTE OR LIMITED I. L. R 10 Calc. 342
I. L. R. 20 Calc. 906
I. L. R. 24 Calc. 406; 834
L. R. 24 I. A. 76
I. L. R. 27 Calc. 44: 449
4 C. W. N. 437

——— "malikana"—

See DEED—CONSTRUCTION.
I. L. R. 9 All. 591

——— "mark"—

See post, "Trade Mark."

——— "marriage"—

See ante, "breach of promise of marriage"

——— "material defects"—

See TRANSFER OF PROPERTY ACT, s. 55.
I. L. R. 20 Bom. 522

——— "materially alter the structure of any house," in Ben. Act II of 1888, s. 236—

KESHUB CHANDRA SEN *v.* CALCUTTA MUNICIPAL CORPORATION
7 C. W. N. 374

——— "materials," in Mad. Act I of 1886, s. 55 (g)—

QUEEN-EMPRESS *v.* GANGAYYA
I. L. R. 24 Mad. 417

——— "may," "must," meaning of.

See RAILWAYS ACT (IX OF 1890), s. 140
I. L. R. 35 Calc. 194

——— "may commit," in Act V of 1898, s. 477—

REILY *v.* KING-EMPEROR
I. L. R. 28 Calc. 434
s.c. 5 C. W. N. 609

——— "means of subsistence"—

See pt, "ostensible means of subsistence."

——— "medicated article," in Bom. Act V of 1878, s. 62—

EMPEROR *v.* JAMSETJI COWASJI CAMA
I. L R. 27 Bom. 551

——— "member"—

See ante, "dependent member."

——— "member of the village community," in Act XVIII of 1876, s. 9, cl. 3rd—

DRIG BIJAI SINGH *v.* DEPUTY COMMISSIONER OF GONDA
I. L. R. 24 All. 420

WORDS AND PHRASES—*contd.*

——— "mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him," in Act IX of 1872, s. 137—

RANJIT SINGH *v.* NAUBAT
I. L. R. 24 All. 504

——— "mere right to sue"—

See ASSIGNMENT
I. L. R. 36 Calc. 345

See TRANSFER OF PROPERTY ACT, s. 6 (*c*)
13 C. W. N. 384

——— "mesne profits"—

NARPAT SINGH *v.* HAR GAYAN
I. L. R. 25 All. 275

——— "mischief"—

See ante, "instrument of mischief."

——— "misconduct," in Act XIV of 1882, s. 521—

KALI CHARAN SIRDAR *v.* SARAT CHUNDER CHOWDHURY
I. L. R. 30 Calc. 397
s.c. 7 C. W. N. 545

——— "mistake"—

See ante, "fraud, surprise or mistake"

——— "mokurari"—

See BENGAL TENANCY ACT (VIII OF 1885), s. 74 12 C. W. N. 175

——— "mokurari istemrari"—

AGIN BINDH UPADHYA *v.* MOHAN BIKRAM SHAH I. L. R. 30 Calc. 20
s.c. 7 C. W. N. 314

NARSINGH DYAL SAHU *v.* RAM NARAIN SINGH I. L. R. 30 Calc. 883

——— "money"—

See WILL I. L. R. 30 All. 455

——— "money likely to become due"—

See TODA GIRAS ALLOWANCE ACT, s. 5.
I. L. R. 33 Bom. 258

——— "month"—

See MARINE INSURANCE
I. L. R. 36 Calc. 516

——— "month lunar or calendar"—

See MARINE INSURANCE
13 C. W. N. 425

——— "mortgage"—

See ante, "English mortgage."

See post, "specifically mortgaged."

——— "motive or reward"—

See PENAL CODE, s. 161.
I. L. R. 31 Bom. 335

WORDS AND PHRASES—*contd.*

——— "movable and immovable property of a defaulter," in Mad. Act II of 1864, s. 5—

NARAYANA RAJA *v.* RAMCHANDRA RAJA
I. L. R. 26 Mad. 521

——— "movable property"—

in Act XV of 1877, Sch. II, Art. 89—

ASGHAR ALI KHAN *v.* KHURSHED ALI KHAN I. L. R. 24 All. 27
s.c. L. R. 28 I. A. 227

in Act XIV of 1882, s. 268—

TARVADI BHOLANATH HARISHANKER *v.* BAI KASHI I. L. R. 26 Bom. 305

——— "mulgeni lease"—

NARAYAN MANJAYA *v.* RAMCHANDRA DEVASTHAN . I. L. R. 27 Bom. 373

——— "nadarad"—

ALI NASIR KHAN *v.* MANIK CHAND
I. L. R. 25 All. 90

——— "naslan bád naslan"—

See DEED—CONSTRUCTION.
I. L. R. 14 Calc. 296

——— "necessity"—

See HINDU LAW—ALIENATION BY WIDOW.
I. L. R. 32 Bom. 577

——— "no power to alienate," in Act I of 1894, s. 32—

MAHAMMAD ALI RAJA AVERGAL *v.* AHAMMED ALI RAJA AVERGAL
I. L. R. 26 Mad. 287

——— "notice"—

See LAND ACQUISITION ACT, 1894, s. 18.
I. L. R. 30 Bom. 275

See post, "the date of issuing a notice."

——— "now on her passage"—

See CHARTER PARTY 8 B. L. R. 544

——— "occasioned a failure of justice," in Act V of 1898, s. 537—

KING-EMPEROR *v.* TIRUMAL REDDI
I. L. R. 24 Mad. 523

——— "occasions"—

See ante, "and it shall be also lawful for the Court, on those or any other occasions"

——— "occupants"—

CHOUDHRI MAKBUL HUSAIN *v.* LALTA PERSHAD I. L. R. 24 All. 1
s.c. L. R. 28 I. A. 169

WORDS AND PHRASES—*contd.*

——— "offence"—

See ante, "any such offence."

——— in Act V of 1898, s. 4 (*0*)—

ADAMS *v.* EMPEROR
I. L. R. 26 Mad. 607

See CRIMINAL PROCEDURE CODE, s 486
I L. R. 11 All. 480

See RAILWAYS ACT, s. 113, cl. (*4*).
I. L. R. 20 All. 95

——— "offence," trial of—

See CATTLE TRESPASS ACT (I OF 1871), s 26, SCH II
I L. R. 34 Calc. 926

——— "offences," in Act XXV of 1879, s. 6—

ADAMS *v* EMPEROR
I. L. R. 26 Mad 607

——— "offences involving a breach of the peace," in Act V of 1898. s. 110 (*e*)—

ARUN SAMANTA *v.* EMPEROR
I. L. R. 30 Calc. 366

——— "offer for sale"—

See post, "sells or offers for sale."

——— "officer in charge of a police-station," in Act V of 1898, s. 4 (*l*) (*p*)—

SOLICITOR TO THE GOVERNMENT OF INDIA *v.* MADHO DHOBI 7 C. W. N. 661

——— "omission," in Act V of 1898, s. 537—

RAMAKRISHNA REDDI *v.* EMPEROR
I. L. R. 26 Mad. 598

——— "only"—

See ante, "having only an imperfect title"

——— "open place"—

See POLICE ACT, 1861, s. 34.
I. L. R. 27 Calc. 655

——— "open square or the like," in Ben. Act III of 1899, Sch. XVII, rule 24—

NONI LAL SETT *v* CORPORATION OF CALCUTTA 7 C. W. N. 853

——— "option"—

See post, "shipment at seller's option."

——— "o putra pautradi"—

GOOROO DAS MUSTAFI *v.* SARAT CHUNDER MUSTAFI
I. L. R. 29 Calc. 669
s c. 6 C. W. N. 721

——— "or the like," in Act X of 1859, s. 23 (4)—

ROOKE *v.* BENGAL COAL COMPANY, LTD.
I. L. R. 28 Calc. 485
s.c. 5 C. W. N. 480

——— "order"—

See post, "party against whom an order is passed."

in Act X of 1897, s. 24—

PADAN SAHA *v.* EMPEROR
7 C. W. N. 658

——— "order granting a certificate," in Act VII of 1889, s. 19—

VENKATESWARLU *v* BRAHMARAVUTU RAJA KRISTNAJI *I. L. R. 25 Mad. 634*

——— "*order him to be committed for trial,*" in Act V of 1898, s. 436—

QUEEN-EMPRESS *v* SURENDRA NATH SARKAR I. L. R. 28 Calc. 397
s.c. 5 C W. N. 574

——— "order made on appeal"—

SUNDER KOER *v* CHANDISHWAR PROSAD SINGH I. L. R. 30 Calc 679

——— "ordinarily"—

See ante, "Court to which appeals ordinarily lie"

——— "ostensible means of subsistence," in Act V of 1898, s. 109 (*b*)—

QUEEN-EMPRESS *v.* POORAN AGARWALLA
5 C. W. N. 28

——— "other"—

See ante, "crops or other produce of land."

See ante, "fraud, surprise or mistake, or such other special ground"

——— "other reasonable cause"—

See ante, "any other reasonable cause"

in Act *XVIII of 1879, s. 13 (f)*—

In the matter of a PLEADER
I. L. R. 26 Mad. 448

——— "otherwise," in Act XIV of 1882, s 600—

BANARASI PERSHAD *v.* KASHI KRISHEN NARAIN I. L. R. 23 All. 227
s c. L. R. 28 I. A. 11
5 C. W. N. 193

——— "owner"—

See post, "the purchaser shall not acquire . . . owners."

in Ben. Act III of 1899, s. 3 (*32*)—

FINK *v.* CORPORATION OF CALCUTTA
I. L. R. 30 Calc. 721
s c. 7 C. W. N. 706

WORDS AND PHRASES—*contd.*

———— "owner of mines"—

See MINES I. L. R. 34 Calc. 257

———— "owner of package."

See RAILWAYS ACT, s. 75.
I. L. R. 33 Bom. 703

———— "paid"—

See post, "sum he has rightly paid under the guarantee"

See post, "the area for which rent has been previously paid"

in Act XV of 1877, Sch. II, Arts. 61, 99—

RAJAH OF VIZIANAGRAM *v.* SETRUCHERLA SOMASEKHARAZ I. L. R. 26 Mad. 686

———— "parjyapta haibek"—

HARRISS *v.* BROWN
I. L. R. 28 Calc. 621
s.c. 5 C. W. N. 729
L. R. 28 I. A. 159

———— "parties concerned in such dispute," in Act V of 1898, s. 145 (1)—

KRISHNA KAMINI *v.* ABDUL JUBBAR
I. L. R. 30 Calc. 155;
s.c. 6 C. W. N. 737

————"parties to the suit," in Act XIV of 1882, s. 244 (c)—

KAHIMUDDIN SARKAR *v.* LALL MEA
I. L. R. 29 Calc. 696
s.c. 6 C. W. N. 727

———— "party"—

See ante, "all proceedings under this Act between party and party"

See ante, "all the parties to a suit."

See CONTRACT ACT, s. 64.
I. L. R. 26 Calc. 381

———— "party against whom an order is passed," in *Act XIV of 1882, s. 283*—

MOIDIN KUTTI *v.* KUNHI KUTTI ALI
I. L. R. 25 Mad. 721

———— "passed jointly"—

See LIMITATION ACT, 1877, SCH. II, ART. 179, EXPL. 1 I. L. R. 31 Bom. 50

———— "pay"—

See ante, "bound by law to pay."

———— "payment"—

See ante, "date of payment."

See ante, "for payment to the decree-holder."

———— "peace"—

See ante, offences involving a breach of the peace."

———— "pension"—

See post, "political pensions."

———— "person"—

See CONTRACT ACT, s. 64
I. L. R. 26 Calc. 381

See COURT OF WARDS
I. L. R. 25 Calc. 795

See STAMP ACT, 1879, s. 61.
I. L. R. 27 Calc. 324

———— "person aggrieved," in Act V of 1898, s. 198—

BEAUCHAMP *v.* MOORE
I. L. R. 26 Mad. 43

EMPEROR *v.* IMTIAZAN
I. L. R. 25 All. 132

———— "person entitled to institute a suit or make an application," in Act XV of 1877, s. 7—

PERIASAMI *v.* KRISHNA AYYAN
I. L. R. 25 Mad. 431

———— "person interested," in Act I of 1894, s. 23—

NARAIN CHANDRA BORAL *v.* SECRETARY OF STATE FOR INDIA
I. L. R. 28 Calc. 152
s.c. 5 C. W. N. 349

———— "person whose immovable property has been sold," in Act XIV of 1882, s. 310A—

MALLIKARJUNADU SETTI *v.* LINGA MURTI PANTULU . I. L. R. 26 Mad.

PARESH NATH SINGHA *v.* NOBOGOPAL CHATTOPADHYA I. L. R. 29 Calc 1
s.c. 5 C. W. N. 821

———— "personally interested"—

See CRIMINAL PROCEDURE CODE, s. 556.
I. L. R. 27 All. 25; 33

———— "physical comfort"—

See EASEMENTS ACT, s. 28 (c)
I. L. R. 30 Bom. 319

———— "physical possession," in Act XV of 1877, Sch. II, Art. 10—

BATUL BEGAM *v.* MANSUR ALI KHAN
I. L. R. 24 All 17
s.c. L. R. 28 I. A. 254
5 C. W. N. 888

———— "place to which the public have access"—

CAWASJI MERWANJI SHROFF *v.* GREAT INDIAN PENINSULA RAILWAY COMPANY
I. L. R. 26 Bom. 609

———— "plaintiff"—

See PRACTICE I. L. R. 32 Bom. 599

WORDS AND PHRASES—*contd.*

——— "police force"—

See post, "rendering such force efficient in the discharge of all its duties"

——— "police station"—

See ante, "officer in charge of a police station."

——— "policy of sea-insurance," in Act II of 1899, Sch I, Art. 47, cl. A—

In the matter of a REFERENCE UNDER THE INDIAN STAMP ACT, 1899 (1903) I L. R. 30 Calc. 565

——— "political pensions," in Act IV of 1882, s. 266 (*g*)—

MUTHUSAMI NAIDU *v* ALAGIA MANAVALA SIMMALA RAJA I. L. R. 26 Mad. 423

——— "possession"—

See ante, "actual possession"

See ante, "physical possession"

in Act XV of 1877, s. 28—

LALLA KANHOO LAL *v* MANKI BIBI 6 C. W. N. 601

in Act XIV of 1882, s. 331—

MANCHARAM *v.* FAKIRCHAND I. L R. 25 Bom. 478

——— "power"—

See ante, "no power to alienate"

——— "prejudice"—

See post, "to the prejudice of the purchaser"

——— "prevailing rate"—

See ENHANCEMENT OF RENT. 9 W. R. 83

——— "prevented by any sufficient cause," in Act XIV of 1882, ss. 103, 108, 558—

SOMAYYA *v* SUBBAMMA I. L. R. 26 Mad. 599

——— "prior to the realisation," in Act XIV of 1882, s. 295—

RAMMANATHAN CHETTIAR *v.* SUBBRAMANIA SASTRIAL I. L. R. 26 Mad. 179

——— "probable cause"—

See post, "reasonable and probable cause."

WORDS AND PHRASES—*contd.*

——— "proceeding"—

See ante, "judicial proceeding."

in Act XV of 1877, s. 14—

JAFAR *v* KAMALINI DEBI I. L. R. 28 Calc. 438 5 C. W. N. 150

——— "proceedings"—

See ante, "all proceedings under this Act between party and party."

in Madras Act VIII of 1865, s. 80—

DHARMAKATRA OF TINNANORE TEMPLE *v.* LUCHMI DOSS I. L. R. 26 Mad. 589

——— "proceedings"—

See "PRESIDENCY SMALL CAUSE COURTS ACT," s. 38 I. L. R. 31 Bom. 259

——— "produce"—

See ante, "crops for other produce of land."

——— "profits"—

See ante, "mesne profits."

——— "projah"—

See LEASE—CONSTRUCTION. 22 W. R. 398

——— "promise"—

See ante, "breach of promise of marriage"

——— "proper Court"—

See EXECUTION 13 C. W. N. 533

——— "property"—

See ante, "immovable property."

See ante, "movable and immovable property."

See ante, "movable property."

See post, "saleable property."

in Act VII of 1870, Sch. I, Art. 11—

In re LAKSHMINARAYANA AMMAL I. L. R. 25 Mad. 515

See MORTGAGE I. L. R. 29 All. 385

See PENAL CODE, s. 420. I. L R. 32 Calc. 22

——— "proprietor"—

See COURT OF WARDS I. L. R. 36 Calc. 28

——— "proprietor," in Act V of 1888, s. 51—

BAHAL RAI *v.* SUMER CHAND I. L. R. 25. All 493

WORDS AND PHRASES—*contd.*

———— "prosecuting with due diligence," in Act XV of 1877, s. 14—

DASRATH RAI *v.* BHIRGU RAI CHANDAN I. L. R. 23 All. 434

———— "prosecutions," in Ben. Act IV of 1866, s. 49 (*1*)—

BIJOYENDRA LAL MITTER *v.* EMPEROR 7 C. W. N. 883

———— "protected interest," in Act VIII of 1885, s. 160—

AKHOY KUMAR SOOR *v.* BEJOY CHAND MOHATAP I. L. R. 29 Calc. 813

———— "public"—

See ante, "place to which the public have access"

———— "public place"—

See GAMBLING I. L. R. 30 Bom. 348

———— "public purpose," in Act I of 1894—

EZRA *v.* SECRETARY OF STATE I. L. R. 30 Calc. 36 s.c 7 C W. N. 249

———— "public servant," in Act XLV of 1860, s. 21—

NAZAMUDDIN *v.* QUEEN-EMPRESS I. L. R. 28 Calc. 344

———— "public street"—

ANKLESVAR MUNICIPALITY *v.* RIKHAV CHAND KAPURCHAND I. L. R. 25 Bom. 315

———— "publication"—

BAHAL RAI *v.* SUMER CHAND I. L. R. 25 All. 493

———— "publisher"—

See PRINTING PRESSES AND NEWSPAPERS ACT, 1867, s. 3 I. L. R. 23 Calc. 414

———— "publishing or conducting" sales—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 311. I. L. R. 32 Bom. 572

———— "punishment"—

See post, "shall be of any of the lower castes of the people on whom it may not be improper to inflict so degrading a punishment."

———— "purchased," in Act XV of 1877, Sch. II, Art. 134—

MANAVIKRAMAN ETTAN THAMBURAN *v.* AMMU I. L. R. 24 Mad. 471

WORDS AND PHRASES—*contd*

———— "purchaser"—

See post, "the purchaser shall not acquire, etc."

See post, "to the prejudice of the purchaser."

———— "purpose"—

See ante, "for the purpose of cross-examination"

See ante, "public purpose."

See post, "solely for agricultural purposes."

———— "question of law"—

See ante, "involve some substantial question of law."

———— "realization"—

See ante, "prior to the realisation."

———— "reasonable cause"—

See ante, "any other reasonable cause."

See ante, "other reasonable cause"

———— "reasonable and probable cause"—

BHIM SEN *v.* SITA RAM I. L. R. 24 All. 363

———— "reclaim"—

SHAMRAO PANDURANG *v.* SECRETARY OF STATE FOR INDIA I. L. R. 25 Bom. 32

———— "*registered*"—

See ante, "contract in writing registered."

———— "relative," in Act X of 1865, s. 105—

ADMINISTRATOR-GENERAL OF MADRAS *v.* SIMPSON I. L. R. 26 Mad. 533

———— "remedy"—

See ante, "mere forbearance ... to enforce any other remedy," etc.

———— "removal"—

See ante, "in the event of the death, resignation, removal," etc.

———— "rendering such force (*i.e.,* the police force) efficient in the discharge of all its duties," in Ben. Act IV of 1866, s. 9—

BIJOYENDRA LAL MITTER *v.* EMPEROR 7 C. W. N. 883

WORDS AND PHRASES—*contd*

———"rent"—

See ante, "abatement of rent."

See ante, "in which the rent payable by the tenant has been a matter in issue

See post, "the area for which rent has been previously paid"

in Bom. Act V of 1879—

SADASHIV *v* RAMKRISHNA I. L. R. 25 Bom. 556

——— "rent"—

See BENGAL TENANCY ACT, s 67 11 C. W. N. 110

See CESS, ASSESSMENT OF I. L. R. 35 Calc. 82; 11 C. W. N. 105

——— "report," in Act V of 1898, s. 4 (*h*)—

KING EMPEROR *v.* SADA I. L. R 26 Bom. 150

——— "required"—

See ante, "anything which the landlord is, under this Act, required or authorised to do"

——— "required or authorised to do."

See BENGAL TENANCY ACT (VIII OF 1885), s 188 . I. L. R. 35 Calc. 331

——— "reservations"—

See ante, "all stipulations and reservations"

——— "reside"—

See INSOLVENCY ACT, s 5. 11 B. L. R. 254

——— "residence"—

See DIVORCE ACT, 1869, s. 2. 3 C. W. N. 250

——— "resign"—

See KHOTI SETTLEMENT ACT, 1880, s. 10 I. L. R. 31 Bom. 267

——— "resignation"—

See ante, "in the event of the death, resignation," etc.

——— "reverse the finding and sentence," in Act V of 1898, s 423 (*1*) (*b*)—

SAMI AYYA *v* EMPEROR I. L R. 26 Mad. 478

——— "revivor," in Act XV of 1877, Sch. II, Art. 180—

MONOHAR DAS *v* FUTTEH CHAND I. L. R. 30 Calc. 679 s.c. 7 C. W. N. 795

WORDS AND PHRASES—*contd.*

——— "right"—

See ante, "any dispute shall arise respecting the right of succession."

See post, "the purchaser shall not acquire any rights, etc.

——— "right, title and interest of the debtors"—

AKHOY KUMAR SOOR *v* BEJOY CHAND MOHATAP I. L. R. 29 Calc. 813

——— "rightly paid"—

See post, "sum he has rightly paid under the guarantee"

——— "run to waste."

See MUNICIPALITY I. L. R. 32 Bom. 460

——— "sale"—

See ante, "date of sale"

See post, "sells or offers for sale."

in Act VII of 1870, s. 34—

KEDAR NATH SHAHA *v.* EMPEROR I. L. R. 30 Calc. 921 s c 7 C W. N. 704

——— "saleable property," in Act XIV of 1882, s. 266—

SHOILOJANUND OJHA *v* PEARY CHARAN DEY I. L. R 29 Calc. 470 s.c. 6 C. W. N. 726

——— "same class"—

See ENHANCEMENT OF RENT. 9 W. R. 83

——— "same judgment-debtor," in Act XIV of 1882, s 295—

RAMANATHAN CHETTIER *v.* SUBRAMANIA SASTRIAL I. L. R. 26 Mad. 179

——— "same transaction," in Act V of 1898, s 235—

CHEKUTTY *v* EMPEROR I L. R. 26 Mad. 454

——— "samskara"—

See HINDU LAW I. L. R. 32 Bom. 81

——— "satisfaction"—

See ante, "execution or satisfaction of the decree"

——— "sea-insurance"—

See ante, "policy of sea insurance"

——— "seller's option"—

See post, "shipment at seller's option."

——— "sells or offers for sale," in Act VII of 1870, s. 34, and Act II of 1899, s. 69—

QUEEN-EMPRESS *v.* VIRASAMI I. L R. 24 Mad. 319

WORDS AND PHRASES—*contd.*

———— "sentence"—

See ante, "enhance the sentence."

See ante, "reverse the finding and sentence."

———— "servant"—

See ante, "public servant."

———— "settlement of the assessment," in Bom. Act II of 1876, s. 9—

VINAYAK ATMARAM *v.* COLLECTOR OF BOMBAY I. L. R. 26 Bom. 339

———— "several distinct matters"—

See ante, "instrument comprising or relating to several distinct matters"

in Act II of 1899, s. 5—

REFERENCE UNDER STAMP ACT, s. 57. I. L. R. 25 Mad. 3

———— "shall add to any existing embankment," in Ben. Act II of 1882, s. 76 (*a*)—

AJODHYA NATH KOILA *v.* RAJ KRISHTO BHAR I. L. R. 30 Calc. 481
s.c. 7 C. W. N. 284

———— "shall be of any of the lower castes of the people on whom it may not be improper to inflict so degrading a punishment," in Mad. Reg. XI of 1816, s. 10 (*1*)—

RATTIGADU *v.* KONDA REDDI I. L. R. 24 Mad. 271

———— "shikmi"—

See ante, "hissadaran shikmi."

———— "ship"—

See ante, "by a ship."

———— "shipment at seller's option during August-September"—

MACKERTICH *v.* NOBO COOMAR RAY I. L. R. 30 Calc. 477;
s.c. 7 C. W. N. 431

———— "shopkeeper," in Mad. Act IV of 1884, Sch. A—

MUNICIPAL COUNCIL OF MANGALORE *v.* SECRETARY OF STATE FOR INDIA I. L. R. 25 Mad. 747

———— "signing otherwise than as witness"—

See STAMP ACT, 1879, s. 61. I. L. R. 27 Calc. 324

———— "situate"—

See JURISDICTION OF CRIMINAL COURTS I. L. R. 30 Mad. 196

See LIMITATION ACT (XV OF 1877), SCH. II, ART 44 I. L. R. 30 Mad. 393

———— "sold"—

See ante, "any person whose immovable property has been sold."

See ante, "person whose immovable property has been sold"

———— "solely for agricultural purposes," in Mad. Act IV of 1884, s. 63 (*3*)—

KING-EMPEROR *v.* ALLAN I. L. R. 25 Mad. 627

———— "some interest in," in Act XIV of 1882, s. 279—

SABHAPATHI CHETTI *v.* NARAYANASAMI CHETTI I. L. R. 25 Mad. 555

———— "some other cause of like nature."

See LIMITATION ACT (XV OF 1877), s. 14 I. L. R. 35 Calc. 728
12 C. W. N. 473

———— "son"—

See ante, "eldest son to be born."

———— "sonatan"—

See DEED—CONSTRUCTION 7 W. R. 320

———— "special ground"—

ROYAL INSURANCE COMPANY *v.* AUKHOY COOMAR DUTT I. L. R. 28 Calc. 272
s.c. 5 C. W. N.

See, also, ante, "fraud, surprise of mistake, or such other special ground."

———— "specific moveable property"—

See ZURIPESHGI LEASE 11 C. W. N. 802

———— "specifically mortgaged," in Act XVII of 1879, s. 22—

BALSHET *v.* DHONDO RAMKRISHNA I. L. R. 26 Bom. 33

———— "spirituous liquor"—

See CANTONMENTS ACT, 1880, s. 14 I. L. R. 15 Calc. 452

———— "square"—

See ante, "open square or the like"

———— "stamped at the time of execution," in Act I of 1879, s. 17—

SURIJ MULL *v.* HUDSON I. L. R. 24 Mad. 259

WORDS AND PHRASES—*contd*

——— "stamp of improper description," in Act II of 1899, s. 37, and Rule 16 of the Rules thereunder dated 17th February 1899—

REFERENCE UNDER S. 57 OF ACT II OF 1899 . I. L. R. 23 All. 213

——— "stipulations"—

See ante, "all stipulations and reservations"

——— "street"

See U P MUNICIPALITIES ACT, S 3 (4) I. L R. 30 All. 70

——— "street"—

See ante, "public street."

See BOMBAY MUNICIPAL ACT (III OF 1888). I. L. R 30 Bom. 558

——— "structure"—

See ante, "materially alter the structure of any house"

——— "subjects in dispute"—

See post, "the subjects in dispute."

——— "subject of dispute," in Act V of 1898 ss. 145 and 146—

SADAR ALI *v.* ABDUL KARIM 5 C. W. N. 710

——— "sub-lease"—

See post, "the sub-lease shall not be valid"

——— "Subordinate Judge"—

See ante, "in the event of the death of a Subordinate Judge," etc.

——— "subsistence"—

See ante, "ostensible means of subsistence."

——— "substantial question of law"—

See ante, "involve some substantial question of law."

——— "succession"—

See ante, "any dispute shall arise respecting the right of succession."

——— "successively"—

GOPAL CHUNDER BOSE *v* KARTICK CHUNDER DEY . I. L. R. 29 Calc. 716

——— "such"—

See ante, "any such offence."

See ante, "fraud, surprise or mistake or such other special ground."

WORDS AND PHRASES—*contd.*

——— "such thing to be done" in Act V of 1898, s. 147—

PASUPATI NATH BOSE *v.* NANDO LAL BOSE 5 C. W. N. 67

——— "sufficient cause"—

See ante, "prevented by any sufficient cause"

in Act XV of 1877, s. 5—

KICHILAPPA NAICKAR *v* RAMANUJAM PILLAI I. L. R. 25 Mad. 166

RAM NARAIN JOSHI *v* PARMESWAR NARAIN MAHTA I. L. R. 30 Calc 309 s.c. L. R 30 I. A. 20

——— "sufficient grounds for committing," in Act V of 1898, s. 209—

EMPEROR *v* VARJIVANDAS I. L. R. 27 Bom. 84

——— "suit"—

See ante, "all the parties to a suit"

See ante, "if a suit be adjusted."

See ante, "parties to the suit."

See ante, "person entitled to institute a suit or make an application."

See post, "the value of the original suit"

——— "suit"—

See PRESIDENCY SMALL CAUSE COURTS ACT, s. 38 I. L. R. 31 Bom. 259

——— "suit for money"—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s 380 I. L. R. 32 Bom. 602

——— "suit relating to a trust," in Act IX of 1887, Sch. II, Art. 16—

SUNDARALINGAM CHETTI *v* MARIYAPPA CHETTI I. L. R 26 Mad. 200

——— "suits for land or other immovable property," in Letters Patent, High Courts, 1865—

HARA LALL BANERJEE *v* NITAMBINI DEBI I. L. R. 29 Calc. 315

——— "sum he has rightly paid under the guarantee," in Act IX of 1872, s. 145—

PUTTI NARAYANAMURTHI AYYAR *v* MARIMUTHU PILLAI I. L. R. 26 Mad. 322

——— "surprise"—

See ante, "fraud, surprise or mistake"

——— "swaraj"—

See SEDITION I. L. R. 34 Calc. 991

WORDS AND PHRASES—*contd.*

——— "talukh"—

See GRANT . . 18 W. R. 469

——— "talukhdar," in Bom. Act VI of 1888, s. 2 (*a*)—

NARANDAS PARBHUDAS *v* PARSHOTTAM VALU . I. L. R. 26 Bom. 757

——— "tari"—

See CANTONMENTS ACT (III OF 1880), s. 14 I L R. 15 Calc. 452

——— "the area for which rent has been previously paid," in Act VIII of 1885, s. 52 (*1*) (*a*)—

RAJENDRA LAL GOSWAMI *v* CHUNDER BHUSAN GOSWAMI 6 C. W. N. 318

——— "the date of issuing a notice," in Act XV of 1877, Sch. II, Art. 179—

KADARESSUR SEN BABOR *v* MOHIM CHANDRA CHAKRAVARTI 6 C. W. N. 656

——— "the purchaser shall not acquire any rights which were not possessed by the previous owner or owners," in Act XI of 1859, s. 54—

ANNODA PROSAD GHOSE *v* RAJENDRA KUMAR GHOSE I L. R. 29 Calc. 223 s.c. 6 C. W. N. 375

——— "the subjects in dispute," in Act XIV of 1882, s. 42—

RAMASWAMI AYYAR *v*. VYTHINATHA AYYAR I. L. R. 26 Mad. 760

——— "the sub-lease shall not be valid," in Act VIII of 1885, s. 85 (3)—

MADAN CHANDRA KAPALI *v*. JAKI KARIKAR 6 C. W. N. 377

——— "the value of the original suit," in Act XII of 1887, s. 21 (*a*)—

SHEO SINGH *v*. BALDEO SINGH I. L. R. 25 All. 277

——— "therein"—

See ante, "found therein."

——— "thing"—

See ante, "intangible thing."

See ante, "such thing to be done."

——— "three miles"—

See BOM. ACT III OF 1866 4 Bom. Cr. 9

——— "*ticca mohto*"—

See ENHANCEMENT OF RENT. 3 W. R., Act X, 144

——— "time of execution"—

See ante, "stamped at the time of execution"

WORDS AND PHRASES—*contd.*

——— "title"—

See ante, 'having only an imperfect title."

See ante, "right, title and interest of the debtors."

——— "to be born"—

See ante, "eldest son to be born."

——— "to the prejudice of the purchaser," in Ben. Act III of 1899, s. 495—

MOTI LAL PAL *v* CORPORATION OF CALCUTTA . . I. L. R. 30 Calc. 643 s.c. 7 C. W. N. 637

——— "trade mark," in Act XLV of 1860, s. 478—

RADHA KRISHNA JOSHI *v*. KISSONLAL SHRIDHAR I. L. R. 26 Bom. 289

——— "trader," in Mad. Act IV of 1884, Sch A—

MUNICIPAL COUNCIL OF MANGALORE *v*. SECRETARY OF STATE FOR INDIA I. L. R. 25 Mad. 747

——— "transaction"—

See ante, "same transaction."

——— "transfer, succession or otherwise"—

See BENGAL TENANCY ACT, s 26 13 C. W. N. 12

——— "trial"—

See ante, "order him to be committed for trial."

See post, "where the trial was by jury."

——— "trust"—

See ante, "suit relating to a trust."

See post, "whenever the direction of the Court is deemed necessary for the administration of such trust.'"

——— "trust for a specific purpose"—

See LIMITATION ACT (XV OF 1877), s. 10 I. L. R. 32 Bom. 394

——— "unable to entertain," "unable to decide," "prosecuted with due diligence"—

See LIMITATION ACT (XV OF 1877), s. 14 I. L. R. 35 Calc. 728

——— "under-renter"—

See BENGAL REGULATION, 1799—VII 13 W. R. 303

——— "undivided family"—

See PARTITION ACT (IV OF 1893), s. 4 I. L. R. 29 All. 308

WORDS AND PHRASES—*contd.*

———— "unfair advantage"—

See CONTRACT ACT (IX OF 1872), s 16
I. L. R. 32 Bom. 37

———— "unless the Court otherwise directs"—

See CIVIL PROCEDURE CODE, 1882, s. 80
13 C. W. N. 490

———— "useless"—

See ante, "become useless and inoperative."

———— "valid"—

See ante, "the sub-lease shall not be valid."

———— "value"—

See ante, "the value of the original suit"

———— "vexatious," in Act V of 1898, s. 250—

BENI MADHUB KURMI *v* KUMUD KUMAR BISWAS I. L. R. 30 Calc. 123
s.c. 6 C. W N. 799

———— "village cattle"—

See BOMBAY SURVEY AND SETTLEMENT ACT, 1865, s 32
I. L. R. 2 Bom. 110

———— "village community"—

See ante, "member of the village community"

in Act XII of 1878—

RAHIMUDDIN *v.* REWAL
I. L R. 30 Calc. 635
s c. 7 C. W. N 498
L. R 30 I. A. 89

———— "wager"—

See ante, "by way of wager"

———— "wantonly"—

See PENAL CODE, s 153
I. L. R. 29 All. 569

———— "wash"—

QUEEN-EMPRESS *v.* GANGAYYA
I. L. R. 24 Mad. 417

[illegible]

NETI RAMA JOGIAH *v* VENKATA CHARULU
I. L. R. 26 Mad. 450

———— "where the trial was by jury," in Act V of 1898, s. 418—

KING-EMPEROR *v.* PARBHUSHANKAR
I. L. R. 25 Bom. 680

WORDS AND PHRASES—*concld*

———— "with the distrainer"—

VIRARAGHAVA AYYANGAR *v* KANAGAVALLI AMMAL I. L. R. 25 Mad. 503

———— "without interruption," in Act IV of 1882, s. 108 (c)—

TAYAWA *v.* GURSHIDAPPA
I. L. R. 25 Bom. 269

———— "writing"—

See ante, "contract in writing, registered"

———— "wrong"—

See ante, "continuing wrong"

———— "year"—

See SALE FOR ARREARS OF REVENUE.
I. L. R 34 Calc. 381

———— "year"—

See ante, "current year."

WORKING FOR GAIN.

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN

WORKMAN.

See WORKMEN'S BREACH OF CONTRACT ACT (XIII OF 1859)
2 B. L. R. A. Cr. 32
I. L. R. 7 Mad. 100
I. L. R. 7 Bom. 379
I. L. R. 10 Bom. 96

WORKMEN'S BREACH OF CONTRACT ACT (XIII OF 1859).

———— *Inquiry under the Act —Summary trial not permissible* An offence under the Workmen's Breach of Contract Act, 1859, cannot be tried summarily. *Emperor* v. *Dhondu Krishna I L R.* 33 Bom. 22, followed EMPEROR *v* BALU (1908). I. L. R. 33 Bom. 25

———— Preamble and s. 1—"*Artificer, Workman or Labourer*"—*Person entitled to work by contract and to percentage of profits—Fraudulent breach of contract—Neglect or refusal to perform work—Refusal to work for alleged breach of contract by employer.* A person entitled under his agreement to have the stipulated work performed on the contract system in lieu of pay, and to receive a percentage on the profits as commission with an annual statement of the accounts of the busi- [illegible]

labourer" [illegible]
wilfully
to perfor
in s. 1 c

WORKMEN'S BREACH OF CONTRACT ACT (XIII OF 1859)—*concld.*

breach of the contract, as stated in the preamble to it. Where, therefore, a person left his employment owing to his employer's failure to furnish him with a statement of the business accounts and to pay a percentage of the profits, in accordance with the terms to the contract :—*Held*, that there was no such neglect or refusal as to bring him within the scope of s. 1 of the Act. PURNA CHANDRA NANDAN *v.* TARACK NATH CHANDRA (1909) . I. L. R 36 Calc. 917

——— ss. 1, 2.—*Summary inquiry into an offence punishable under the Workmen's Breach of Contract Act—Court Fees Act (VII of 1870), sec. 31—Court-fee on petition of Complaint—Liability of the workman to pay* An offence under the Workmen's Breach of Contract Act (XIII of 1859) cannot be tried summarily. A penal enactment must be construed strictly. The proceedings of the Magistrate, under the Act, up to and inclusive of the passing by him of an order for either the repayment of the advance or performance of the contract do not constitute a trial for any offence as defined in the Criminal Procedure Code In a proceeding under the Workman's Compensation Act where the workman admits the advance and repays the same it is not competent to the Magistrate to make him pay to the complainant the Court-fee paid on the petition of complaint EMPEROR *v* DHONDU (1904)
I. L. R. 33 Bom. 22

WORSHIP.

See HINDU LAW—WORSHIP.

WRITTEN STATEMENT.

See ADMISSION—ADMISSIONS IN STATEMENTS AND PLEADINGS
B. L. R. Sup. Vol. 904
1 B. L. R. A. C. 133
9 W. R. 83, 130, 290
16 W. R. 257
22 W. R. 220
I. L R. 14 Bom. 516

See PRACTICE I. L. R. 34 Calc. 443

See SET-OFF—CIVIL PROCEDURE CODE, 1882, s. 11
8 C. W. N. 174

See SET- OFF—GENERAL CASES
14 W. R. 473
I. L. R. 15 Mad. 22

——— absence of evidence in support of—

See EASEMENT. I. L R. 30 Calc. 918

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION
5 C. W. N. 71

——— denial of title in—

See CO-SHARER SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY
I. L. R. 28 Calc. 223

WRITTEN STATEMENT—*contd*.

——— denial of title in—*concld.*

See FALSE EVIDENCE—GENERAL CASES.
I. L R. 6 All. 626

See LANDLORD AND TENANT—FORFEITURE —DENIAL OF TITLE
I. L. R. 28 Calc. 135
I. L. R. 13 Calc. 96
I. L. R. 15 Mad. 123

——— presumption from non-denial in, of allegation made against defendant—

See INJUNCTION SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY . I. L. R. 26 Bom. 735

——— treated as an acknowledgment—

See LIMITATION ACT, 1877, s 19—ACKNOWLEDGMENT OF DEBTS.
I. L. R. 24 Mad. 361

1. ——— Form and contents of written statement—*Civil Procedure Code, 1859, s. 123—Defendant's written statement—Variance between pleading and proof* S. 123 of the Civil Procedure Code, contemplated that a defendant should, in his written statement, set forth the case he intends to make at the trial The rule followed in *Eshenchunder Singh* v. *Shamachurn Bhutto, 11 Moo. I. A. 7, Mohummud Zahoor Ali Khan* v. *Rutta Koer, 11 Moo I. A. 468;* and *Narainee Dossee* v. *Nurrohurry Mohuto, Marsh. 70,* that a plaintiff must be held to the state of facts and equities alleged and pleaded by him in his plaint, or involved in or consistent therewith, applies also to the case made on the pleadings by a defendant. Therefore, where the defendant in a suit in ejectment averred in his written statement that the land in dispute was in fact his, but had previously to ... who, in ... on, and ... itigation, ... e plaint- ... the land, ... of it :— and had since then remained in poss... *Held*, that the only defence open to the defendant was that of purchase, and that he could not be allowed at the trial to prove a case of continuous user and possession adverse to the plaintiff commencing before 1865. CHOVA KARA *v* ISA BIN KHALIFA . . . I. L. R 1 Bom. 209

2. ——— *Argumentative statement.* A written statement should not be argumentative. BISHEN SAHAYE SINGH *v* BEER KISHORE SINGH . . 8 W. R. 296

3. ——— *Offer without prejudice—Irrelevant matter—Act VIII of 1859, s. 124.*—An officer without prejudice should be omitted from the pleadings. In a suit where the written statement of the plaintiff contained letters relative to an offer made by the defendants without prejudice, the Court ordered, on the application of

WRITTEN STATEMENT—*contd*

the defendant, that the paragraphs of the written statement relating to the offer should be struck out HALFORD v EAST INDIAN RAILWAY COMPANY
12 B. L. R. Ap. 19

4. ——— *Irrelevant matter —Application to take written statement off the*

5. ——— *Taking off the file for irrelevancy—Relevant matter—Tender of written statement.* The Court has jurisdiction to

10 Bom. 425

6 ——— *Inconsistent pleas —Plea allowed on appeal inconsistent with written statement* A Hindu wrote his will devising certain ancestral property to his wife, and on the

ditional on the provisions of the will being acquiesced in *Held*, that the defendants were not precluded from succeeding on the latter of these pleas not- ... written *Hoseini* *A. 81,*

I. L. R. 14 Mad 172

7. ——— **Court fee on written statement**—*Code of Civil Procedure (Act VIII of 1859), s 120—Act X of 1877, s 110—Court Fees Act (VII of 1870), s 19* A written statement of

CHERAG ALI v. KADIR MAHOMED
12 C. L. R. 367

8. ——— **Verification of written statement**—*Admission on record without verification.* A written statement filed by the defendant should be verified, but if admitted in the record without verification, its allegation should be noticed and issues framed accordingly. RADHACHURN ROY v MORAN & Co . . . 13 W. R. 342

9. ——— *Verification on ... of Corpo ... Code, 1882, objection to* ... The Civil Procedure Code by ss 115 and 435 enables a principal officer of a corporation to verify a plaint or written statement, and it is therefore not necessary

plaint or a written statement on behalf of a Corporation or Company is a principal officer of the Corporation, and is able to depose to the facts of the case If the plaint or written statement contains a statement to that effect, verification in the usual form would probably be sufficient. Where suits had been filed against the East Indian Railway Company, the plaints in which described the defendant Company as a Corporation, and an application was made for the admission on behalf of the defendant Company of written statements signed, "The East Indian Railway Company by their constituted attorney and agent Richard Gardiner," who was described in the verification as the "Agent of the defendant Company," and the

relating to the verification of written statement, however, being intended for the protection of plaintiffs, the ir observance might be waived by the plaintiffs, and if they were prepared to waive objections to the sufficiency of the verification, further evidence of the nature indicated might be dispensed with SREENATH BANERJEE v. EAST INDIAN RAILWAY CO I. L. R. 22 Calc. 268

10. ——— *Application to verify—Notice—Practice* where an application is made that a written statement be verified by a person other than the plaintiff or defendant, it is always desirable that notice be given to the other side, although not absolutely necessary FINLAY, CAMPBELL & CO v. STEELE
1 Ind. Jur. N. S. 39

11. ——— *Application to* ... ll allow a ... e constitut- ... notice to the ... v. STEELE
1 Ind. Jur. N. S. 40

12. ——— **Filing written statement**—*Time for filing*—Under the Code of Civil Procedure a plaintiff cannot file a written statement after having seen that of the defendants, and by way

WRITTEN STATEMENT—*contd.*

of rejoinder thereto. JADUB RAM DEB *alias* JADUB CHUNDER DEB *v* RAM LOCHUN MUDUCK

5 W. R. 56

13. ——— *Filing and verifying written statement on behalf of plaintiff—Civil Procedure Code, 1859, ss. 28, 123.* The plaintiff in a suit went on a pilgrimage after he had been orderd to file a written statement, but without hav- ... case was ... and 123 ... and file a statement, alleging himself to be interested as a reversioner The application was refused *Held*, that a third party will not be allowed to verify and file a written statement for a plaintiff who has culpably neglected to file one himself. DENOMOYE DOSSEE *v* TARRACHURN COONDOO CHOWDHRY

Bourke O C. 153

14 ——— **Admission of written statements**—*Civil Procedure Code, 1859, ss 120, 122* The admission of written statements of the parties on various dates, unless expressly called for by the Court, was *held* to be contrary to the provisions of ss 120 and 122 of the Civil Procedure Code, 1859. ALI NUKEE *alias* EMDAD ALI *v.* TORAB ALI *alias* MIRZA NAWAB . **W. R. 1864, 44**

15. ——— **Written statement by third party**—*Power of Court* A Court has no authority to receive a written statement in a suit from one who is not a party, or to permit such a person to appear at the hearing. SURNOMOYEE *v.* BYKUNT CHUNDER MUSTOFEE . . **25 W. R. 17**

16. ——— **Defendant neglecting to put in statement**—*Adjournment of case—Costs* In the event of a defendant neglecting to furnish a written statement, the Court will examine him as to the grounds of his defence and should it appear desirable that a written statement should be put in, the case will be adjourned for that purpose at the expense of the defaulting party. RAMRUTTON *v* ORIENTAL INLAND STEAM NAVIGATION COMPANY

2 Hyde, 89

17. ——— **Additional written statement**—*Practice—Act VIII of 1859, s 122* An application by the defendant for leave to file an additional written statement allowed on condition of the defendant paying the whole costs and furnishing a copy of the additional statement to the ...

18. ——— *Supplemental statements, filing of* Supplemental written statements cannot be filed after the parties have entered upon their case at the hearing MUNCHERSHAW BEZONJI *v* NEW DHURUMSEY SPINNING & WEAVING COMPANY . **I L. R. 4 Bom. 576**

19. ——— *Civil Procedure Code, 1859, s 122* A Court was *held* not to have done wrong in admitting a supplemental written statement which it had called for under s. 122, Civil Procedure Code, 1859, which did not add to or vary the plaintiff's claim. JAHANGEER BUKSH *v.* BHICKAREE LALL . . **11 W. R. 71**

20. ——— *Statement explaining plaint.* A written statement which was in explanation of the plaint and not starting a new case was allowed to be put in by the plaintiff after evidence was taken, and the defendant not being prejudiced by its admission. LALL MAHOMED *v.* DHOOLEE RAM DOSS . . **22 W. R. 377**

21. ——— **Amendment of written statement**—*Permission to extend counter claim—Practice.* The defendants, owing to their ignorance of the true facts, did not include in their counter claim certain sums paid by them to the plaintiff in part payment of the alleged losses incurred in respect of the purchase and re-sale of the aforesaid cotton. *Held*, that the lower Court (RUSSELL, J) had rightly permitted the defendants to put in a supplemental written statement extending their counter claims so as to include these items. LAKHMICHAND *v* CHOTOORAM **I. L. R. 24 Bom. 403**

22 ——— **Objections to written statement**—*Sunday—"Four clear days"—Civil Procedure Code, 1859, s. 124* A written statement has been "four clear days" upon the file in compliance with the rule 28, although the last of such days is a Sunday. Objections to the written statement on the ground stated in s. 124 of Act VIII of 1859 cannot be taken when the suit is ripe for hearing. SMALLWOOD *v.* PARRY . **Cor. 39**

23. ——— *Civil Procedure Code (Act XIV of 1882), ss 115, 146 written statement, received and not objected to, though not signed or verified according to law—Objection taken on appeal after case fought out on merits* It is not obligatory upon a defendant to put in a written statement He may do so if he likes S 146 of ... issues ... statement ... on the Court to frame issues if the defendant ... takes no defence. Where a written statement filed on behalf of the defendant was actually received by the Court and no application was made by the plaintiff to have it taken off the file on the ground of its not being signed and verified by the defendant as required by s 115 of the Civil Procedure Code, and the question was raised for the first time in appeal after the case had been fought on in the first Court on the footing of a proper written statement *Held*, that in such circumstances the appellate Court was not justified in decreeing the suit on the footing that ... the written statement ... defendant, ... merits ... HRY ... **... C. ... 871**

(1907)

24. ——— **Raising question not raised in written statement**—*Omission to raise equitable defence in written statement.* A defendant is

WRITTEN STATEMENT—*concld*

not precluded from availing himself of any equity which might arise out of the facts proved at the trial, merely because he has not raised that equity on the face of his written statement GOUR CHUNDER BISWAS *v.* GREESH CHUNDER BISWAS

7 W. R. 120

25. ——————— *Raising question of jurisdiction—Fresh issue—Practice.* Where a question of jurisdiction had not been raised in a written statement, the defence therein being limited to a statement, of the merits of the case, an application to raise an issue as to jurisdiction was granted on payment of the costs of the adjournment to enable the plaintiff to meet the case set up BOHTYVOLLI *v.* PALMER . . . . **Cor. 8**

WRITTEN SUBMISSION.

See ADMINISTRATION SUIT
I. L. R. 33 Bom. 69

WRONG-DOERS.

See CONTRIBUTION, SUIT FOR—JOINT WRONG DOERS.

See LIMITATION ACT, 1877, SCH II, ART. 109 . . **I. L. R. 24 Calc. 413**

See PARTITION . **I. L. R. 35 Calc. 961**
12 C. W. N. 127

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES
I. L. R. 14 Bom. 408

WRONGFUL ATTACHMENT.

See ATTACHMENT—LIABILITY FOR WRONGFUL ATTACHMENT
I. L. R. 17 Calc. 436
L. R. 17 I. A. 17

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS.
3 B. L. R. A. C. 413

I L. R. 3 Bom. 74
7 Mad. 235

See DAMAGES—SUITS FOR DAMAGES—TORTS.

See EXECUTION OF DECREE—LIABILITY FOR WRONGFUL EXECUTION.

WRONGFUL CONFINEMENT.

See COMPOUNDING OFFENCE
I. L R 21 Calc. 103

See PENAL CODE, ss. 340 to 348

See UNLAWFUL COMPULSION.
I. L. R. 19 Calc. 572

See WRONGFUL RESTRAINT
I. L. R. 12 Bom. 377

1. ——— **What amounts to imprisonment**—*Suit for damages* The detaining of a person in a particular place, or the compelling him to go in a particular direction by force of an exterior will overpowering or suppressing in any way his

WRONGFUL CONFINEMENT—*contd.*

own voluntary action, is an imprisonment on the part of the person exercising that exterior will. PARAN KUSAM NARASAYA PANTULU *v.* STUART.
2 Mad. 396

2. ——— **Nature of confinement**—*Penal Code (Act XLV of 1860), s 340.* In order to render a person liable under s 340 of the Penal Code it must be shown that the wrongful confinement was of such a nature as to indicate an intention that the person confined should not be discovered. *In the matter of the petition of* SREENATH BANERJEE. EMPRESS *v.* SREENATH BANERJEE.
I. L. R. 9 Calc. 221

3. ——— **Unlawful commitment by person in authority**—*Illegal arrest—Penal Code, s 220—Presumption of malice* Proof of an unlawful commitment to confinement will not of itself warrant the legal inference of malice. Knowledge that such commitment is contrary to law is a question of fact and not of law, and must be proved in order to satisfy the requirements of s 220 of the Penal Code REG *v.* NARAYAN BABAJI
9 Bom 346

4. ——— **Obtaining arrest of wrong person**—*Liability of person setting Court in*

the process fraudulently or improperly. BHEEMA CHARLU *v.* DONTI MURTI . . **8 Mad. 38**

5. ——— **Illegal arrest**—*Malice* Four persons, two of them police constables and two village officers, were convicted of wrongful confinement and abetment thereof. The defendants, the village officers, maliciously directed the arrest of certain persons for resisting the detention of certain pigs found trespassing. *Held*, a good conviction ANONYMOUS . **5 Mad. Ap. 24**

6. ——— **Wrongful restraint**—*Penal Code, ss 339, 340, 342—Malice.* Malice is not an

obstructed so as to be prevented from proceeding in any direction in which he has a right to proceed The accused as abkari inspector visited a toddy shop where the complainant and one *D* were employed as agents for the sale of toddy. Having

detained him during the night, and on the following

WRONGFUL CONFINEMENT—*contd.*

morning sent him in charge of a sepoy to a Magistrate's Court, where the complainant repeated the statements made by him before the accused. He was then allowed to go away. The accused prosecuted *D*, and in the course of his trial admitted in his deposition that he had ordered his sepoy to [illegible]

the complainant had voluntarily come to his tent to have his statements reduced to writing, and that [illegible]

X of 1882) The Sessions Judge held that, though the accused had detained the complainant in his camp during the night, still he was not guilty of any offence under the Penal Code, as he had acted without malice and to the best of his judgment. *Held*, by the High Court on revision, that the mere circumstance that the accused had acted without malice and to the best of his judgment did not protect him, if his act otherwise satisfied the definition of s 310 of the Indian Penal Code. DHANIA *v* CLIFFORD . **I. L. R. 13 Bom. 376**

7. ——— **Wrongful arrest**—*Penal Code (Act XLV of 1860), s 342—Criminal Procedure Code, 1882, s 54—Offence committed by a British subject in foreign territory—Powers of the police to arrest for such offence without a warrant.* S. 54 of the Criminal Procedure Code (Act X of 1882) does not empower a police officer to arrest, without a warrant, a British subject in British India on a charge of criminal breach of trust or other cognizable offence committed outside British India. *M* was a native Indian subject of the Queen-Empress, residing at Belgaum. A complaint was filed against him in the Sangli State, charging him with committing breach of trust within the territories of that State Thereupon he obtained an order from the District Magistrate of Belgaum, dated the 15th November 1891, which exempted [illegible]

on a charge of criminal breach of trust. The chief constable thereupon directed *M's* arrest. *M* brought to the notice of the chief constable the District Magistrate's order of the 15th November 1891, but he was detained in custody till the matter was reported to the first class Magistrate, who ordered his discharge. In the meantime the complaint filed against *M* in the Sangli State was dismissed without requiring his extradition. *M* thereupon prosecuted the chief constable on a charge of wrongful arrest and wrongful confinement. *Held*, that the chief constable had no [illegible] warrant [illegible] wrongful [illegible] Code *In* [illegible] Bom. 72

8. ——— *Prisoner in jail—Confinement, illegal, in cell—Penal Code (Act XLV of 1860), ss. 79, 114 and 342.* If a prisoner is confined in a particular part of a prison without legal authority, that confinement is a wrongful one, notwithstanding that his confinement in the prison at large may be legal. BAISHTAB CHARAN SHAHA *v.* EMPEROR (1902) **I. L. R. 30 Calc. 95**
s. c. 6 C. W. N. 511

9. ——— *Penal Code (Act XLV of 1860) s 342—Officer arresting and confining judgment-debtor in house of judgment creditor not* [illegible]

he confines him in the house of the judgment- [illegible]

I. L. R. 30 Mad. [illegible]

WRONGFUL CONVERSION.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS.
I. L. R. 4 Calc 116
5 Bom. O. C. 140
I. L. R. 10 All. 133

See ONUS OF PROOF—WRONGFUL CONVERSION . . . **7 W. R. 286**

See PLEDGOR AND PLEDGEE.
I. L. R. 19 Calc 322
L. R. 19 I. A. 60

WRONGFUL DETENTION.

——— **Detention of accused by Police Inspector**—*Criminal Procedure Code, 1872, s 124—Per* GLOVER, *J*—Where a Sub-Inspector of Police is charged with having detained prisoners for more than twenty-four hours, it is not necessary for the Crown to prove that he detained them with a guilty knowledge, as s 124, Act X of 1872, imperatively lays down that accused persons are on no account to be detained beyond that time except under special order of the Magistrate, which was not obtained in this case. QUEEN *v.* BASOORAM DASS . **19 W. R. Cr. 36**

WRONGFUL DISMISSAL.

See DAMAGES, SUIT FOR . **I. L. R. 34 Calc 863**

See MASTER AND SERVANT.

WRONGFUL DISMISSAL *contd.*

suit for, against Government.

See GOVERNMENT . **7 B. L. R. 688**

WRONGFUL DISTRAINT.

See BENGAL RENT ACT (VIII OF 1869), s. 27 . **6 W. R. Act X, 7, 33**
7 W. R. 41
9 W. R. 162
Marsh. 264
15 W. R. 461
3 B. L. R. Ap. 74
3 B. L. R. A. C. 261

See BENGAL RENT ACT (VIII OF 1869), s. 100
Marsh. 470
3 W. R. Act X, 130

See BENGAL TENANCY ACT, ss. 121, 122, 140
I. L. R. 28 Calc. 364

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.
I. L. R. 12 All. 409

See LIMITATION ACT, 1877, SCH. II, ART. 28.
7 C. W. N. 728

See MADRAS RENT RECOVERY ACT, s. 20
I. L. R. 26 Mad. 183

See MADRAS RENT RECOVERY ACT, s. 78.
I. L. R. 20 Mad. 449

See PRIVATE DEFENCE, RIGHT OF
23 W. R. Cr. 40

See RIOTING . . **8 Mad. Ap. 11**
I. L. R. 13 Mad. 148

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—WRONGFUL DISTRAINT.

See TRESPASS—GENERAL CASES
23 W. R. Cr. 40

1. ———— **Cutting and carrying away crops**—*Persons put in possession in execution of decree.* Certain patnidars who, in execution of a [illegible] nal [illegible] the [illegible] hey [illegible] ops [illegible] of [illegible] for [illegible] HA- [illegible] **70**

2. ———— **Crops, seizure of**—*Act X of 1859, ss. 142 and 143—Trespass.* Certain sub- [illegible]

WRONGFUL DISTRAINT—*contd.*

the provisions of the law, though he has no power to distrain, but also the case of a person [illegible] under colour of the Act, does distrain, [illegible] [illegible] against them by the Revenue Court [illegible] MOHAN NASKAR *v.* JADUNATH DASS
3 B. L. R. A. C. 261 : 12 W. R. [illegible]

3. ———— **Person acting without authority**—*Act X of 1859, s. 143—Trespasser.* [illegible] Act X of 1859, did not apply when a [illegible] without the authority of the superior [illegible] such a case he was a mere trespasser. [illegible] BHOLANATH DOSS . . **5 W. R. Act X, [illegible]**

4. ———— **Suit for damages for illegal distraint**—*Tort—Non-joinder of parties [illegible] in actions of tort.* A suit for compensation for illegal distraint of crops was brought by one of the persons jointly entitled to the crops [illegible] Objection being taken at a late stage of the case on the ground of non-joinder of a party, that party was in his own application added as a plaintiff. *Held,* that the rule that persons having the same cause of action must sue jointly does not apply to actions on tort in every case in which persons have been damnified by the same tortious act. If the objection of non-joinder of party in an action of tort be not taken at the time and in the way provided by law, the defendant is liable to such portion of the damages only as have been incurred by the plaintiff who originally brought the suit. JAGDEO SINGH *v.* PADARATH AHIR.
I. L. R. 25 Calc. 2[illegible]

5. ———— **Persons removing property under rent law**—*Procedure—Penal Code, s. [illegible]* Persons removing property under the provisions of the rent law relating to distraint ought not to be proceeded against under the criminal law, but the parties aggrieved by a wrongful distraint should have recourse to the remedy provided by Bengal Act VIII of 1869. *In the matter of* AGHANI AGHANI *v.* BHAGI HALWAI . **8 C. L. R. 204**

6. ———— **Right to sue to set aside wrongful distraint**—*Right of landlord against trespasser.* A landlord whose tenant's crops have been wrongfully distrained by a stranger, has a right to sue to set aside such wrongful distraint. HORRO NARAIN *v.* SHOODHA KRISHTO BEHAH.
I. L. R. 4 Calc. 890 : 4 C. L. R. 32

7. ———— **Right to damages for wrongful distraint**—*Beng. Act VIII of 1869, ss. 69, 78—Liability to suit for damages.* When, on the [illegible]

WRONGFUL DISTRAINT—*concld.*

8. ——— **Right to damages**— *Act X of 1859, s 142—Suit to contest distraint—Onus of proof damages* In a suit to contest the demand of a distrainer, the landlord is only required to prove the fact of tenancy and the amount of jumma if thereupon the tenant pleads payment and payment is denied, the onus is on the tenant to prove his allegation Before a tenant can obtain any decree for damages on the ground of illegal distraint he must prove what loss he has actually sustained. OOJAN DEWAN *v.* PRANNATH MUNDUL

8 W. R. 220

9. ——— **Onus of proof**—*Suit for damages for wrongful distraint—Act X of 1859, s. 143.* In order to maintain a suit under s 143, Act X of 1859, it was necessary for the plaintiff to prove that

ation for the claim set up RAYE KUMUL DOSSEE *v* JHOROO MOLLAH . . **15 W. R. 543**

See JOYLOLL SHEIKH *v.* BROJONATH PAUL CHOWDHRY . . **9 W. R. 162**

10. ——— **Suit on account of property damaged by wrongful distrainer**—*Act X of 1859, s 142—Damages for vexatious distraint, power of Court to award.* When a suit had been brought under s. 142, Act X of 1859, on account of property damaged or destroyed by neglect of a distrainer, the Court was not competent to award damages for vexatious distraint. Such damages were properly awarded by the Collector under s. 138, in a suit to contest the distrainer's demand. NONKOO RAM *v.* WOOJOGUR ROY .

5 W. R., Act X, 68

11. ——— **Procedure**—*Beng Act VIII of 1869, s 101—Proceedings against persons wrongfully distraining* When proceedings are taken before a Munsif under Bengal Act VIII of 1869, s 101, he is bound, first, to inquire whether an offence has been committed, and if he is satisfied ... t the ... pay ... HAND

. . . **445**

WRONGFUL GAIN OR LOSS.

See CRIMINAL BREACH OF TRUST.
6 C. W. N. 203

See CHEATING . **I. L. R. 33 Calc. 50**

See THEFT . **I. L. R. 15 Bom. 344**
I. L. R. 18 All 88
I. L. R. 22 Calc. 669; 1017
I. L. R. 25 Calc. 416

WRONGFUL LOSS.

See CHEATING . **I. L. R. 33 Calc. 50**

See FORGERY . **5 C. W. N. 897**

WRONGFUL LOSS—*concld.*

See MISCHIEF . **3 B. L. R. A. Cr. 17**
I. L. R. 3 Calc. 473
I. L. R 12 Calc. 55; 660
I. L. R. 7 Bom. 126

See WRONGFUL GAIN OR LOSS.

WRONGFUL POSSESSION.

——— **Trespasser**—*Sums paid during wrongful possession, right to recover.* Where a person was wrongfully taken possession of an estate and held it adversely to the true owner, and has,

so paid, even though such payments may have enured to the benefit of the true owner, but must be content to bear the burden of his own wrong TILUCK CHAND *v* SOUDAMINI DASI

I. L. R. 4 Calc. 566; 3 C. L. R. 456

WRONGFUL RESTRAINT.

See COMPOUNDING OFFENCE.
I. L. R. 21 Calc. 103

See MISCHIEF . **I. L. R. 12 Calc. 55**

See PENAL CODE, ss. 339 to 341.

See WRONGFUL CONFINEMENT.
I. L. R. 13 Bom. 378

... 339, 340, 342 ... police ... where ... n act of ... and no ... hough there ... exercise of ... officer, the ... he criminal offence of wrongful restraint. *In the matter of the petition of* BUDROOL HOSSEIN

24 W. R. Cr. 51

2. ——— **s. 339**—*Refusal to let person go until he gave bail.* Where a police officer refused to let a person go home until he had given bail, he was *held* to have been guilty of wrongful restraint under s. 339 of the Penal Code SHEO SHURN SAHAI *v.* MAHOMED FAZIL KHAN

10 W. R. Cr 20

3. ——— *Police keeping witness in custody under surveillance.* Where the police kept a witness under surveillance for four days, the High Court *held*, under the circumstances, that there was nothing in law to warrant them in keeping him so in restraint. BAJRANGI LALL *v* EMPRESS . . . . . **4 C. W. N. 49**

4. ——— *Restraint and taking money on false plea.* Where the accused

WRONGFUL RESTRAINT—*contd.*

prevented the complainants from proceeding in a certain direction with their carts and exacted from them a sum of money on a false plea:—*Held*, that the accused were guilty of wrongful restraint, and not theft. JOWAHIR SHAH *v.* GIRDHARRE CHOWDHRY 10 W. R. Cr. 35

5. ——— Penal Code, ss. 79 and 341—*Mistake of fact—Act done in good faith under belief it is justified by law.* A Court peon accompanied by two of the decree-holder's men (petitioners) went to execute a warrant of arrest against the judgment-debtor *M.* A palki with closed doors was noticed to [illegible]

Held, that, having regard to the terms of s. 79 of the Penal Code, a conviction of the petitioners under s. 341 was not right. KANAI LAL GOWALA *v.* QUEEN-EMPRESS I. L. R. 24 Calc. 885

KANHAI GOALA *v.* QUEEN-EMPRESS 1 C. W. N. 665

6. ——— Penal Code, ss. 52, 79, 99, and 342—*Act done by a person by mistake of fact in good faith believing himself justified by law—Right of private defence against acts of a public servant acting bonâ fide under colour of his office—Act XII of 1850, s. 35—Reasonable suspicion—Obstruction to a police officer while acting in execution of duty—Arrest—Criminal Procedure Code (Act X of 1882), s. 54.* On the 29th December 1887, the accused, a police constable, was on duty at a temporary post near the Arther Crawford Market. His turn of duty lasted from 4 to 7 A. M. Between 6-30 and 7 A.M. he saw the complainant carrying under his arm three pieces of cloth. Suspecting that the cloth was stolen property, he went up to the complainant and questioned him. In answer to one of the questions the complainant stated that the cloth was made in England. The accused, noticing that each piece bore Gujarathi marks and not knowing that such marks are placed on English-made goods, concluded that this statement was false, and that the cloth had been stolen. He took hold of one of the pieces of cloth in order to examine it more closely. The complainant objected to this, and there was a scuffle between them for the possession of the cloth. The accused then arrested the complainant, and took him to a European Inspector, to whom he stated the facts, alleging that he had arrested the complainant because he had assaulted him. The Inspector, seeing that the complainant was an old man, and on the accused saying he was not hurt, let the complainant go. The complainant then lodged a complaint before the acting Chief Presidency Magistrate charging the accused with wrongful restraint and wrongful confinement, offences punishable under ss. 341 and 342, respectively, of the Indian Penal Code (XLV of 1860). The defence was that the complainant had assaulted the accused, and had been on that account arrested and kept in confinement until released by the Inspector of Police. The Magistrate found that there was no justification for the suspicion which the accused professed to entertain; that there were no reasonable grounds for questioning the complainant about the cloth in his possession, and that the scuffle was caused solely by the action of the accused in treating the complainant without any valid reason as a suspected thief. The [illegible] that the conviction was wrong. The accused having, under the circumstances of the case, an honest suspicion that the cloth in the possession of the complainant was stolen property, was justified in putting questions to the complainant, the answers to which might clear away his suspicions, and having received answers which were not, in his opinion, satisfactory, he acted under a *bonâ fide* belief that he was legally justified in detaining what he suspected to be stolen property. The putting of questions to the complainant, not for the purpose of causing annoyance or from idle curiosity, but in order to clear up his suspicions, was an indication of good faith, as defined in s. 52 of the Indian Penal Code (Act XLV of 1860). He was therefore protected by s. 79 of the Code. Even though the act [illegible] the Code, as the accused was a public servant acting in good faith under colour of his office, and his act was not one which caused the apprehension of death or of grievous hurt. The complainant was not justified in refusing to allow the accused to inspect the cloth, in snatching it from his hands, and in scuffling with him. He was therefore [illegible]

I. L. R. 12 Bom. 377

7. ——— *Indian Penal Code (Act XLV of 1860), ss. 113, 341—Erecting a fence over a way—Obstruction to public pathway—Decree of Civil Court—Maps and plans deposed—way—Unlawful assembly—Magistrate, duty of, to maintain decrees of Civil Court—Rule, enlargement of, at the hearing.* In deciding whether a person accused of wrongful restraint by erecting a fence over a way had, as he alleged, obtained a decree of the Civil Court with regard to that particular

WRONGFUL RESTRAINT—*concld.*

way, a Magistrate should, instead of obtaining evidence to modify or question a decree passed by the Civil Court declaring rights of parties, confine his attention to observing or enforcing the terms of the decree of the Civil Court RASH MOHAN PAL *v.* MOHIM CHANDRA CHAKRAVARTY (1900)

5 C. W. N. 215

8. ———————— *Criminal Procedure Code (Act V of 1898) s 423—Right of way, interference with—Order of preserving status quo ante on conviction, if proper—Appellate Court, power of, to set aside for such order —Penal Code (Act XLV of 1860), s 341.* Where a person blocked up a private way, along which the complainant had a right to go, by raising a wall, and was convicted of the offence of wrongful restraint under s 341 of the Penal Code, and an order was passed by the trying Magistrate directing the accused to remove the obstruction and not to interfere with the complainant's right of way, and, on appeal, the Appellate Court set aside the order directing the removal of the obstruction and preventing the accused from interfering with the complainant's right :—*Held,* that the order of removal of the obstruction was a necessary corollary to the previous conviction of the accused, and was a proper order *Held,* also, that, although an Appellate Court has, under s 423 of the Code of Criminal Procedure, the power of making any amendment *or any consequential or incidental order that* may be just and proper, such Court cannot make an order which would make the entire proceeding infructuous and absurd *Held,* also, that the order of the Appellate Court, setting aside the order for removal of the obstruction, was neither proper nor just DEBENDRA CHANDRA CHOWDHURY *v* MOHINI MOHAN CHOWDHURY (1901) . .

5 C. W. N. 432

9. ———————— *Right of way, interference with—Order to remove obstruction, legality of—Penal Code (Act XLV of 1860), ss. 114, 241,* [illegible] *522,* [illegible] and [illegible] convicting an accused under ss. [illegible]/114 of the Penal Code for wrongfully restraining a person by the erection of a hut or by similar act of obstruction, has no [illegible] that, whereas in this case criminal force had been [illegible] the complainant when the [illegible] an order [illegible]

WRONGFUL SEIZURE IN EXECUTION.

See CIVIL PROCEDURE CODE, 1882, s. 244 (ACT XXIII OF 1861, s 11)—QUESTIONS IN EXECUTION OF DECREE.
3 N. W. 187
2 Agra 105
5 Mad. 185
12 B. L. R. 201; 203 note; 207 note; 208 note.
12 W. R. 85
3 B. L. R. A. C. 413
I. L. R. 22 Calc. 483

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS
Marsh. 495
3 Agra 202
3 B. L. R. A. C. 413
I. L. R. 3 Bom. 74
7 Mad. 235

See EXECUTION OF DECREE—LIABILITY FOR WRONGFUL EXECUTION

See MALICIOUS PROSECUTION.
I. L. R. 19 Bom. 485

See SALE IN EXECUTION OF DECREE—WRONGFUL SALES

Y

YEAR.

—— agricultural—

See N.-W. P. RENT ACT (XVIII OF 1873), s 94 . . I. L. R. 1 All. 512

YOUTHFUL OFFENDER.

See REFORMATORY SCHOOLS ACT (VIII OF 1897)

Z

ZAMINDAR.

See CHAUKIDARI CHAKRAN ACT, s 48.
10 C. W. N. 637

See GRANT—CONSTRUCTION OF GRANTS.
I. L. R. 9 Mad. 307
L. R. 13 I. A. 32

See GRANT — POWER TO GRANT.
B. L. R. Sup. Vol. 75, 774

See ZAMINDAR, DUTY OF.

See ZAMINDAR, POWER OF.

See ZAMINDAR, RIGHTS OF.

See ZAMINDAR AND RAIYAT

——— kabuliat between [illegible] and—

See SPECIFIC P[illegible] CASES [illegible]

ZAMINDAR—*contd.*

liability of, for repairs of tank [illegible]

I. L. R. 15 Mad. 88

——— proof of title of—

[illegible]

I. L. R. 15 Mad. 123
L. R. 15 I. A. 149

——— purchase by, of patni interest, effect of—

[illegible] 3 C. L. R. 159
I. L. R. 19 Calc. 760

ZAMINDAR, DUTY OF

Ancient tanks—[illegible] *— Liability for damage occasioned by overflow of tanks.* The public duty of maintaining ancient tanks, and of constructing new ones, was originally undertaken by the Government of India, and upon the settlement of the country has, in many instances, devolved upon zamindars. Such zamindars have no power to do away with these tanks, in the maintenance of which large numbers of people are interested, but are charged under Indian law, by reason of their tenure, with the duty of preserving and repairing them. The rights and liabilities of such zamindars with regard to these tanks are analogous to those of persons or corporations on whom statutory powers have been conferred and statutory duties imposed. A zamindar, if the banks of any such tank in his possession are washed away by an extraordinary flood without negligence on his part, is not liable for damage occasioned thereby. MADRAS RAILWAY COMPANY *v.* ZAMINDAR OF CARVETINAGARAM

14 B. L. R. 209: 22 W. R 279
L. R. 1 I. A. 364

s.c. in lower Courts. MADRAS RAILWAY COMPANY *v.* ZAMINDAR OF KAVETINUGGUR

5 Mad 139

and after remand . . . . 6 Mad. 180

ZAMINDAR, POWER OF.

1. ——— Power to grant lease—*Lease granted for longer term than zamindar's engagement with Government — Operation of Act XVI of 1842* A lease granted by a zamindar for a longer period than the term of his own engagement with the [illegible]

NITA RAM *v.* NANUCK DASS

1 N. W. Part III, 47: Ed. 1873, 103

2. ——— *Hindu law—Authority to grant lease as manager and owner.* Under the Hindu law, the granting of a lease, though for a term, is an act within the scope of a zamindar's authority as manager and owner of the

ZAMINDAR, POWER OF—*contd.*

[illegible] as such, binding on his successors, unless in the circumstances in which it was made it was otherwise than bona fide. [illegible] *v.* [illegible] I. L. R. 9 Mad. [illegible]

3. ——— Power to alter boundaries—[illegible] without sanction of Government. Zamindars [illegible] without the sanction of Government, to alter the boundaries of their permanently settled estates, and to transfer villages from one estate to another. Such an arrangement is of no binding effect, except between the parties who have made it. [illegible] *v.* [illegible] TEWAREE . . . W. R. 1864, 84

4. ——— Power to charge estate with personal debts—A decree for possession of certain land with wasilat obtained by a zamindar of an estate, as such, cannot be pledged by him as security for a personal debt, nor for such a debt can the estate be made liable, nor his successor be held responsible. NIMYE CHURN SEIN *v.* RAMMONEE BEEBEE 10 W. R. 162

ZAMINDAR, RIGHTS OF.

See MADRAS REGULATION XXV OF 1802. 14 B. L. R. 115
L. R. 1 A. 208; 209

See PATNI TENURE.
I. L. R. 20 Calc. 744

See WASTE LANDS
I. L. R. 10 All. 173

1. ——— Nature of zamindari estate—*Power to deal with estate.* A zamindar's estate is analogous to an estate tail as it originally stood upon the statute *de donis*. The zamindar is the [illegible]

2. ——— Collections of rent—*Claim to intermediate tenure—Onus of proof.* A zamindar [illegible]

[illegible] PRASAD TEWARI [illegible]
2 B. L. R. P. C. 111: 12 W. R. P. C. 6
12 Moo. I. A. 290

3. ——— Right to rent—*Payment of revenue by zamindar.* The right of a zamindar to exact from a tenant payment of rent for a certain piece of land in no way depends on whether he does or does not pay revenue for that land. JOTENDRO MOHUN TAGORE *v.* AYMUN BEEBEE

1 C. L. R. [illegible]

4. ——— Liability for rent—*Co-sharers in taluk.* *Held*, that a zamindar, by bee[illegible] co-sharer in the talukh, does not lose [illegible] the joint responsibility of all the other [illegible] for the due payment of the rent; [illegible]

WRONGFUL RESTRAINT—*concld.*

way, a Magistrate should, instead of obtaining evidence to modify or question a decree passed by the Civil Court declaring rights of parties, confine his attention to observing or enforcing the terms of the decree of the Civil Court. RASH MOHAN PAL *v.* MOHIM CHANDRA CHAKRAVARTY (1900)

5 C. W. N. 215

8. ———— *Criminal Procedure Code (Act V of 1898) s. 423—Right of way, interference with—Order of preserving status quo ante on conviction, if proper—Appellate Court, power of, to set aside for such order —Penal Code (Act XLV of 1860), s 341.* Where a person blocked up a private way, along which the complainant had a right to go, by raising a wall, and was convicted of the offence of wrongful restraint under s 341 of the Penal Code, and an order was passed by the trying Magistrate directing the accused to remove the obstruction and not to [illegible]

[illegible] right :—*Held,* that the order of removal of the obstruction was a necessary corollary to the previous conviction of the accused, and was a proper order *Held,* also, that, although an Appellate Court has, under s 423 of the Code of Criminal Procedure, the power of making any amendment or any consequential or incidental order that may be just and proper, such Court cannot make an order which would make the entire proceeding infructuous and absurd. *Held,* also, that the order of the Appellate Court, setting aside the order for removal of the obstruction, was neither proper nor just DEBENDRA CHANDRA CHOWDHURY *v.* MOHINI MOHAN CHOWDHURY (1901) .

5 C. W. N. 432

9. ———— *Right of way, interference with—Order to remove obstruction, legality of—Penal Code (Act XLV of 1860), ss 114, 341, Criminal Procedure Code (Act V of 1898), s. 522* *Held,* by the Full Bench (AMEER ALI, J., and BRETT, J. dissenting), that a Magistrate, while convicting an accused under ss $\frac{341}{114}$ of the Penal Code for wrongfully restraining a person by the erection of a hut or by similar act of obstruction, has no [illegible]

[illegible]

offence the accused had been convicted, an order [illegible]

WRONGFUL SEIZURE IN EXECUTION.

See CIVIL PROCEDURE CODE, 1882, s. 244 (ACT XXIII OF 1861, s. 11)—QUESTIONS IN EXECUTION OF DECREE

3 N. W. 187
2 Agra 105
5 Mad. 185

12 B. L. R. 201; 203 note; 207 note; 208 note. 12 W. R. 85
3 B L. R. A. C. 413
I. L. R. 22 Calc. 483

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS

Marsh. 495
3 Agra 202
3 B. L. R. A. C. 413
I. L. R. 3 Bom. 74
7 Mad. 235

See EXECUTION OF DECREE—LIABILITY FOR WRONGFUL EXECUTION.

See MALICIOUS PROSECUTION.

I. L. R. 19 Bom. 485

See SALE IN EXECUTION OF DECREE—WRONGFUL SALES

Y

YEAR.

—— agricultural—

See N.-W. P. RENT ACT (XVIII OF 1873), s. 94 . . I. L. R. 1 All. 512

YOUTHFUL OFFENDER.

See REFORMATORY SCHOOLS ACT (VIII OF 1897).

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ZAMINDAR.

See CHAUKIDARI CHAKRAN ACT, s. 48.
10 C. W. N. 637

See GRANT—CONSTRUCTION OF GRANTS
I. L. R. 9 Mad. 307
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See GRANT — POWER TO GRANT.
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See ZAMINDAR, DUTY OF.

See ZAMINDAR, POWER OF.

See ZAMINDAR, RIGHTS OF.

See ZAMINDAR AND RAIYAT.

———— kabuliat between Government and—

See SPECIFIC PERFORMANCE — SPECIAL CASES . I. L. R. 3 Calc. 404

ZAMINDAR—*concld*

liability of, for repairs of tank

See CONTRACT ACT, s. 70
I. L. R. 18 Mad. 88

——— proof of title of—

See OWNERSHIP, PRESUMPTION OF
I. L. R. 15 Mad. 101
L. R. 18 I. A. 149

——— purchase by, of patni interest, effect of—

See MERGER . . 3 C. L. R. 159
I. L. R. 19 Calc 760

ZAMINDAR, DUTY OF

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ZAMINDAR, POWER OF.

1. ——— Power to grant lease—*Lease granted for longer term than zamindar's engagement with Government — Operation of Act XVI of 1812.* A lease granted by a zamindar for a longer period than the term of his own engagement with the

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1 N. W. Part III, 47: Ed. 1873, 103

2 ——— *Hindu law—Authority to grant lease as manager and owner.* Under the Hindu law, the granting of a lease, though for a term, is an act within the scope of a zamindar's authority as manager and owner of the

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zamindari, and is, as such, binding on his successor, unless, in the circumstances in which it was made, it was otherwise than *bonâ fide*. RAMANANDAN v SRINIVASA MURTHI . . I. L. R 2 Mad. 80

3. ——— Power to alter boundaries—*Effect of arrangement altering boundary without sanction of Government.* Zamindars have no authority, without the sanction of Government, to alter the boundaries of their permanently settled

4. ——— Power to charge estate with personal debts—A decree for possession of certain land with wasilat obtained by a zamindar of an estate, as such, cannot be pledged by him as security for a personal debt, nor for such a debt can the estate be made liable, nor his successor be held responsible. NIMAYE CHURN SEIN v. RAMMONEE BEEBEE 10 W. R. 152

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See WASTE LANDS
I. L. R. 19 All. 172

1. ———Nature of zamindari estate—

2. ——— Collections of rent—*Claim to intermediate tenure—Onus of proof.* A zamindar

PRASAD TEWARI
2 B L. R. P. C. 111; 12 W. R. P. C. 6
12 Moo. I. A. 286

3. ——— Right to rent—*Payment of revenue by zamindar.* The right of a zamindar to exact from a tenant payment of rent for a certain piece of land in no way depends on whether he does or does not pay revenue for that land. JOTENDRO MOHUN TAGORE v. AYMUN BEEBEE
1 C. L. R. 386

4. ——— Liability for rent—*Co-sharer in talukh.* *Held*, that a zamindar, by becoming a co-sharer in the talukh, does not lose his right to the joint responsibility of all the other co-sharers for the due payment of the rent; he only becomes

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way, a Magistrate should, instead of obtaining evidence to modify or question a decree passed by the Civil Court declaring rights of parties, confine his attention to observing or enforcing the terms of the decree of the Civil Court RASH MOHAN PAL *v.* MOHIM CHANDRA CHAKRAVARTY (1900)

5 C. W. N. 215

8. ———————— *Criminal Procedure Code (Act V of 1898) s 423—Right of way, interference with—Order of preserving status quo ante on conviction, if proper—Appellate Court, power of, to set aside for such order —Penal Code (Act XLV of 1860), s 341.* Where a person blocked up a private way, along which the complainant had a right to go, by raising a wall, and was convicted of the offence of wrongful restraint under s 341 of the Penal Code, and an order was passed by the trying Magistrate directing the accused to remove the obstruction and not to

[illegible]

ant's right :—*Held*, that the order of removal of the obstruction was a necessary corollary to the previous conviction of the accused, and was a proper order. *Held*, also, that, although an Appellate Court has, under s 423 of the Code of Criminal Procedure, the power of making any amendment or any consequential or incidental order that

[illegible]

nor just. DEBENDRA CHANDRA CHOWDHURY *v.* MOHINI MOHAN CHOWDHURY (1901) . .

5 C. W. N. 432

9. ———————— *Right of way, in-*

[illegible]

BRETT, J. dissenting), that a Magistrate, while convicting an accused under ss. $\frac{341}{114}$ of the Penal Code for wrongfully restraining a person by the erection of a hut or by similar act of obstruction, has no

[illegible]

stituted the offence of wrongful restraint, of which offence the accused had been convicted, an order for the removal of the obstruction should be passed under s. 522 of the Criminal Procedure Code. MOHINI MOHAN CHOWDHURY *v.* HARENDRA CHANDRA CHOWDHURY (1904) . I. L. R. 31 Calc. 691

WRONGFUL SEIZURE IN EXECUTION.

See CIVIL PROCEDURE CODE, 1882, s. 244 (ACT XXIII OF 1861, s 11)—QUESTIONS IN EXECUTION OF DECREE.

3 N. W. 187
2 Agra 105
5 Mad. 185
12 B. L. R. 201; 203 note; 207 note; 208 note.
12 W. R. 85
3 B. L. R. A. C. 413
I. L. R. 22 Calc. 483

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS

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3 Agra 202
3 B. L R. A. C. 413
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See EXECUTION OF DECREE—LIABILITY FOR WRONGFUL EXECUTION.

See MALICIOUS PROSECUTION.

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See SALE IN EXECUTION OF DECREE—WRONGFUL SALES.

Y

YEAR.

—— agricultural—

See N.-W. P RENT ACT (XVIII OF 1873), s 94 . . I. L. R 1 All. 512

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See REFORMATORY SCHOOLS ACT (VIII OF 1897).

Z

ZAMINDAR.

See CHAUKIDARI CHAKRAN ACT, s 48.
10 C. W. N. 637

See GRANT—CONSTRUCTION OF GRANTS.
I. L. R. 9 Mad. 307
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See GRANT — POWER TO GRANT.
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See ZAMINDAR, RIGHTS OF.

See ZAMINDAR AND RAIYAT

———— kabuliat between Government and—

See SPECIFIC PERFORMANCE — SPECIAL CASES . I. L. R. 3 Calc. 464

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— liability of, for repairs of tank

See CONTRACT ACT, s 70.
I. L. R. 18 Mad. 88

— proof of title of—

See OWNERSHIP, PRESUMPTION OF
I L. R 15 Mad. 101
L. R. 18 I. A. 149

— purchase by, of patni interest, effect of—

See MERGER 3 C. L. R. 159
I L. R. 19 Calc. 760

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1. — Nature of zamindari estate—

CHINTALAPATI CHINNA SIMHADRIRAJ *v.* ZAMINDAR OF VIZIANAGRAM . . . 2 Mad. 128

2. — Collections of rent—*Claim to intermediate tenure—Onus of proof.* A zamindar

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bound to make an allowance for that portion which he as a co-sharer ought to pay. GOBINDO COOMAR CHOWDHRY *v.* HANSON
15 B. L. R. 56: 23 W. R. 152

5. ———— **Compensation**—*Compensation to zamindar for loss sustained by erection of works by railway company.* A zamindar who receives his rents in full is not entitled to participate in compensation received by his patnidar for loss suffered by the latter in consequence of works being erected on land included in the patni. MAHARAJAH OF BURDWAN *v.* WOOMA SOONDURI DOSSEE . . . . . . 10 W. R. 12

6. ———— **Sale in execution of decree**—*Custom—Charge on sale-proceeds.* Where a sale took place in execution of a decree, and it was proved by custom that the zamindar's right extended to one-fourth of the sale-proceeds in cases of involuntary sales:—*Held*, that the zamindar had a right to recover the fourth share of the proceeds of sale from the judgment-creditor, who in truth reserved the sale price. The zamindar's right attached to the sale-proceeds, and was a prior charge upon the proceeds. BAIJ NATH PERSHAD *v.* MAHOMED FUZL HOSSEIN
2 Agra, Part II, 204

7. ———————— *Custom — Right to share of sale-proceeds—Calculation of amount—Zamindari huq.* Where by custom the zamindar is entitled to a quarter share of the sale-proceeds as his huq zamindari, he is entitled to recover it on the occasion of sales, either absolute or originally conditional, but subsequently becoming absolute by foreclosure, from the vendor and the purchaser, and the latter cannot be discharged from his liability by proving that he has paid all, including zamindar's dues, to the former, it being incumbent on him to see that the zamindar is satisfied in respect of his dues. *Held*, further, that, under the circumstances, the plaintiffs, the zamindars, were entitled to one-fourth from R450, the principal amount repayable, and not from the amount ascertained at the time of foreclosure to be due to the mortgagee, including interest, inasmuch as the deed made no provision for payment of any sum as interest. HEERA RAM *v.* DEO NARAIN SINGH
Agra F. B. 63: Ed. 1874, 48

8. ———————— *Sale in execution of house in Mohalla—Wajib-ul-urz—Liability of auction-purchaser—Right of zamindar to huq-i-chaharum.* The zamindars of a certain mohalla claimed from the purchaser of a house situated in such Mohalla, which had been sold in execution of a decree, one-fourth of the sale-proceeds of such house, such purchaser being the holder of such decree. Such suit was based upon the terms of the wajib-ul-urz. That document stated, *inter alia*, that, when a house in such Mohalla was sold, a cess called chaharam was received by such zamindars "according to the understanding arrived at between the seller and the zamindars." *Held*, that such zamindars were not entitled under the terms of the wajib-ul-urz to one-fourth of the sale-proceeds; that the decree-holder, who had happened to have become the auction-purchaser, could not be regarded as the "seller"; and it was only the "seller" who was liable; that the terms of the wajib-ul-urz were applicable only to private and voluntary sales, and not to execution sales; and that under these circumstances, the suit must be dismissed. RENT MARHO *v.* ZAHURUL HAQ I. L. R. 3 All. 797

9. ———— **Sale of zamindar's right**—*Right of tenant in another house.* Where a zamindar's right is sold by auction, it does not follow that, by the sale of the zamindari right, he forfeits his tenant-right which he had in another patti in respect of a house. RAM BUKSH SINGH *v.* PURDUMUN KISHORE . 2 Agra, Part II, 202

10. ———————— *Landholder and [illegible] Sale of house by tenant—Haq-i-chaharum [illegible] right [illegible] vendor, the right can be enforced against the vendor. [illegible] Singh, N.-W. P. H. C. (1867), F. B., 63, referred to. DHANPAI BIBI *v.* ABDUR RAHMAN (1901)
I. L. R. 23 All. 200

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See BENGAL RENT ACT, 1869.

See LANDLORD AND TENANT.

See MADRAS RENT RECOVERY ACT, 1865.

See RIGHT OF OCCUPANCY.

ZAMINDARI DAKS.

1. — — — **Beng. Act VIII of 1862**—*Effect of Act on liability of patnidars.* Bengal Act VIII of 1862 did not relieve patnidars from their liability under the old laws of paying the zamindari dák charges. BISSONATH SIRCAR *v.* SHURNOMOYEE . . . . . 4 W. R. 6

2. ———————————— *Liability of patnidar.* Where the terms of a patni lease did not make the patnidar liable for the maintenance of the zamindari dáks, it was *held* that the patnidar was not liable for a tax which was imposed on the zamindar by Bengal Act VIII of 1862. RAKHAL DOSS MOOKERJEE *v.* SHURNO MOYEE
6 W. R. 100

3. ———————————— *Liability of patnidar.* [illegible] that if any item [illegible] the sudder [illegible] proper [illegible] connected [illegible] KANT ROY *v.* 8 W. R. 45

[illegible] CHUND SIRCAR *v.* SARODA SOONDURY DEBIA 3 W. R. S. C. C. Ref. 17

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4 ——— — *Cess — Dák cess —Zamindari dák, maintenance of—Ben Reg XX of 1817, s 10—Ben. Act VIII of 1862—Contract between zamindar and patnidar as to payment of dák charges—Liability of patnidar to pay dák charges —Construction of patni lease* In a *patni-kabuliyat* executed in 1855, the *patnidar* stipulated to pay the salary and expense of *amlas of dák chauki* houses, and to appoint them and superintendent their work, under the system of *zamindari dák* then in vogue *Held*, that this stipulation imposed upon the patnidar the liability of paying *dák* charges recoverable from the *zamindar*, and, although the system has since been changed, [illegible]

[illegible] I. L. R. 20 Calc. 200

ZAMINDARI DUES AND CESSES.

——— suit for—

See Small Cause Court, Mofussil—Jurisdiction—Cess
I. L. R. 1 All. 444

ZAMORIN OF CALICUT.

See Hindu Law — Will — Power of Disposition — Generally.
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See Pensions Act, s. 12.
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ZANZIBAR.

See Consular Court (at Zanzibar).
I. L. R. 3 Bom. 58

——— application of Bom. Reg II of 1627, s. 21, cl. 1, to—

See Jurisdiction of Civil Court—Caste . . I. L. R. 26 Bom. 174

——— Consular Court at—

See High Court, Jurisdiction of—Bombay — Civil.
I. L. R. 20 Bom. 480

See High Court, Jurisdiction of — Bombay — Criminal.
I. L. R. 3 Bom. 334

See Jurisdiction of Criminal Court — General Jurisdiction.
I. L. R. 19 Bom. 741

——— jurisdiction of British Consul at Zanzibar to hear suits—

See Consular Court (Zanzibar).
I. L. R. 3 Bom. 58

——— *Law of Zanzibar—Lands taken for public purposes — Zanzibar Order in Council, 1884—Indian Land Acquisition Act,*

ZANZIBAR—*concld.*

1894, s. 6—Compensation—Incidents of land governed by the local law—Mahomedan law of compensation —Buildings erected by Government on the plaintiffs' land without authority. The lands of the plaintiffs in the island of Mombasa, part of the dominions of the Sultan of Zanzibar, were taken for a railway by the British Government, under s. 6 of the Indian Land Acquisition Act, 1894, which had been brought into force in Zanzibar by Order in Council. In a suit for [illegible]

regards the buildings, English law applied, under the Order in Council of 1884 and the subsequent treaty of 1886 By that law, notwithstanding treaty rights of exterritoriality, the *lex loci rei sitæ* governs the incidents of land, that is, in this case, Mahomedan law, of which law a Zanzibar Judge has judicial cognizance, and (iii) that, by Mahomedan law, the houses did not become the plaintiffs' property: the plaintiffs are entitled to have them removed, and the value to them of the right to have them removed from lands which have ceased to be their property is the measure of the compensation due. Secretary of State for Foreign Affairs *v* Charlesworth, Pilling and Company (1901) . I. L. R. 26 Bom. 1
s c. L. R. 28 I. A. 121

ZERAIT LAND.

See Bengal Tenancy Act, s 116
13 C. W. N. 661; 664

See Bengal Tenancy Act, s 120
13 C. W. N. 135

See Civil Procedure Code (Act XIV of 1882), s. 211. 12 C. W. N. 650

See Mesne Profits.
12 C. W. N. 650

ZOROASTRIAN FAITH.

——— tenets of—

See Muktad Ceremonies.
I. L. R. 33 Bom. 122

ZUR-I-PESHGI LEASE.

See Attachment—Alienation during attachment . I. L. R. 18 All. 123

See Bengal Regulation VIII of 1819

See Bengal Tenancy Act, s. 21.
10 C. W. N. 351

See Decree — Form of Decree — Possession . I. L. R. 18 All. 440